

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-03-13-04 / NON-PRECEDENTIAL
ID: P-85-189
DATE: MARCH 13, 1986
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to the regular assignment made to ADMINISTRATIVE LAW JUDGE by the Oklahoma Tax Commission, and hearing had at which hearing the PROTESTANT, appeared in person represented by ATTORNEY and the Sales and Use Tax Division appearing by OTC ATTORNEY, Attorney for the General Counsel's office of the Oklahoma Tax Commission.

Opening statements were made by the respective parties and exhibits, not itemized herein, were received into evidence. PROTESTANT testified on his own behalf as the Protestant. Closing arguments were made by the respective parties and the case was submitted for a decision.

STATEMENT OF FACTS

The Protestant is the owner of a certain facility known as SPEEDWAY and was the owner/operator of said Speedway during the year 1983. During the audit period, aside from the general admission fees collected for entrance into the SPEEDWAY and concessions sold at the Speedway, the drivers and their respective pit crew members paid a "back gate entry fee" which was used as prize money for each of the respective races on designated nights with a portion of this money being held until a year-end banquet, at which point the money collected throughout the year would be given to the driver who won the most races or who collected the most points throughout the year. The Protestant testified that this money was collected and carried on the books of the business enterprise by his bookkeeper and secretary, BOOKKEEPER. PROTESTANT testified that nearly every night that there was a race held at SPEEDWAY in 1983, he had to contribute money from the profits obtained from general admission and the concession stands to pay the winners of the respective races. The monies paid to the drivers was made through the Protestant's business account and shown on 1099's as paid to the winning drivers. The back gate receipts were deposited nightly with the total receipts obtained by the Protestant from concessions and general admission fees, although the back gate entry fees were kept separate on their business books and records designated "drivers fund".

The Sales and Use Tax Division on June 12, 1985 issued a proposed assessment for the period of January 1, 1983 through December 31, 1983 in the amount of Four Thousand Five Hundred Fifty Four Dollars and Ninety-Two Cents (\$4,554.92) representing sales tax of Three Thousand Five Hundred Fifty-Eight Dollars and Fifty-Four Cents (\$3,558.54), interest of Six Hundred Forty Dollars and Fifty-Four Cents (\$640.54) and penalty in the amount of Three Hundred Fifty-Five Dollars and Eighty-Four Cents (\$355.84). This assessment was amended at

the hearing to reflect concessions by the Protestant and the amended assessment amounting to Four Thousand One Hundred Fourteen Dollars and Seventy-Eight Cents (\$4,114.78) representing sales tax of Three Thousand Two Hundred Fourteen Dollars and Sixty-Eight Cents (\$3,214.68), interest in the amount of Four Hundred Seventy-Eight Dollars and Sixty-Four Cents (\$478.64) and penalty in the amount of Three Hundred Twenty-One Dollars and Forty-Six Cents (\$321.46), this amount being attributable to the sole issue at this hearing being the taxability of the back gate entry fees charged the drivers and their pit crew members.

ISSUES AND CONTENTIONS

It is the Protestant's contention that these back gate entry fees are not taxable in that the Protestant has no control over the back gate entry fees and that the proceeds are not an admission to an event as designated under the Sales Tax Code, pursuant to Section 1354(L), nor deemed gross proceeds under the definition contained withing [SIC] Section 1352(F) of Title 68 of the Oklahoma Statutes.

The Sales Tax Division contends that the back gate receipts are in effect fees or contributions made and collected from the drivers and their pit crew members for admission to a place of amusement, sports, entertainment, exhibition, display, or other recreational event or activities pursuant to the provisions of Section 1354(L) of Title 68 of the Oklahoma Statutes, and as such are also deemed gross receipts as defined in Section 1352(F) of Title 68 of the Oklahoma Statutes.

The issue to be determined is whether or not the assessment by the Sales and Use Tax Division on the back gate entry fees charged the drivers and the respective members of their pit crew was correct and proper and pursuant to the authority contained within Section 1354(L) and Section 1352(F).

APPLICABLE LAW

The Oklahoma Sales Tax Code, Section 1350 et seq. of Title 68 of the Oklahoma Statutes, is broad and comprehensive and the Oklahoma Tax Commission is vested with the authority granted to it by the Legislature to carry out the intent of the Legislature as to the provisions of the Sales Tax Code. Section 1354(L) of Title 68 of the Oklahoma Statutes provides:

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

The terms of Section 1354(L) supra are clear and unambiguous concerning the application and levy of sales tax in regard to tickets for admission to or voluntary contributions made to a place of amusement, etc., and as such, in the case at bar, sales tax would be applicable to the back gate entry fees paid by the drivers and their respective pit crew members irregardless of how these funds are distributed by the Protestant to the winners of the respective races on designated nights.

The testimony of the Protestant is that in the event there were insufficient funds collected from back gate entry fees to award the prize money to the winners of the respective races on a designated night, he would have to make up the difference from what was collected out of other proceeds from his business establishment, being concession stand fees and/or general admission fees. Protestant testified the shortfall in back gate entry fees happened almost every time races were conducted in 1983. Protestant testified that the back gate entry fees were deposited through his business account, that winnings were paid to the drivers through his business account and 1099's were issued to the winning drivers.

Section 1352(F) of Title 68 of the Oklahoma Statutes defines gross receipts or gross proceeds to mean:

(F) "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under this article, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

- (1) Cash paid, and
- (2) Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, and
- (3) Any amount for which credit or a discount is allowed by the vendor, and
- (4) Any amount of deposit paid for transfer of possession, and
- (5) Any value of a trade-in or other property accepted by the vendor as consideration,...

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

It is equally clear that these proceeds from back gate entry fees would be deemed gross receipts and subject to sales tax pursuant to the provisions of the Sales Tax Code.

Assuming, for the sake of argument, that the Protestant's contention that all the monies from the back gate entry fees collected is distributed to the drivers as winners of the respective races and such does not constitute gross receipts is beside the point in view of the fact that the provisions of Section 1352(F) of Title 68 of the Oklahoma Statutes specifically states that there shall not be this type of a deduction from the gross receipts or gross proceeds.

CONCLUSION

In view of the above and foregoing factual situation and law applicable thereto, the Administrative Law Judge concludes as follows:

(1) That the Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the back gate entry fees collected by the Protestant are subject to the levy of sales tax pursuant to the provisions of Section 1354(L) of Title 68 of the Oklahoma Statutes and would qualify as gross receipts pursuant to the definition of such contained within Section 1352(F) supra.

(3) That the protest of PROTESTANT be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied and that the assessment by the Sales and Use Tax Division as amended at the protest hearing be sustained and that interest will continue to accrue from said date of the assessment until paid in full.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.