

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-03-13-05 / NON-PRECEDENTIAL
ID: P-85-190
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 assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission, and hearing had at which hearing the Protestant, PROTESTANT, d/b/a RACE TRACK, appeared in person and represented by ATTORNEY, Attorney at Law, and the Sales and Use Tax Division appeared 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 behalf of himself as the Protestant. Closing arguments were then made by each respective party and additional time was permitted for the submission of briefs in support of the respective parties' positions concerning the protest.

STATEMENT OF FACTS

The Protestant leases certain facilities known as the RACE TRACK and holds car races on weekends and certain other special designated dates for which he charged a general admission for entrance into the speedway. The drivers who participate at the speedway hold a meeting every year to determine the amount of entry fee to be charged the driver and his/her pit crew, which is for the purposes of this hearing designated as "back gate entry fee" for each race which must be paid by the driver and his respective crew. This back gate entry fee is collected and turned over to PROTESTANT who acts as custodian for said funds, and at the end of the races for the day in question he disburses these funds according to the terms set by the drivers. The amount of the fee for the specific period in question was nine dollars (\$9.00) back gate entry fee for each driver and each pit crew member, whereas the general admission for spectators was five dollars (\$5.00) each. Of this nine dollars (\$9.00) back gate entry fee, one dollar (\$1.00) is held for an annual banquet at the end of the year and the eight remaining dollars (\$8.00) is distributed to the winner of the races on the designated night. If in the event there is insufficient funds collected from the back gate entry fee for distribution to the winners of the races, PROTESTANT would make up the shortfall out of the profits from the concession stand and the general admission to the speedway.

The Sales and Use Tax Division of the Oklahoma Tax Commission did on June 12, 1985 issue a proposed assessment against PROTESTANT, d/b/a RACE TRACK for the period of January 1, 1984 through April 30, 1985 in the amount of Ten Thousand Seven Hundred Nineteen Dollars and Eighty-three Cents (\$10,719.83) representing sales tax of Eight Thousand Three

Hundred Seventy-four Dollars and Eighty-seven Cents (\$8,374.87), interest of One Thousand Five Hundred Seven Dollars and Forty-eight Cents (\$1,507.48) and penalty of Eight Hundred Thirty-seven Dollars and Forty-eight Cents (\$837.48). Following certain concessions by the Protestant and adjustments agreed to between the Protestant and the General Counsel's Office, the assessment of June 12, 1985 was amended to Five Thousand Two Hundred Thirty Dollars (\$5,230.00) representing sales tax of Four Thousand Eighty-five Dollars and Ninety-three Cents (\$4,085.93), interest of Seven Hundred Thirty-five Dollars and Forty-seven Cents (\$735.47) and penalty of Four Hundred Eight Dollars and Sixty Cents (\$408.60), this amount 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 within 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.

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 , d/b/a RACE TRACK be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT, d/b/a RACE TRACK 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.