

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-01-20-03 / NON-PRECEDENTIAL
ID: P-86-170
DATE: JANUARY 20, 1987
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, Oklahoma Tax Commission. A hearing was had, at which hearing Protestant appeared not, nor by attorney, after being called three times in open court. Protestant had received notice of the hearing by certified mail and had signed and returned a receipt indicating receipt of the notice. The Sales and Use Tax Section of the Business Tax Division of the Oklahoma Tax Commission appeared by Attorney OTC ATTORNEY. Exhibits, not herein itemized, were received into evidence.

STATEMENT OF FACTS

A field audit of the books and records of Protestant for the period of November 1, 1981 through October 31, 1984 was conducted by the Division. On April 26, 1985, the Sales and Use Tax Division, by certified letter with return receipt requested, sent a proposed assessment of \$12,768.28 for tax, \$2,410.55 for interest and \$1,276.84 for penalty for a total aggregate assessment of \$16,455.67. The return receipt was returned dated April 29, 1986.

By letter dated May 16, 1985, and received May 22, 1985, Protestant indicated that certain sales of Protestant were not subject to tax for the reason that the purchases were for resale or for manufacturing. The Protestant protested sales tax on those invoices in the amount of \$3,867.42, plus penalty and interest thereon.

After reviewing the documentation submitted by Protestant, the Division revised its assessment. The amount of tax, interest and penalty under protest after this revision is sales tax in the amount of \$2,028.91, interest in the amount of \$478.24, penalty in the amount of \$202.90 for an aggregate of \$2,710.05.

ISSUES AND CONTENTIONS

The Protestant contends that it correctly made sales exempt from sales tax to purchasers who were holding the items for resale or would use the items in the manufacturing process with the ultimate product to be sold.

The Division contends that Section 1354(A) of Title 68 levies an excise tax on the gross receipts or gross proceeds of each sale of tangible personal property unless otherwise exempted. 68 O.S. § 1352 et seq.

APPLICABLE LAW

During the audit period, Protestant made sales of tangible personal property to purchasers who did not hold tax permits without collecting, reporting or remitting sales tax on the gross proceeds of the sales. Further, Protestant made sales to persons claiming exemption under a resale permit manufacturing exemption who were not actually exempt.

Section 1354 of Title 68 reads in pertinent part as follows:

There is hereby levied upon all sales, not otherwise exempted in this article, an excise tax . . . on the gross receipts or gross proceeds of each sale of the following:

A. Tangible personal property

Protestant, during the audit period, transferred title and/or possession of items of tangible personal property to purchasers who were not exempt from the payment of sales tax. Records of Protestant indicated an additional sales tax liability for sales made to persons who did not hold valid sales tax permits, and sales to customers claiming exemptions where tax was due but not charged.

In order for no tax to be due, the transactions engaged in by Protestant must be exempt transactions. In order for Protestant to avoid the payment of sales tax on the transfers as assessed, there must be showing by Protestant that the transaction is specifically exempt under the sales tax code. Exemptions statutes are strictly construed against the taxpayer claiming an exemption. Bert Smith Machinery Co., Inc. vs. Oklahoma Tax Commission, 563 P.2d 641 (Okl. 1977), citing Phillips Petroleum Co. vs. Oklahoma Tax Commission, 542 P.2d 1303 (Okl. 1976). Thus, Protestant has the burden of showing that he falls within a specified exemption. Bert Smith Road Machinery Co., Inc. vs. Oklahoma Tax Commission, supra.

The burden of proving that a sale was not a taxable sale shall be upon the person who made the sale. In the instant case, Protestant has failed to prove that the sales on which this assessment was based were either not subject to tax or that the sales were specifically exempt under the Sales Tax Act.

CONCLUSIONS

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter under 68 O.S. 1981, § 207.
- (2) That sales tax is levied on each sale of tangible personal property unless otherwise exempted in the Sales Tax Code.

(3) That Protestant has failed in his burden of proving that he is exempt from the sales tax assessed.

(4) That the Protest of PROTESTANT should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied, that the assessment of the Sales and Use Tax Section of the Business Tax Division for Sales tax be sustained, and that the Protestant, PROTESTANT be required to pay the amount of the Sales tax as assessed, plus the penalty and the interest assessed and accrued from the due date until paid.

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.