

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-10-28-03 / NON-PRECEDENTIAL
ID: CR-85-012
DATE: OCTOBER 28, 1987
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

On July 12, 1984, NAME, Assistant Secretary of the Claimant, wrote a letter to AUDITOR A of the Sales Tax Section of the Business Tax Division, requesting the necessary forms to file for a refund of sales tax paid. The letter stated that certain equipment leased by the Claimant was subject to Missouri sales tax and that all delinquent sales tax, plus penalty and interest, had been paid to the State of Missouri.

By letter dated July 17, 1984, AUDITOR A requested certain information to substantiate the Claimant's request for a refund of sales tax remitted to the State of Oklahoma. Requested was a written explanation of why the refund is due, as well as copies of original invoices on which the tax was charged, copies of sales tax reports on which sales were reported, copies of cancelled checks used to remit the tax paid for which a refund was being requested, and copies of the credit invoices or cancelled checks showing that tax collected in error had been returned to Claimant's customers.

On July 20, 1984, the Claimant, by letter, explained that it had two leases in which all or a portion of the equipment which was originally leased to an Oklahoma corporation were currently in Missouri. The letter emphasized that Claimant had paid Missouri delinquent sales tax, penalty and interest because the equipment was in Missouri and the State of Missouri was subjecting the lease payments to sales tax. Enclosed in the letter were the documents requested and copies of the audit papers from the Missouri Department of Revenue showing their computations of the delinquent taxes.

On November 26, 1984, AUDITOR A responded to the Claimant's letter and acknowledged that a refund would be due based upon the following: one, sales tax paid to Oklahoma after the new leases were signed will be subject to refund; two, sales tax paid to Oklahoma prior to new leases being signed is subject to Oklahoma sales tax and would not be refunded; three, any disparity between the amount submitted to Oklahoma less the amount of Missouri tax must be returned to Claimant's customers before it would be subject to refunding; four, concerning the contract and equipment located in Texas, documentation must be provided which will show that the tax has been remitted to Texas or has been refunded to Claimant's customers. The letter requested additional information in the form of a worksheet detailing, by month reported, the amount of refund requested.

By letter dated June 10, 1985, the Sales Tax Section of the Business Tax Division, having failed to find records which indicated that the Claimant had responded to the request of November 26, 1984 for documentation, again requested documentation.

On June 12 1985, the Claimant wrote that it had responded to the letter of November 26, 1984 by telephone on December 6, 1984. The letter reviewed the telephone conversation in which the Claimant explained that the July request for refund had been postponed pending a decision between the legal departments of Oklahoma and Missouri. It also explained that the sales tax protest of the Claimant with Missouri was still pending a decision. The letter concluded that unless contacted, the Claimant would disregard the request made in the letter of June 10, 1985.

On July 16, 1985, the Division acknowledged receipt of the Claimant's June, 1985 sales tax report and letter of July 10, 1985 concerning a protest of a portion of the sales tax remitted. It advised the Claimant that the letter of July 10, 1985 would serve as the Claimant's official protest and that the file was being transferred to the General Counsel's Office for future action.

The July 10, 1985 letter is not a part of the file as it now exists. An office correspondence signed by AUDITOR B and dated July 19, 1985 indicates the file was received by the General Counsel's Office on July 24, 1985.

The file was docketed and assigned to ATTORNEY 1 on July 29, 1985. It was reassigned to ATTORNEY 2 on December 12, 1985. On April 9, 1987, ATTORNEY 3, attempted to contact the Claimant concerning the status of the case. ATTORNEY 3 was told by a Southwestern Bell Telephone operator that the Claimant had no telephone number at which it could be reached. ATTORNEY 3, by office correspondence dated April 9, 1987, requested that AUDIT SUPERVISOR of the Sales Tax Section of the Business Tax Division, check into the status of the company.

AUDIT SUPERVISOR, on the office correspondence dated April 9, 1987, indicated that he was of the opinion that the Claimant was a subsidiary of 1st National Bank of CITY and that since the F.D.I.C. had taken over 1st National Bank of CITY, the claimant was no longer in business.

ISSUES AND CONTENTIONS

The sole issue herein is whether the Claimant is entitled to a refund of the sales tax collected and remitted to the State of Oklahoma on lease agreements which were signed in Oklahoma for equipment which was delivered in Oklahoma, but used in Missouri.

The Protestant contends that the leases of equipment which were sent to Missouri should not be subject to Oklahoma sales tax. The Sales Tax Section of the Business Tax Division contends that the claim for refund should be denied insofar as the original lease agreements are concerned since the lease agreements were signed by the Claimant and the lessee in the State of Oklahoma and the equipment under the lease agreements was delivered by the Claimant to the

lessee in the State of Oklahoma. The Sales Tax Section of the Business Tax Division also contends that the Protestant has failed to carry its burden of proof in this case.

APPLICABLE LAW

Section 1352(F) of Title 68 of the Oklahoma Statutes provides:

“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:

...

(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

...

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. (Emphasis added.)

Section 1352(L) of Title 68 of the Oklahoma Statutes provides:

“Sale” means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, including but not limited to:

(1) The exchange, barter, lease or rental of tangible personal property resulting in the transfer of the title to or possession of property; and ... (Emphasis added.)

Section 1354 of Title 68 of the Oklahoma Statutes provides in pertinent part:

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of three and one-fourth percent (3¼%) of the gross receipts or gross proceeds of each sale of the following:

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any

deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds; (Emphasis added.)

In this case, the original lease agreements were signed by the Claimant and the lessee in the State of Oklahoma and the equipment which was the subject of the lease agreements was delivered by the Claimant to the lessee within the State of Oklahoma. The equipment was subsequently removed from the State of Oklahoma to the State of Missouri.

Pursuant to the above statutory authority, the lease of the equipment by the Claimant to the lessee was within the meaning of “sale” as defined in 68 O.S. 1981, § 1352(L) because there was a transfer of possession for a valuable consideration which was accomplished within the State of Oklahoma. Oklahoma sales tax was correctly charged, collected and remitted to the state on the gross receipts or gross proceeds of the original lease agreement because gross receipts or gross proceeds are defined in 68 O.S. 1981, § 1352(F) to mean the “total amount of consideration” and includes “any amount for which payment is charged, deferred, or otherwise to be made in the future.” Therefore, the Claimant in accordance with the above cited statutory authority is not entitled to a refund of the sales tax which was collected for the State of Oklahoma on the original lease agreements.

In regard to any lease agreements entered into by the Claimant and the lessee subsequent to the time the equipment was removed from the State of Oklahoma to the State of Missouri, to extend the original lease period, the Claimant must come forward with evidence or proof that sales tax on the subsequent lease agreements was remitted to the State of Oklahoma, the amount of sales tax which was remitted to the State of Oklahoma under the subsequent lease agreements and that the sales tax has been returned to its customers or the amount of any disparity between the amount remitted to Oklahoma and the amount of Missouri tax has been returned to its customers. Otherwise, the claim for refund in regard to the sales tax remitted on the lease agreements entered into subsequent to the time the equipment was removed from the State of Oklahoma to the State of Missouri, if any, should also be denied as not being verified in accordance with 68 O.S. 1981, § 227. Also, Rule 26 of the Rules of Practice and Procedure Before the Oklahoma Tax Commission provides as follows:

In all proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may dismiss the case for lack of sufficient evidence and, thereafter, recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief. (Emphasis added.)

In conclusion, the Claimant is not statutorily entitled to a refund of the sales tax collected and remitted under the original lease agreements because the lease of the equipment was within the meaning of sale and, therefore, the total amount of the lease was subject to Oklahoma sales tax. Further, the Claimant is not statutorily entitled to a refund of sales tax collected and remitted under any lease agreement entered into subsequent to the time the equipment was removed from the State of Oklahoma to the State of Missouri, if any, unless and until the Claimant sustains its burden of verifying the claim for refund.

CONCLUSIONS OF LAW

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the Claimant is not statutorily entitled to a refund of sales tax collected and remitted to the State of Oklahoma under the original lease agreements.
- (3) That the Claimant has not sustained its burden of proof and therefore is not entitled to a refund of sales tax collected and remitted to the State of Oklahoma under the lease agreements entered into subsequent to the time the equipment was removed from the State of Oklahoma to the State of Missouri.
- (4) That the Claimant did not appear at the hearing, nor did it file brief or a position letter in this case. The Claimant has not sustained its burden of proof. See Rule 26 of the Rules of Practice and Procedure Before the Oklahoma Tax Commission.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the claim for refund of CLAIMANT be denied.

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.