

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-12-29-16 / PRECEDENTIAL
ID: P-86-099
DATE: DECEMBER 29, 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, by the Oklahoma Tax Commission. A hearing was had on November 4, 1987, at which hearing Protestant appeared not, nor by counsel. The Sales and Use Tax Section of the Business Tax Division appeared by ATTORNEY, Attorney. Exhibits, not herein itemized, were received into evidence, and the case was submitted for a decision.

STATEMENT OF FACTS

The Sales and Use Tax Section of the Business Tax Division conducted a field audit of Protestant's books and records at Protestant's headquarters in CITY, Texas. Protestant's records revealed an additional sales tax liability for the period of February 1, 1983 through November 30, 1985, in the amount of Two Thousand Five Hundred Forty-three Dollars and Seventy-six Cents (\$2,543.76) plus interest and penalty.

The additional tax was municipal sales tax that was not collected on sales in Oklahoma where property sold was shipped from Protestant's warehouse in Oklahoma to Oklahoma customers.

ISSUES AND CONTENTIONS

The issue presented is whether sales taxable transactions occurred when Oklahoma customers received possession of tangible personal property for valuable consideration from an owner in Texas, who had stored the property in Oklahoma prior to the transfer.

The property originated from a CITY IN TEXAS manufacturing facility and was transferred to a facility in Oklahoma for warehousing. According to Protestant, the sales occurred in CITY IN TEXAS, at Protestant's headquarters, because the shipment originated there and all credit approval, order acceptance, and invoicing occurred in CITY IN TEXAS. Thus, use tax was applicable rather than sales tax.

The Division contended that since title to the property and possession remained with Protestant while the property was warehoused in Oklahoma, the subsequent transfer of the property to an Oklahoma customer constituted a sale within this state and was subject to sales tax.

APPLICABLE LAW

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

(L) “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 the property; and
- (2) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing; and
- (3) The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities; and
- (4) The furnishing or rendering of services taxable under this article.

Under the definition of “sale”, when a transfer of title or possession of tangible personal property for valuable consideration is accomplished in Oklahoma, a sale has occurred. Protestant’s retention of title and possession of the property, while it was stored in Oklahoma, and the subsequent transfer of possession for valuable consideration to Oklahoma customers, established the sales for which municipal sales taxes were properly assessed. Municipalities are authorized by 68 O.S. 1981, § 2701 to levy and collect such taxes as the Legislature may levy and collect for state government.

Use tax is levied and must be paid by persons bringing property into this state and storing the same. 68 O.S. 1981, § 1402. When the property is brought into Oklahoma for the purpose of being resold, as it was in the present situation, use tax is not applicable. 68 O.S. 1981, § 1404. Although Protestant, in its letter of protest, appeared to take the position that use tax rather than sales tax was due because title to the property was transferred in Texas, its contention was unsupported by evidence that title transferred in Texas. The transfer of possession of the property, within this state, to the Oklahoma customers was the taxable event upon which sales tax was due.

CONCLUSIONS OF LAW

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

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) A sale occurred under 68 O.S. 1981, § 1352(L) when possession of tangible personal property located in this state was transferred by Protestant to another person or entity within this state.

(3) The sales tax levy of 68 O.S. § 1354(A) was applicable to the sales of the property, and municipal sales taxes were due.

(4) The proposed assessment of the Business Tax Division, dated February 28, 1986, of sales tax in the amount of Two Thousand Five Hundred Forty-three Dollars and Seventy-six Cents, interest in the amount of Four-Hundred Fifty-seven Dollars and Eighty-eight Cents (\$457.88), and penalty in an amount of Two Hundred Fifty-four Dollars and Forty-two Cents (\$254.42), for a total of Three Thousand Two Hundred Fifty-Six Dollars and Sixty Cents (\$3,256.60), plus any additional accrued interest, is correct.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest of PROTESTANT to the proposed assessment of additional sales tax, penalty and interest be denied.

OKLAHOMA TAX COMMISSION