

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 98-01-27-012 / NOT PRECEDENTIAL
ID: P9500030
DATE: 01-27-98
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties to this proceeding stipulated to a number of the exhibits received into evidence. The parties also stipulated that the protest to the use tax assessment had been resolved and that the hearing had been limited in scope to only one issue involving the sales tax assessment.

Upon review of the file and records, including the record of the proceeding held on June 26, 1996 and the exhibits received into evidence, the undersigned finds:

1. During the audit period, Protestants sold acetone, white and black peel cote, defloculent, glass cleaner and stripper to ANONYMOUS SERVICES.

2. Protestants did not charge or collect sales tax on these sales based on ANONYMOUS SERVICES representations that the sales were exempt from sales tax by virtue of its contract with A GOVERNMENTAL ENTITY.

3. Protestants did not have a supply contract with THE GOVERNMENTAL ENTITY during the audit period.

4. According to PROTESTANT ONE, President of THE COMPANY, the items sold to ANONYMOUS SERVICES were picked up by ANONYMOUS SERVICES at Protestants' business location.

5. The contract between ANONYMOUS SERVICES and THE GOVERNMENTAL ENTITY is a service contract.

6. The contract in Part I - Supplies or Services and Prices/Costs - provides:

Services Non-personal: Contractor shall furnish all personnel, supervision, tools, materials, equipment except as specified herein as government furnished, and any incidentals necessary to perform preventive maintenance and limited remedial maintenance on paint booths and flame spray booths at [THE GOVERNMENTAL ENTITY] in accordance with (IAW) the attached performance work statement (PSW).

7. The performance work statement in paragraph 1.1. - Scope of Work - provides:

The contractor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform Preventive Maintenance and limited remedial maintenance on paint booths and flame spray booths as defined in this Performance Work Statement (PWS) except as specified in section C-3 as government furnished property and services at THE GOVERNMENTAL ENTITY.

8. Section C-3 provides that the government shall furnish and/or make available facilities, utilities, custodial services, refuse collection, equipment maintenance, security police and fire protection and emergency medical service.

9. The amount in controversy is \$4,361.59, inclusive of tax in the amount of \$2,807.01, interest accrued through November 15, 1995, in the amount of \$1,273.81 and penalty in the amount of \$280.77.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the sales to ANONYMOUS SERVICES are exempt from the levy of sales tax pursuant to 68 O.S. Supp. 1993, § 1356(2).

Protestants contend that the sales to ANONYMOUS SERVICES are exempt. In support of this contention, Protestants argue that the items are immediately transferred to THE GOVERNMENTAL ENTITY for application to paint and flame spray booths owned by the United States Government.

The Division contends that sales to ANONYMOUS SERVICES are not exempt from sales tax. In support of this contention, the Division argues that the items are not transferred, immediately or otherwise, to the United States government, but are used and consumed by ANONYMOUS SERVICES in performing its service contract.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. The sale of tangible personal property, unless otherwise exempted by the provisions of the Sales Tax Code, is subject to sales tax. 68 O.S. 1991, §1354(1)(A).

3. Sales of taxable services or tangible personal property to persons who are primarily engaged in selling their services are subject to sales tax. 68 O.S. 1991, §1354(1)(U).

4. As a general rule, statutes exempting property from taxation are to be applied circumspectly and are to be construed against the allowance of an exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977). The burden of proving that a sale is not a taxable sale is on the person who made the sale. 68 O.S. 1991, § 1365(C).

5. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government are exempt from the levy of sales tax if ownership and possession of such property transfers immediately to the United States government. 68 O.S. Supp. 1993, § 1356(2).

6. Here, the evidence indicates that the items sold to ANONYMOUS SERVICES are used and consumed by ANONYMOUS SERVICES in performing the service contract with THE GOVERNMENTAL ENTITY. The ownership and possession of these items are not transferred, either immediately or otherwise, to the United States government. According, the sales to ANONYMOUS SERVICES are not exempt from sales tax under 68 O.S. Supp. 1993, § 1356(2).

7. Protestants' protest to the assessment of sales tax on the sales to ANONYMOUS SERVICES should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the sales tax protest of PROTESTANT CORPORATION AND ITS OFFICERS be denied. It is further DETERMINED that the amount in controversy be fixed, jointly and severally, as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.