JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-02-26-012 / NOT PRECEDENTIAL**
ID: **P9600232**
DATE: **02-26-98**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The parties stipulate to the following:

1. The PROTESTANT d/b/a THE SHOP was assessed by the Account Maintenance Division of the Oklahoma Tax Commission by letter dated February 23, 1996.

2. The proposed assessment was based upon the sale of fixtures and equipment of a business owned by Protestant named THE SHOP located in ANYCITY, Oklahoma.

3. The PROTESTANT, timely filed his protest to the proposed assessment on or about March 16, 1996.

B. Additional Facts:

1. The aggregate amount assessed on the sale of the fixtures and equipment totaled $727.94, inclusive of sales tax in the amount of $624.00, interest accrued through March 25, 1996, in the amount of $41.54 and penalty in the amount of $62.40.

2. Protestant does not challenge the value used by the Division to assess sales tax on the sale of the fixtures and equipment.

ISSUE AND CONTENTIONS

The stipulated issue is whether Protestant is personally liable for sales tax which was assessed upon the sale of fixtures and equipment involved in the sale of an ongoing business.

Protestant contends that the party to whom he sold the fixtures and equipment is liable for the sales tax. In support of this contention, Protestant argues that if he is obligated to pay sales tax on the sale of the fixtures and equipment double taxation results since he paid sales tax on the purchase of the fixtures and equipment. Protestant further argues that he was not obligated to act as a collection agent on the sale of the fixtures and equipment since the sale was a casual sale.

The Division contends that Protestant is personally liable for the amount assessed on the sale of the fixtures and equipment. In support of this contention, the Division argues that Protestant was the vendor of the fixtures and equipment and is personally liable for the sales tax required to be collected from the sale of the fixtures and equipment. The Division further argues that assuming arguendo the sale of the fixtures and equipment was a casual sale, Protestant is not relieve of the duty to collect, report and remit sales tax.

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. Each sale of an item of tangible personal property, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code[1], is subject to sales tax, 68 O.S. 1991, § 1354(1)(A)[2]; including the sale of fixtures and equipment as a part of the sale of any business. 68 O.S. 1991, § 1364(F).

3. Casual or isolated sales of tangible personal property are subject to sales tax. 68 O.S. 1991, § 1352(L). See, ***Magnolia Petroleum Company v. Oklahoma Tax Commission***, 326 P.2d 821, 824 (Okl. 1958).

4. The incidence of the levy of sales tax is on the consumer who is required to pay the tax to the vendor. 68 O.S. 1991, § 1361(A). The vendor is required to collect the full amount of the sales tax from the consumer, 68 O.S. 1991, § 1361(A); and report, 68 O.S. 1991, § 1365(A); and remit the same to the Tax Commission, 68 O.S. 1991, § 1362(A). The vendor is personally liable for the full amount of the sales tax whether or not the tax is collected from the consumer. 68 O.S. 1991, § 1361(A).

5. Protestant's contention of double taxation is without merit. "Double taxation" results where any one person or subject of taxation directly contributes twice to the same burden while other subjects of taxation belonging to the same class contribute but once. ***Olsen v. Oklahoma Tax Commission***, 198 Okl. 607, 180 P.2d 622 (1947).

---

[1] 68 O.S. 1991, § 1350 et seq.

[2] This section provides:

> 1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:
>
> (A) Tangible personal property, except newspapers and periodicals;

The Sales Tax Code provides that each sale of an item of tangible personal property, unless the sale is exempt, is subject to sales tax, including the sale of fixtures and equipment as a part of the sale of any business. 68 O.S. 1991, §§ 1354(1)(A) and 1364(F). The incidence of the tax is on the consumer or user. 68 O.S. 1991, § 1361(A). The liability of the vendor is conditioned upon the failure to charge and collect the sales tax from the consumer or the failure to report and remit the collected tax to the Tax Commission. 68 O.S. 1991, § 1361(A). Where the vendor adds the sales tax to the sales price of the tangible personal property, the tax constitutes a part of the sales price and is a debt, recoverable at law, from the consumer to the vendor until paid. 68 O.S. 1991, § 1361(B).

6. Protestant's protest to the proposed sales tax assessment should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of PROTESTANT, d/b/a THE SHOP, be denied. It is further DETERMINED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed 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.