JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-09-29-003 / NOT PRECEDENTIAL**
ID: **P9700277**
DATE: **09-29-98**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the recording of the proceeding held on June 17, 1998, and the exhibits received into evidence, the undersigned finds:

PROTESTANT operates a business, which pursuant to an arrangement with COMPANY ONE, transports military personnel to and from AN ANONYMOUS Air Force Base. COMPANY ONE, a privately held company that does not possess an Oklahoma sales tax permit, contracts for its services with the U.S. Government. PROTESTANT invoices the transportation charges to COMPANY ONE, who in turns bills the U.S. Air Force. Subsequent to COMPANY ONE receiving payment from the Air Force, COMPANY ONE pays PROTESTANT with a check drawn on its own account.

PROTESTANT on his sales tax report filed for the months of August, 1994, through May, 1997, deducted the amounts attributed to charges for transportation of military personnel from gross receipts. By letter dated July 24, 1997, the Audit Division of the Oklahoma Tax Commission notified PROTESTANT that the legal deductions for August 1, 1994, through May 31, 1997, were disallowed. The letter proposed an assessment of sales tax, penalty and interest through August 25, 1997, in the amount of $20,812.88. PROTESTANT filed a written protest to the proposed assessment, which was received by the Division on August 21, 1997.

ISSUE

Whether PROTESTANT sustained his burden of proving that the proposed sales tax assessment is incorrect.

CONTENTIONS

PROTESTANT contends that the charges for transportation of military personnel are exempt as sales to the federal government and were properly deducted from gross receipts on his monthly sales tax reports for the period at issue.

The Division contends that for PROTESTANT to show that these sales were exempt as ones to the federal government he must document that the transportation charges were billed to and paid by a government agency. The Division contends that PROTESTANT has failed to do so and in fact the evidence indicates that his invoices are paid by COMPANY ONE from its private bank account. Moreover, the Division contends that COMPANY ONE does not possess an Oklahoma sales tax permit and therefore cannot purchase goods or services exempt from sales tax.

CONCLUSIONS OF LAW

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

2. The sale of transportation to persons by common carriers in the State of Oklahoma, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code[1], is subject to an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of the sale. 68 O.S. Supp. 1992, § 1354(1)(C).[2] PROTESTANT urges the application of Subsection 1 of Section 1356[3] of the Oklahoma Sales Tax Code to otherwise exempt the transactions at issue.

3. As a general rule, statutes exempting property from taxation are to be applied circumspectly and are to be strictly construed against the allowance of an exemption. *Bert Smith Road Machinery Co. V. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977); *Phillips Petroleum Co. v. Oklahoma Tax Commission*, 542 P.2d 1303 (Okl. 1975). The language of an exemption statute may not be construed so as to give it an effect which is not intended. *Protest of Hyde*, 188 Okl. 413, 110 P.2d 292 (1941). The burden of proving that a sale was not a taxable sale is upon the person who made the sale. 68 O.S. 1991, § 1365(C).

To qualify as a sale to the U.S. Government, the charges for such sale must be billed to and paid by the government agency. *Oklahoma Administrative Code* 710:65-13-130. PROTESTANT has failed to establish that the charges for transporting military personnel were billed to or paid by the federal government.

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[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:
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> * * *
>
> (C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire; . . . .

[3] This Section provides in relevant part:

> There are hereby specifically exempted from the tax levied by this article:
>
> (1) Sales of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; . . . .

Although, PROTESTANT did not specifically raise the sale for resale exemption, the sales of transportation by PROTESTANT to COMPANY ONE do not qualify for the resale exemption found at Section 1357(3)[4] of Title 68 since COMPANY ONE did not possess a sales tax permit during the audit period.

The burden of proof in all proceedings is on the taxpayer to show that the assessment is erroneous. *Oklahoma Administrative Code* 710:1-5-47. See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988). Here, PROTESTANT failed to present evidence sufficient to sustain his burden of proof. Accordingly, PROTESTANTS protest to the proposed sales tax assessment should be denied.

DISPOSITION

It WAS the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT d/b/a COMPANY ONE be denied.

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.

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[4] This section in part provides:

There are hereby specifically exempted from the tax levied by this article:

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3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this article.