JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-01-14-003 / NOT PRECEDENTIAL**
ID: **P9600109**
DATE: **01-14-99**
DISPOSITION: **SUSTAINED**
TAX TYPE: **USE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter comes on for entry of a final order of disposition. The Commission, having reviewed the files and records herein, and the findings and recommendations entered herein by the Administrative Law Judge on November 9, 1998, finds and orders as follows:

FACTS

1. Taxpayer manufactures and sells mortgage coupon books, monthly loan payment documents and custom-printed letters. Taxpayer's principal place of business is in ANOTHER STATE. Some of its customers are located in Oklahoma. Taxpayer has no manufacturing, distribution or sales facilities within this State, nor does it maintain any sales representatives here. All of taxpayer's products are sold by telephone, at trade shows and through direct mail solicitation. All products sold to taxpayer's Oklahoma customers are delivered by mail or common carrier from out-of-state locations.

2. Taxpayer voluntarily applied for and obtained an Oklahoma out-of-state vendor's use tax permit, and began collecting and remitting state use taxes on its sales to Oklahoma customers in January, 1991. Taxpayer did not collect, report or remit any municipal or county use tax.

3. In December, 1992, and again in December, 1993, the Audit Division notified the taxpayer that because taxpayer had failed to report city tax, the Division had "adjusted" taxpayer's use tax reports for January through April, 1991, and estimated that an additional $900 was due, plus penalty and interest. Taxpayer did not respond.

4. In January, 1996, the Collections Division, Show Cause Section, issued a Notice to the taxpayer that it was required to appear before an Administrative Law Judge for the Commission, and if taxpayer "failed to resolve" its use tax delinquencies,[1] it would be subject to legal action, including an injunction against further operations in Oklahoma. Taxpayer protests.

[1] The Division also asserted liability for franchise and income taxes since January, 1991. The Division has since abandoned this assertion.

CONCLUSIONS OF LAW

1. In 1967, the United States Supreme Court ruled that an out-of-state seller who has neither outlets, facilities nor sales representatives in the State, and whose only connection with customers in the State is by common carrier or the United States Mail, cannot constitutionally be required to collect and pay a use tax on goods purchased for use within the State. *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967). Twenty-five years later, the Court reaffirmed that ruling in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Such is the case here.

2. Relying on language contained in 68 O.S. §1407, a statute first enacted in 1945, the Division appears to argue that, once having been *authorized* to collect the State's use tax on sales to Oklahoma customers, taxpayer may then be *compelled* to collect other taxes, such as the cities'. The Division cites no authority for this proposition, however, and we are aware of none.

3. The proposed assessment of municipal use tax in this case is contrary to the constitutional pronouncements in *Bellas Hess* and *Quill*. The protest should be sustained.

ORDER

For the reasons stated, the foregoing protest is sustained.

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.