JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-03-25-010 / NOT PRECEDENTIAL**
ID: **P9600319**
DATE: **03-25-99**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The PROTESTANT, was assessed, as president of COMPANY ONE and as an individual, sales tax in the amount of $914.58, inclusive of tax in the amount of $567.63, interest accrued through March 11, 1996, in the amount of $290.19 and penalty in the amount of $56.76. The proposed assessment was based upon the transfer of fixtures and equipment from COMPANY ONE to COMPANY TWO.

Protestant timely filed a protest to the proposed assessment on or about March 8, 1996.

ADDITIONAL FACTS

ANONYMOUS BANK held a note on a loan to COMPANY ONE for certain fixtures and equipment. PROTESTANT testified that he had located a buyer, COMPANY TWO, to take over the note. He testified further that at one point ANONYMOUS BANK had considered repossessing the equipment and then selling it to COMPANY TWO; however, ANONYMOUS BANK decided that would complicate the situation if handled in such a manner.

On or about September 2, 1992, Protestant signed a Bill of Sale transferring title of all fixtures and equipment of COMPANY ONE to COMPANY TWO.

ANONYMOUS BANK loaned COMPANY TWO the exact amount of COMPANY ONE'S note with the bank. Cashier's checks payable to COMPANY ONE and ANONYMOUS BANK remitted by COMPANY TWO were issued and the proceeds from the transfer of the fixtures and equipment were used to pay COMPANY ONE'S note with ANONYMOUS BANK.

Protestant does not dispute being an officer of COMPANY ONE. Additionally, Protestant does not challenge the value used by the Division to assess sales tax on the sale of the fixtures and equipment.

ISSUE

Whether the transfer of title and possession of fixtures and equipment by COMPANY ONE to COMPANY TWO was made for valuable consideration and therefore was a sale that is taxable under 68 O.S. § 1354.

CONCLUSIONS OF LAW

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

2. Oklahoma sales tax is imposed on all sales of tangible personal property not otherwise exempted in the Sales Tax Code. 68 O.S. § 1354(1)(A). Casual or isolated sales of tangible personal property are subject to sales tax. 68 O.S. Supp. 1996, § 1354(M). See, *Magnolia Petroleum Co. v. Oklahoma Tax Commission*, 326 P.2d 821, 824 (Okl. 1958).

3. A taxable "sale" under the Sales Tax Code consists of "the transfer [within this State] of either title or possession of tangible personal property for a valuable consideration." 68 O.S. Supp. 1996, § 1352(M).

4. Sales tax is levied on the gross receipts or gross proceeds from the sale of the tangible personal property. 68 O.S. § 1354(1). "'Gross receipts' or 'gross proceeds'" is defined to mean, "the total amount of consideration for the sale . . . whether the consideration is in money or otherwise." 68 O.S. Supp. § 1352(G).

5. The transfer at issue herein by Protestant of the fixtures and equipment constituted a sale of tangible personal property for a valuable consideration and was a taxable event under the provisions of Sections 1352(M) and 1354(A).

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 WAS DETERMINED that the protest be denied. It WAS further DETERMINED that the amount of the proposed assessment, plus 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.