JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **99-08-31-028 / NOT PRECEDENTIAL**
ID: **CR91041R**
DATE: **08-31-99**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant did not appear at the hearing although notice of the hearing was forwarded to Claimant's last known address in accordance with 68 O.S. 1991, § 208.

Upon review of the file and records in this matter, including Claimant's refund claim and letter of protest, the Division's position letter and the exhibits attached thereto, the undersigned finds:

FINDINGS OF FACT

1. During the period of March, 1986, through March, 1989, Claimant was the owner of a condominium unit in the XXX ANONYMOUS Building in ANYTOWN, Oklahoma.

2. Although an owner, Claimant did not reside in the condominium unit.

3. Claimant, by virtue of unit ownership, is a member of XXX ANONYMOUS Unit Owners, Inc., an Oklahoma corporation, incorporated under the laws of the State of Oklahoma on December 24, 1975.

4. During the period at issue, Claimant received natural gas and electricity in Claimant's individual unit as a result of purchases of the natural gas and electricity through a common meter.

5. XXX ANONYMOUS Unit Owners, Inc. was billed monthly for the utility services and in turn billed Claimant on a pro rata basis based on the square footage of the condominium and decimal interest ownership of certain areas, i.e., roads, fences, gardens, swimming pool, walks, etc.

6. Beginning in May, 1989, and continuing through June, 1989, the condominium unit owners filed individual claims for refund of their pro rata share of sales tax paid on purchases of natural gas and electricity by XXX ANONYMOUS Unit Owners, Inc. to AN OKLAHOMA GAS UTILITY COMPANY AND AN ELECTRIC SERVICE PROVIDER during the period of March, 1986, through February 28, 1989.

Claimant individually filed a claim for a refund of sales tax for the period of March, 1986, through February 28, 1989, in the amount of $342.96, which was received by ANYTOWN Enforcement of the Tax Commission on May 16, 1989.

By letter dated October 8, 1991, the Division denied the claim for refund.

The Condominium Unit Owners, by letter dated October 25, 1991, timely protested the denial of their claims.

Claimant was initially represented by counsel in this proceeding. Subsequent to the withdrawal of Claimant's counsel, Claimant was sent notice of a prehearing conference. Claimant did not appear at the prehearing conference nor did he contact the Division or the office of the Administrative Law Judge.

ISSUES

Whether Claimant's refund claim is barred in whole or in part by the three (3) year statute of limitations.

Whether Claimant met the burden of proving that the natural gas and electricity purchased was exclusively for residential use.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction in this matter. 68 O.S. § 207.
2. Sales tax is levied upon all sales of natural gas and electricity. 68 O.S. § 1354(1)(B).

3. The sale of natural gas and electricity when sold exclusively for residential use is exempt from the sales tax levy. 68 O.S. § 1357(G).

4. Exemption statutes are to be strictly construed against exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977).

5. Any taxpayer who erroneously has paid taxes to the State of Oklahoma may be refunded that amount of such tax so erroneously paid, without interest. 68 O.S. § 227(a). The refund claim must be filed with the Tax Commission within three years from the date of payment. 68 O.S. § 227(b). On May 16, 1989, Claimant filed its sales tax refund claim for the period of March, 1986, through February 28, 1989. It appears from the evidence in the file that a part of the refund claim is barred by the statute of limitations. Claimant has not presented any evidence to prove otherwise. Therefore, the portion of the refund claim that relates to sales tax paid prior to May 16, 1986, is barred pursuant to Section 227 of Title 68.

6. The burden of proof in all proceedings, unless otherwise provided by law, is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code* 710:1-5-47.

7. Claimant has wholly failed to come forward with any evidence to prove that the use of the gas and electricity was exclusively for residential purposes or to show in what respect the Division's denial of the claim for refund is incorrect.

8. Claimant's protest to the denial of the claim for refund of sales tax should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest to the denial of the claim for refund 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.