JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-02-08-004-/ NOT PRECEDENTIAL**
ID: **P9700108**
DATE: **02-08-00**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

A. STIPULATIONS OF PROCEDURAL FACTS

1. A field audit of the books and records of PROTESTANT was conducted by the Division for the period of August 1, 1993 through July 31, 1996.

2. By letter dated December 17, 1996, the Division proposed assessment of sales tax, interest, and penalty against PROTESTANT, OFFICER ONE, OFFICER TWO, and OFFICER THREE as follows:

Tax	$30,625.74
Interest through 2/3/97:	9,374.16
Penalty:	3,062.59
Total:	$43,062.49

3. By letter dated January 15, 1997, Protestant requested a 90-day extension of time in which to respond to the assessment.

4. By facsimile transmittal dated January 16, 1997, the Division extended the time in which to respond to the assessment until Tuesday, April 15, 1997, at 4:30 p.m.

5. A timely protest to the sales tax assessment was received by the Division on April 2, 1997.

6. As a result of supporting documentation submitted by Protestant, the Division made certain revisions to the audit workpapers. The amount of sales tax, interest, and penalty remaining at issue after the revision is as follows:

Sales Tax:	$ 26,822.06
Interest through 2/16/98:	12,424.73
Penalty:	2,682.26
Total:	$ 41,929.05

7. As a result of information submitted by Protestant, the Division hereby withdraws its assessments issued against OFFICER TWO and OFFICER THREE.

B. STIPULATION OF FACTS

8. Protestant incorporated in the mid-1980's and was issued Sales Tax Permit Number XXX by the Commission. Protestant is in the business of making draperies and window coverings for customers.

9. Protestant's invoices delineated four (4) different areas: materials, labor, tax, and installation.

10. The labor amounts on Protestant's invoices are charges for making of the customer's draperies.

11. Protestant calculated and collected sales tax from Protestant's customers on materials sold by Protestant to the customer. Protestant did not calculate or collect sales tax for Protestant's labor to make the draperies.

12. Invoices of the business known as ANONYMOUS DRAPERIES in 1981 and 1982, years prior to Protestant's incorporation in 1989, delineated four (4) different areas: material, tax, labor, and installation.

C. STIPULATIONS OF LEGAL ISSUES

Ultimate Stipulations - based on the foregoing stipulated facts, the Division and Protestant stipulate that this protest will be controlled by the following questions of law to be decided by the Court:

1. Whether charges for labor to produce or fabricate made-to-order or custom drapes are includable in the gross receipt or gross proceeds subject to sales tax pursuant to the Oklahoma Sales Tax Code, 68 O.S. § 1350 ***et seq.***

2. Whether the fact that had Protestant set up two (2) separate legal entities - one to sell materials to the customer and the other to make drapes for the customer who brings in material purchased from the first entity - no sales tax would have been assessed against the drape maker, negates the instant assessment.

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. Sales tax is required to be charged, collected and remitted on the gross receipts or gross proceeds of each sale of "[T]angible personal property, except newspapers and periodicals." 68 O.S. 1991, § 1354(1)(A).

3. The terms "gross receipts" or "gross proceeds" are defined in part to mean the total amount of consideration for the transfer of tangible personal property or service taxable under this article, including any amounts charged for labor service performed. 68 O.S. Supp. 1991, § 1352(F)[1].

4. The vendor of "made to order and custom articles of tangible personal property" manufactured, compounded, processed or fabricated from its materials may not deduct any costs, nor any charges for labor or services, which are an item of the production or fabrication costs of the article, to arrive at the amount of gross receipts subject to tax. Rule 13.016.24 of the Oklahoma Tax Commission Permanent Rules (March 10. 1989)[2]. Articles commonly made to order are curtains, draperies, tents, awnings, clothing, and slipcovers.

5. Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise. See, ***State ex rel. York v. Turpen***, 681 P.2d 763, 767 (Okl. 1984). The Tax Commission as an administrative agency is not empowered to decide the constitutional validity of a taxing statute. See, ***Dow Jones & Company, Inc. v. Oklahoma Tax Commission***, 787 P.2d 843, 845 (Okl. 1990).

6. Rules promulgated pursuant to the Administrative Procedures Act[3] are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. Id.

---

[1] Currently codified at 68 O.S. Supp. 1998, § 1352(7).

[2] Currently codified at 710:65-19-60 of the *Oklahoma Administrative Code*.

[3] 75 O.S. 1991, § 250 et seq., § 301 et seq.

7. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless the rules and regulations are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, ***Boydston v. State***, 277 P.2d 138 (Okl. 1954); ***Arkansas Louisiana Gas Co. v. Travis***, 682 P.2d 225 (Okl. 1984); ***Rutherford v. United States***, 438 F. Supp. 1287 (D.C. Okl. 1977). As a general rule, it is presumed that administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence. ***Stiner v. Califano***, 438 F. Supp. 796 (D.C. Okl. 1977); ***State ex rel. Hart v. Parham***, 412 P.2d 142 (Okl. 1966).

8. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect. ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988). The burden of proving that a sale is not a taxable sale shall be upon the person who makes the sale. 68 O.S. 1991, § 1365(C).

9. Here, Protestant sold articles of tangible personal property. The tangible personal property was constructed, fabricated or otherwise assembled from his own material. Accordingly, the gross receipts or gross proceeds included the charges for labor service performed. See, 68 O.S. 1991, § 1352(F).

10. The protest to the proposed assessment should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestants, and OFFICER ONE, be denied. It WAS 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.