JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-02-22-013 / NOT PRECEDENTIAL
ID: P9800014
DATE: 02-22-00
DISPOSITION: SUSTAINED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Protestants sold "tin horns" and a "heater treater" to COMPANY ONE during the audit period. A tin horn is a plastic pipe culvert which is used in the construction of a well location. Three sales are at issue in this cause.

2. At the time of each sale, Protestants had in their possession a copy of COMPANY ONE'S sales tax permit.

3. Protestants admit that they did not received a written certification from COMPANY ONE at the time of each sale indicating that COMPANY ONE was in the business of reselling the articles purchased. MR. OFFICER testified, however, that COMPANY ONE upon ordering any materials would advise whether sales tax should be charged. He further stated that sales tax was charged and remitted on two sales to COMPANY ONE.

4. MR. OFFICER worked for COMPANY ONE up and until October, 1995. According to MR. OFFICER, all items or materials purchased by COMPANY ONE go to a central yard in AN ANONYMOUS CITY, Oklahoma where they are stored until the items or materials are needed at a well location. He stated that when the items or materials are dispersed to a well location, COMPANY ONE bills the interest owners in the well and charges and collects sales tax on the transfer.

5. COMPANY ONE'S sales tax permit indicates a SIC code of XXX. This classification generally indicates "establishments primarily engaged in the wholesale distribution of industrial machinery and equipment", including "oil well machinery, equipment, and supplies." Standard Industrial Classification Manual.

6. MR. OFFICER testified that he made several attempts to contact COMPANY ONE concerning the material sold to them, but that COMPANY ONE refused to release the information to him. He stated that COMPANY ONE advised him that they would release the information to the Tax Commission. On cross-examination, MR. OFFICER admitted that because of time considerations he did not relay this information to the Division.

7. The auditor testified that in performing the audit he viewed COMPANY ONE as the end user of the material.

8. PROTESTANT is no longer in business.

9. The aggregate amount in controversy, as adjusted, is $3,752.42, consisting of sales tax in the amount of $2,802.71, interest in the amount of $669.43 and penalty in the amount of $280.28.

ISSUE

Notwithstanding that Protestants did not comply with the statutory certification requirements on the three sales to COMPANY ONE, the issue presented for decision is whether the evidence proves the sales were for resale and therefore are exempt from the levy of sales tax.

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. Any sale of tangible personal property is subject to the levy of sales tax, unless the sales is otherwise specifically exempted by the provisions of the Oklahoma Sales Tax Code[1]. See, 68 O.S. 1991, § 1354(1)(A).

3. Sales for resale to persons engaged in the business of reselling the articles purchased are exempt from the levy of sales tax provided that if such sales are to residents of Oklahoma, the purchasers have valid sales tax permits and the property is not purchased for their use. 68 O.S. 1991, § 1357(C).

4. A "material transfer" of tangible personal property is subject to the levy of sales tax, provided the ownership interest in the property has changed and sales tax has not previously been remitted on such property. See, 68 O.S. 1991, § 1360(B) and Rule 710:65-19-240 of the *Oklahoma Administrative Code*. A "material transfer" is a transfer of property from one location to another. Rule 710:65-19-240(a) of the *Oklahoma Administrative Code*. During the drilling phase of a well, the operator is responsible for collecting and remitting sales tax on the material transfers. Rule 710:65-19-240(b) of the *Oklahoma Administrative Code*. After the well is completed, either the operator or the producer is responsible for collecting and remitting sales tax on the material transfers. Id.

5. Here, Protestants sold tangible personal property to COMPANY ONE. COMPANY ONE had a valid Oklahoma sale tax permit and according to the SIC code on the permit was in the business of reselling the articles purchased. The evidence indicates that Protestants had a copy of COMPANY ONE'S sales tax permit in their files and records and

[1] 68 O.S. 1991, § 1351 et seq.

that COMPANY ONE upon ordering material would confirm whether sales tax should be charged and collected on the sale. Further, the evidence indicates that COMPANY ONE upon making a material transfer of the property would charge and collect sales tax on the transfer. Accordingly, the undersigned finds that the sales to COMPANY ONE were sales for resale which are exempt from the levy of sales tax. The undersigned further finds that notwithstanding Protestants' failure to secure written certification of the resale nature of each transaction, Protestants should not be held liable for the sales tax on such sales.

6. Protestants' protest to the proposed sales tax assessment should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protests of Protestants, and MR. OFFICER, be 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.