**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2000-03-14-005 / NOT PRECEDENTIAL**
**ID:** **P9600179**
**DATE:** **03-14-00**
**DISPOSITION:** **SUSTAINED**
**TAX TYPE:** **SALES**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. PROTESTANT manufactures pipe through a batch-flow process.

2. PROTESTANT purchases steel free on board shipping point from CORPORATION ONE in large coils. The large steel coils do not conform to PROTESTANT'S machinery.

3. PROTESTANT does not have a slitter on its premises to cut the steel into the required size needed to fit its machines. The steel coils are shipped from CORPORATION ONE to CORPORATION TWO in PROTESTANT'S trucks or by rail and PROTESTANT pays CORPORATION TWO to slit the steel coils into smaller pieces.

4. After CORPORATION TWO slits the steel coils, they are reloaded by rail or into PROTESTANT'S trucks and taken to PROTESTANT'S plant where they are unloaded by a forklift and placed into production.

5. The total revised amount assessed by the Audit Division on the purchase of the forklift was $11,769.58, inclusive of sales tax in the amount of $9,711.18, penalty in the amount of $971.13 and interest accrued through March 8, 1996, in the amount of $1,087.27.

## ISSUES AND CONTENTIONS

The issue presented for decision is whether the forklift in dispute herein was incorporated into and used directly in the process of manufacturing property for sale or resale.

Protestant argues that the forklift is used in its manufacturing process and is exempt from sales tax pursuant to 68 O.S. § 1359. In support of this contention, Protestant argues that the process of manufacturing steel pipe begins when the steel coils arrive at CORPORATION TWO to be slit into smaller pieces to fit Protestant's machinery. The forklift is used by Protestant to unload and move the slit steel coils to the next phase of steel pipe production. Therefore, according to Protestant, pursuant to the Oklahoma Supreme Court decision in *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 882 P.2d 65 (Okl. 1994), and the Ohio Supreme Court decision in *Bird & Son, Inc. v. Lambach*, 543 N.E.2d 1161 (Ohio 1989), the forklift should be exempt from taxation.

The Division asserts that Protestant's production process of steel pipe does not begin at the CORPORATION TWO plant where the steel coils are slit, but begins after the forklift unloads the steel and places it in the first phase of production at the Protestant's facilities. Therefore, the forklift is used before the manufacturing process begins and was taxable at the time of purchase.

## CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. 1991, § 207.

2. The Oklahoma Sales Tax Code levies upon all sales of tangible personal property an excise tax of four and one-half percent (4.5%). 68 O.S. Supp. 1996, § 1354.

3. Sales of "machinery and equipment purchased and used in the operation of manufacturing plants" are exempt from the levy of sales tax provided "such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale." 68 O.S. Supp. 1996, § 1359(3).

4. As a general rule, statutes exempting property from taxation are to be applied circumspectly and are to be strictly construed against the allowance of an exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977). To be entitled to an exemption, the taxpayer has the burden of proving that the transaction falls squarely within the exemption. *Id*.

5. Manufacturing is defined in 68 O.S. Supp. 1996, § 1352(l) to include "every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another."

6. The manufacturing exemption "should receive a practical construction□one that would not allow a manufacturing operation that is in fact but one continuous and integrated production process to be chopped up into distinct and discrete segments." *Schulte Oil Co. v. Oklahoma Tax Commission*, 882 P.2d 65, 74 (Okl. 1994). See *United Design Corp. v. Oklahoma Tax Commission*, 942 P.2d 725, 727 (Okl. 1997).

7. “Machinery which is synchronized into manufacturing operation in a manner that makes it necessary to the production of the finished product is ’directly used in’ the manufacturing process” within the meaning of Section 1359. *Schulte*, *supra* at 74. In *Schulte*, the court found that, from the beginning to end, the forklifts were an "indispensable and integrated part of the production line" and that "the first movement of pipe to a batch station is as essential as the last." *Id*. at 75. Based on the finding that forklifts are critical tools in the batch-flow manufacturing system, the court held that the diesel fuel used to power the forklift was consumed in the manufacturing process and hence, was entitled to a sales tax exemption. *Id*.

Likewise, Protestant's use of the forklift to unload and move the slit pipe to a batch station or production stage, was necessary to the production of the steel pipe and is therefore directly used in the manufacturing process. Accordingly, Protestant's purchase of the forklift is exempt from sales tax.

8. The protest should be sustained.

## DISPOSITION

It WAS DETERMINED, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT 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.