JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-07-11-006 / NOT PRECEDENTIAL**
ID: **P9500008 / P9500008A**
DATE: **07-11-00**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. The taxpayer in this protest is CORPORATION ONE.

2. CORPORATION ONE sells trailers intended for use on roadways.

3. All trailers sold by CORPORATION ONE are accompanied by a manufacturer's statement of origin.

4. In the event that the purchasers of the trailers paid excise tax on them pursuant to 68 O.S. § 2103, CORPORATION ONE would not be liable for such tax.

5. A sales tax audit of Protestant's books and records was conducted by the Division. For sales tax purposes, the Division's auditor conducted a detailed audit of Protestant's records from actual invoices.

6. A letter of proposed assessment was mailed to Protestant reporting a sales tax liability for the period of October 1, 1991, through February 28, 1994, totalling Ten Thousand Four Hundred Twenty-one Dollars and Five Cents ($10,421.05), inclusive of tax, interest and penalty.

7. A protest of the sales tax assessment was filed with the Division on November 30, 1994.

8. The issue presented for this court is whether the trailers sold by Protestant are subject to sales tax.

Additional findings:

1. The proposed sales tax assessment was also issued against MR. OFFICER, President of CORPORATION ONE and as an individual.

2. Protestant, MR. OFFICER, has not raised as an issue in these proceedings his individual liability as a principal officer of CORPORATION ONE for the assessed sales tax.

3. Only those trailers which have not been titled and tagged by the purchaser thereof are included in the audit and proposed assessment.

4. The amount of the assessed sales taxes have been remitted by Protestants.

5. At the hearing, the Division stipulated that all of the trailers manufactured and sold by Protestants are trailers or semi-trailers that are designed to be pulled by a truck or truck-tractor.

6. Protestants manufacture and sell trailers and semi-trailers.

7. Protestant, CORPORATION ONE, is licensed as a new and used commercial trailer dealer.

8. The trailers Protestants manufacture are designed to haul construction equipment. The trailers are designed for business or commercial purposes.

9. Upon the sale of any trailer, Protestants have the trailer inspected, make out a manufacturer's statement of origin, an application for certificate of title, an invoice and give the purchaser a dealer's tag and a notice advising the purchaser of the requirements to register and tag the trailer.

CONTENTIONS

Protestants contend that the assessment is erroneous. In support of this contention, Protestants argue that the sale of trailers is exempt from sales tax pursuant to the provisions of 68 O.S. 1991, § 1355(B). Protestants further contend that they manufacture and sell trailers intended for use in a business or commercial manner which are specifically subject to payment of excise taxes under 68 O.S. §§ 2101, 2103 and 2104, and 47 O.S. §§ 1102, 1115 and 1133. Protestants argue that these excise taxes are in lieu of payment of sales taxes and, therefore, such trailers are exempt from payment of sales taxes.

The Division contends that Protestants' protest should be denied. In support of this contention, the Division argues that the exemption contained in Section 1355(B) does not apply since the trailers which have been tagged and titled by the purchasers have been removed from the audit. The Division additionally cites 68 O.S. Supp. 1996, § 1365(C) and argues that Protestants have the burden of proving that the sale of the trailers is not subject to the levy of sales tax.

The Division further contends that it is irrelevant to the issue of sales tax whether

trailers are commercial trailers or semi-trailers designed to be pulled and usually pulled by a truck or truck-tractor. 47 O.S. § 1102 defines a commercial trailer to mean any trailer defined at 47 O.S. § 1-180 or semi-trailer defined at 47 O.S. § 1-162, when such trailer or semi-trailer is used primarily for business or commercial purposes. Intent of the manufacturer is immaterial. It is the use by the purchaser that determines whether it is a commercial vehicle - - commercial trailer or non-commercial trailer. A commercial truck, a farm truck, or a personal truck, pulling Protestants' trailer will result in different treatment for sales tax purposes.

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. In Oklahoma Tax Commission Order No. 97-10-29-002, the Tax Commission held that where the taxpayer does not come forward with evidence to show Section 1355(B) of Title 68 of the Oklahoma Statutes is applicable to the sale of a trailer, the sale is subject to the levy of sales tax. The decision is based on the following conclusions of law:

> The sale of tangible personal property in the State of Oklahoma, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code[1], is subject to sales tax. 68 O.S. 1991, § 1354(1)(A).[2] Protestant urges the application of Subsection (B) of Section 1355[3] of the Oklahoma Sales Tax Code to otherwise exempt the transactions at issue.
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> As a general rule, statutes exempting property from taxation are circumspectly

[1] 68 O.S. 1991, § 1350 et seq.

[2] This section provides:

> 1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:
>
> (A) Tangible personal property, except newspapers and periodicals;

[3] Section 1355 provides:

> There are hereby specifically exempted from the tax levied pursuant to the provisions of this article:
>
> (B) Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid;

applied and strictly construed against the allowance of an exemption. ***Bert Smith Road Machinery Co. v. Oklahoma Tax Commission***, 563 P.2d 641 (Okl. 1977); ***Phillips Petroleum Co. v. Oklahoma Tax Commission***, 542 P.2d 1303 (Okl. 1975). The language of an exemption statute may not be construed so as to give it an effect which is not intended. ***Protest of Hyde***, 188 Okl. 413, 110 P.2d 292 (1941). The burden of proving that a sale was not a taxable sale is upon the person who made the sale. 68 O.S. 1991, § 1365(C).

3. The Commission also held in Order No. 97-10-29-002 that although the exemption provided in Section 1355(B) does not apply to sales of trailers, citing 68 O.S. 1991, §§ 2101(a)[4] and 2104[5], the payment of Oklahoma Motor Vehicle Excise Tax by the purchaser of a trailer is in lieu of the sales tax levy on sale of the trailer.

4. Here, Protestants have failed to show that the exemption statute applies to the trailers remaining in the audit. The statute provides that sales are exempt from sales tax where "the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid". The trailers which have been tagged and titled were removed from the audit. Will excise tax be paid on the trailers in question? Considering the date of the sales and the provisions of the Oklahoma Motor Vehicle Excise Tax Act[6] and the Oklahoma Vehicle License and Registration Act[7], specifically 68 O.S. 1991, § 2103(A)(2)[8] and 47 O.S. 1991,

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[4]This Section provides:

> The term "motor vehicle" means and includes every automobile, truck, truck-tractor, or any motor bus or any self-propelled vehicle not operated or driven upon fixed rails or tracks or in the air or on water.

[5]This Section provides that the value of any new motor vehicle shall include the value of all extra or optional equipment and accessories physically attached to such vehicle at the time of sale and sold as a part thereof. By definition, the terms "optional equipment" or "accessories" do not include trailers.

[6]68 O.S. 1991, § 2101 et seq.

[7]47 O.S. 1991, § 1101 et seq.

[8]This Section provides in part:

> The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Tax Commission at the time of the issuance of a certificate of title for any such vehicle. . . . The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents ($0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

§§ 1102(26), 1115 and 1133[9], the question must be answered in the negative. Accordingly, the trailers sold by Protestants which are the subject of the audit and assessment are subject to sales tax.

5. Protestants' 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 of Protestants, CORPORATION ONE and MR. OFFICER, be denied. It WAS further DETERMINED that the amount in controversy, inclusive of any additional accrued interest, 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.

[9]These provisions essentially provide that except for commercial trailers or semitrailers designed to be pulled and usually pulled by a truck or truck-tractor, and travel trailers and rental trailers, trailers are not "vehicles" which are required to be registered and licensed.