

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-10-17-022 / PRECEDENTIAL
ID: CR960003
DATE: 10-17-00
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about October 5, 1994, the taxpayer, CLAIMANT, filed an Application for Refund of Overpayment of Oklahoma Sales/Use Tax. Exhibit "I" is a copy of the Application.
2. CLAIMANT'S original refund claim covered the time period of January 1, 1993, to date and claimed an amount of \$313,720.14. However, CLAIMANT actually commenced doing work in Oklahoma in June, 1993, and therefore, submitted documentation of its claimed refund for the time period June 1, 1993, through July 31, 1994. CLAIMANT has now submitted documentation of its claimed refund for the time period June 1, 1993, through December 31, 1996. Exhibit "II" is a copy of the documentation detailing sales tax paid for the period June 1, 1993, through December 31, 1996.
3. For the time period of June 1, 1993, through December 31, 1993, CLAIMANT paid Oklahoma State and local sales taxes to its vendors in the amount of \$137,266.24. (Exhibit "II").
4. For the time period of January 1, 1994, through December 31, 1994, CLAIMANT paid Oklahoma State and local sales taxes to its vendors in the amount of \$255,734.58. (Exhibit "II").
5. For the time period of January 1, 1995, through December 31, 1995, CLAIMANT paid Oklahoma State and local taxes to its vendors in the amount of \$292,576.91. (Exhibit "II").
6. For the time period of January 1, 1996, through December 31, 1996, CLAIMANT paid Oklahoma State and local taxes to its vendors in the amount of \$422,610.51. (Exhibit "II").
7. The Division has verified that the amount of Oklahoma State sales tax paid by CLAIMANT to its vendors from January 1, 1993, through December 31, 1996, on "qualified purchases" as defined by 68 O.S. § 54003 is \$767,212.55. The total amount of local sales tax paid to vendors on "qualified purchases" by CLAIMANT during the same period is \$340,975.69.

8. Exhibit "II" and Stipulations 2-7 refer only to sales taxes paid by CLAIMANT on leases of hardware and on software licensing agreements. All of the hardware and software on which sales tax was paid was utilized in Oklahoma City by CLAIMANT in providing service to COMPANY ONE DATA CENTER. CLAIMANT has elected to waive any claim for refund for sales or use taxes paid on items used in providing service to COMPANY ONE DATA CENTER other than hardware leasing and software licensing for the time period of June 1, 1993, through December 31, 1996, because of the difficulty in providing supporting documentation. Such waiver does not affect CLAIMANT'S ability or right to claim an exemption for all state and local sales and use taxes paid by CLAIMANT after December 31, 1996.

9. By letter dated September 25, 1995, the Division denied CLAIMANT'S claim for refund on the basis that, "CLAIMANT does not appear to derive fifty percent (50%) of its sales from its Oklahoma location from sales outside Oklahoma." Exhibit "III" is a copy of the letter.

10. By letter dated October 24, 1995, CLAIMANT filed a Protest and Application for Hearing contending that CLAIMANT was a "Qualified Purchaser" as defined in 68 O.S. §§ 54001 *et seq.* and that "the interpretation of the Oklahoma Tax Commission limiting the calculations of CLAIMANT'S annual gross revenues to those derived from its Oklahoma location for purposes of determining whether at least 50% are derived from the sales of its services to out-of-state buyers is not correct." Exhibit "IV" is a copy of CLAIMANT'S Protest and Application for Hearing.

11. The Oklahoma Employment Securities Commission by letter dated October 14, 1996, advised that the average annual wage for the ten highest wage employees for the period April, 1993, through March, 1996, was \$51,553.12. Exhibit "V" is a copy of OESC's letter.

12. CLAIMANT is a corporation organized under the laws of ANONYMOUS STATE ONE. Prior to November, 1995, CLAIMANT'S principal place of business was CITY "A" ANONYMOUS STATE TWO. As of November, 1995, CLAIMANT'S principal place of business was moved to CITY "B" ANONYMOUS STATE TWO.

13. CLAIMANT'S total gross sales from all CLAIMANT locations for the years 1993 through 1996 was in excess of \$3.6 billion.

14. CLAIMANT was qualified to do business in Oklahoma on November 15, 1993.

15. Virtually all of the sales made by the Oklahoma office of CLAIMANT during the period at issue herein, were made to The COMPANY ONE CORPORATION pursuant to an agreement executed by CLAIMANT and COMPANY ONE CORPORATION on or about March 1, 1993. Exhibit "VI" is an excerpt from the agreement which described the work to be performed by CLAIMANT under the agreement.

16. COMPANY ONE CORPORATION has three facilities in OKLAHOMA, to-wit: a Worldwide Reservation Center, a Financial Center and a Data Center. The Oklahoma office of CLAIMANT principally performs data processing for the COMPANY ONE Data Center located in OKLAHOMA. (Exhibit "VI").

17. In 1993, the Oklahoma office of CLAIMANT had gross sales in excess of \$10,800,000.00.

18. In 1994, the Oklahoma office of CLAIMANT had gross sales in excess of \$18,000,000.00.

19. In 1995, the Oklahoma office of CLAIMANT had gross sales in excess of \$17,800,000.00.

20. The Oklahoma office of CLAIMANT as well as CLAIMANT nationwide is primarily engaged in computer processing and data preparation services as described under Industry Group Number XXXX of the Standard Industrial Classification Manual.

21. The state and local sales taxes for which CLAIMANT seeks a refund were paid by CLAIMANT to its vendors and no credit, refund or rebate was sought by CLAIMANT from any vendor.

22. On November 20, 1998, CLAIMANT and the Division entered a Stipulation Regarding Reduction of Amount of Claim in which the claim for refund in this case was reduced to the total amount of \$886,080.17.

ISSUES

1. Whether only sales made by CLAIMANT'S Oklahoma office or CLAIMANT'S sales company-wide are examined in determining whether the business "derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer," as required to be a "qualified purchaser" pursuant to 68 O.S. Supp. 1992, § 54002.

2. Whether, if only sales by CLAIMANT'S Oklahoma office are to be examined in making the determination outlined in Issue 1 above, COMPANY ONE CORPORATION is an out-of-state buyer or consumer.

CONCLUSIONS OF LAW

I. MEASUREMENT OF THE FIFTY PERCENT RULE

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

2. The Oklahoma Research and Development Incentives Act provides a sales and use tax exemption to "qualified purchasers" pursuant to 68 O.S. § 54003. The term "qualified purchaser" is defined in 68 O.S. § 54002(1) as follows: "Qualified purchaser" means any new or expanding business which adds and maintains for a period of at least thirty-six (36) months at least ten (10) new full-time equivalent in-state employees at an average annual salary of Thirty-five Thousand **Dollars (\$35,000.00)** per employee, as certified by the Employment Security Commission and is a business which derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. The issue in this case involves the interpretation of this statute concerning how the fifty percent (50%) of gross revenues from out-of-state sales is to be measured. The facts of this case show that CLAIMANT qualified to do business in Oklahoma on November 15, 1993, and established its Oklahoma office in order to fulfill a contract with the COMPANY ONE CORPORATION. CLAIMANT was engaged to perform data processing for COMPANY ONE Data Center in OKLAHOMA. For the years 1993 through 1996, CLAIMANT had total gross sales in excess of \$3.6 billion worldwide. For years 1993 through 1995, CLAIMANT earned gross revenues from the COMPANY ONE CORPORATION contract of \$46.6 million in Oklahoma. THE CORP[ORATION did not have any other revenue in Oklahoma other than from the COMPANY ONE CORPORATION contract.

3. It is a long standing rule of statutory construction that statutes which provide for an exemption from taxation are to be strictly construed against the exemption, *McDonald's Corp. v. Oklahoma Tax Commission*, 563 P.2d 635, 1977 OK 74, and *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641, 1977 OK 75. However, the ascertainment of legislative intent is the cardinal rule of statutory construction, *State ex Rel. Cartwright v. Georgia-Pacific*, 663 P.2d 718, 1982 OK 148. In the absence of a contrary definition of the common words used in a legislative act, we must assume that the lawmaking authority intended for them to have the same meaning as that attributed to them in ordinary and usual parlance *Cartwright, supra; State ex rel. Western State Hospital v. Stoner*, 614 P.2d 59, 1980 OK 104. Concerning the court's interpretation of statutory language, the Oklahoma Court of Appeals has held in *C&C Tile and Carpet Co., Inc. v. Aday*, 697 P.2d 175, 1985 OK CIV APP 8; We commence consideration of this issue with a reminder that intention and purpose of the legislature in enacting this provision is of primary importance. While generally the language used in a statute is indicative of purpose and

intent, it is not the sole source nor is it controlling. As pointed out in *Keck v. Oklahoma Tax Commission*, 188 Okla. 257, 259, 108 P.2d 162, 164 (1940), where the legislative intent is plainly discernible from the provisions of a statute when considered as a whole, the real purpose and intent of the legislative body will prevail over the literal import of the words employed. In order to give an act a reasonable and sensible construction in keeping with the legislature's intent, the entire act must be considered. *Public Service Co. v. Northwest Rogers County*, 675 P.2d 134, 139 (Okla. 1983). Using these rules, the Commission can determine whether CLAIMANT is a qualified purchaser under the facts of this case, being "a business which derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer."

4. Viewing the entire act as a whole in relation to the definition of a "qualified purchaser," it is clear that the act is intended to provide an incentive to develop businesses which create economic growth in Oklahoma. Therefore, the title of the act is recited in Section 54001 as the "Oklahoma Research and Development Incentives Act." The purpose of the act is to provide an incentive for businesses to locate within Oklahoma that provide high wages to employees who live in Oklahoma and that produce goods or services in Oklahoma which are sold to consumers outside of Oklahoma thereby enlarging the economy of Oklahoma rather than reallocating existing sales or economic dollars within Oklahoma among new businesses without economic growth. The fifty percent (50%) requirement for a qualified purchaser is intended to provide the incentive only to companies that increase Oklahoma gross domestic production and export that production to consumers outside of Oklahoma in exchange for revenue imported into Oklahoma which will increase economic growth within Oklahoma. Therefore, the fifty percent (50%) out-of-state sales requirement is measured by the sales of services produced by CLAIMANT in Oklahoma. The act is not concerned with sales of services produced by CLAIMANT in states other than Oklahoma because this is the Oklahoma Research and Development Incentive Act.

5. The facts of this case show that CLAIMANT provides data processing services to the COMPANY ONE Data Center in OKLAHOMA. The contract between CLAIMANT and COMPANY ONE CORPORATION located in Exhibit VI, provides at paragraph 4.18 and paragraph 5.3 that CLAIMANT will use the building space, furniture, equipment, utilities, services and facilities provided by COMPANY ONE CORPORATION at the OKLAHOMA COMPANY ONE CORPORATION location IN OKLAHOMA. From this location CLAIMANT provides one hundred percent (100%) of its services to COMPANY ONE CORPORATION in Oklahoma. None of the services produced by CLAIMANT in Oklahoma are sold to out-of-state consumers and therefore CLAIMANT is not a qualified purchaser entitled to sales and use tax exemption under the Oklahoma Research and Development Incentives Act. In this case CLAIMANT is performing a contract with COMPANY ONE CORPORATION for services in Oklahoma rather than investing in its own facilities in Oklahoma to produce services for customers in other states. This is not the kind of activity that the legislature intended to reward with incentives. The act requires that the qualified purchaser, with a new or expanding business in Oklahoma, must derive fifty percent (50%) of its annual gross revenues from the sale of a product or service produced by the new or

expanding business in Oklahoma to out-of-state consumers in order to qualify for the exemption. Since CLAIMANT sells one hundred percent (100%) of its services produced in Oklahoma to an Oklahoma consumer, the tax exemption provided by Section 54003 is not available to CLAIMANT.

II. STATUS AS OUT-OF-STATE BUYER

6. CLAIMANT urges that if the fifty percent (50%) rule must be measured only by sales from CLAIMANTS Oklahoma office, then COMPANY ONE CORPORATION should be deemed an out-of-state buyer. CLAIMANT asserts that COMPANY ONE CORPORATION is an out-of-state buyer on the grounds that COMPANY ONE CORPORATION is incorporated in ANONYMOUS STATE ONE and maintains a "home office" in ANONYMOUS STATE THREE. This argument is not persuasive because COMPANY ONE CORPORATION is qualified to do business in Oklahoma just as CLAIMANT is qualified to do business in Oklahoma and both companies work together in the same building in OKLAHOMA. Both COMPANY ONE CORPORATION and CLAIMANT have availed themselves of the protections and services provided by the state and local governments in Oklahoma and the facts of this case demonstrate that COMPANY ONE CORPORATION has a significant corporate presence in Oklahoma. The sales of CLAIMANT services to COMPANY ONE CORPORATION in this case are sales to a buyer or consumer in Oklahoma. Therefore, CLAIMANT is not a "qualified purchaser" entitled to sales tax exemption pursuant to the Oklahoma Research and Development Incentive Act.

DISPOSITION

It WAS DETERMINED based upon the specific facts and circumstances of this case, that the sales and use tax claim for refund of CLAIMANT be denied.

OKLAHOMA TAX COMMISSION