

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2000-12-19-005 / NOT PRECEDENTIAL  
**ID:** P9500289  
**DATE:** 12-19-00  
**DISPOSITION:** DENIED  
**TAX TYPE:** SALES  
**APPEAL:** SUP. CT. 95,789 / DISMISSED

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That MR. "X" was President of THE PROPANE GAS COMPANY d/b/a MY COMPANY at all times relevant to this proceeding.

2. That MS. "Y" was Secretary/Treasurer of THE PROPANE GAS COMPANY d/b/a MY COMPANY at all times relevant to this proceeding.

3. That after a field audit, the Oklahoma Tax Commission issued a letter dated September 27, 1995 proposing to assess sales taxes in the total amount of \$13,176.58 consisting of a tax due of \$9,568.57, penalty in the amount of \$957.15 and accrued interest through October 20, 1995 in the amount of \$2,650.86 for the period of March 1, 1992 through December 31, 1994 to THE PROPANE GAS COMPANY d/b/a MY COMPANY, MR. "X" and MS. "Y" as principal officers of the corporation.

4. That the Oklahoma Tax Commission also issued a letter dated September 27, 1995 proposing to assess special fuel taxes in the total amount of \$907.30 consisting of a tax due of \$627.34, penalty in the amount of \$62.73 and accrued interest through October 20, 1995 in the amount of \$217.23 for the period of March 1, 1992 through December 31, 1994 to THE PROPANE GAS COMPANY d/b/a MY COMPANY, MR. "X" and MS. "Y" as principal officers of the corporation.

5. That Protestants filed a protest letter dated October 26, 1995 and such protest was timely submitted to the Oklahoma Tax Commission.

6. That at the hearing held in this matter on November 14, 1996, Protestants withdrew their protest to the assessment of special fuels tax and reserved their right to request a waiver of penalty and interest under 68 O.S. Supp. 1999, §220.

7. That at the same hearing, the Administrative Law Judge provided Protestants an opportunity to re-submit additional documentation to the Division on its claims of exemptions and gave the Division a chance to rebut the documentation. The Division made adjustments based on the documentation submitted by Protestants. The revised audit reflects a liability due in the amount of \$12,085.60 consisting of a tax due in the amount of \$7,545.97, a penalty in the amount of \$754.86 and accrued interest through May 3, 1997 in the amount of \$3,784.77.

### ISSUE

The issue to be decided is whether after a field audit, Protestants should be granted exemptions to sales tax based on residential use of propane gas, the sale of propane gas to manufacturers or good faith compliance.

### CONTENTIONS

The Protestants contend that the sales of propane gas were exempt from sales tax which were 1) sold to residents outside of the city limits for residential use; or 2) sold to manufacturers; and that 3) Protestants good faith attempts to comply with statutory requirements relieve them of any liability.

The Division contends that based on a field audit, Protestants were assessed additional sales taxes on the sale of propane gas and Protestants failed to produce documentation to support their contention that the sale was tax exempt or that specified consumers were entitled to an exemption based on their status as manufacturers.

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission (the "Commission") has jurisdiction of this protest. 68 O.S. 1991, §207.
2. Generally, the sale of any natural or artificial gas is subject to sales tax. 68 O.S. Supp. 1999, §1354(2).
3. Exemption statutes are to be strictly construed against exemptions. *Bert Smith*, 563 P.2d 641 (Okl. 1977), *Phillips Petroleum Co. v. Okl. Tax Comm.*, 542 P.2d 1303 (Okl. 1975).
4. Protestants first contend that the sales tax levied was improperly calculated due to the exemptions found in 68 O.S. §1355(1). This exemption from sales tax is on certain fuels for which a special fuels tax has been or will be paid. This argument was presented in Protestants' Memorandum Brief, however, at the hearing, no evidence or mention of this argument was presented. Without any testimony or documentation to explain or support Protestants' claim, this argument is summarily rejected.
5. Protestants claim an exemption for the sale of propane gas exclusively for residential use. MR. "Z", employed by MY COMPANY as a bookkeeper testified that MY COMPANY sold small bottles of propane, usually weighing five to twenty-five gallons to consumers and that all bottles were "presumed" to be for heating and cooking. MR. "Z" knew of no other use for the small bottles of propane. However, when the auditor for the Division, THE OTC AUDITOR, was questioned, he testified that there were other, non-exempt purposes for which the fuel could be used, such as in a recreational vehicle or used in a home for a non-exempt purpose.

THE OTC AUDITOR also testified that since the use or any other documentation was not designated on cash sales receipts, he conceded that the use of propane gas may have been for residential use and therefore revised the audit to discount a percentage of the transactions. Since the possibility of other uses does exist, the Protestant is unable to meet the burden of wholly proving such an exemption and therefore this argument must be rejected.

6. Protestants also contend that gas sold to manufacturers and for use in a forklift are exempt based on the sales to manufacturers exemption found in 68 O.S. 1999 Supp. §1359(A) and (C). Protestants produced exemption certificates of two companies to justify this exemption. (Protestants' Exhibits 3 and 4). However, the mere holding of a Manufacturer's Limited Exemption Certificate (MLEC) does not trigger a tax exemption. The fuel must be used directly as an integral part of the manufacturing process. *Schulte Oil Co., Inc. v. Okl. Tax Com'n*, 882 P.2d 65 (Okl. 1994). In this case, involving the sale of diesel fuel to a manufacturer to run forklifts at its plant, the Court held that the forklifts used in the operations were an indispensable and integrated part of the production line in a batch-flow manufacturing system and the diesel fuel used to the power the vehicles to move pipe and therefore, was entitled to a sales tax exemption. *Id.* at 75. To qualify for an exemption in this case, Protestants could have requested a statement from the manufacturers as to the use and purpose of propane in the manufacturing process. Since Protestants have produced no evidence or a statement of the purpose or use of propane gas in each manufacturing process or the use of the forklifts in the manufacturing process, there is no basis to grant such an exemption in this case.

7. Protestants contend that sales to individuals on the audit work papers with addresses in a city were actually sales made to individuals who lived outside of the city limits and therefore such sales should also be exempt from sales tax. Protestants argue that since other gas companies such as GAS COMPANY ONE or GAS COMPANY TWO have the exclusive contract to sell gas within the city limits, it would be illegal for Protestants to sell to such customers. Therefore, Protestants argue, they could not collect city sales tax on such transactions. Protestants have not submitted any affidavits of residential customers or testimony of their own employed drivers to demonstrate that no city sales tax should have been collected. According to the testimony of THE OTC AUDITOR, the receipts produced do not refute the locations of any address being inside the city limits. Without additional documentation, the Protestant has not met its burden of proof on this argument.

8. Protestants finally argue that their good faith attempts to comply with sales tax requirements should counter any Oklahoma Tax Commission claims. However, Protestants were given an additional thirty days at the conclusion of their hearing to submit any additional documentation. Any prior attempt at good faith compliance that resulted in a tax due on the field audit work papers should have been perfected and such documentation submitted to the Division. Upon receiving the documentation, the Division further adjusted the audit resulting in a decreased liability for the Protestants. Instead of a mere attempt, this opportunity afforded Protestants actual compliance with statutory requirements. In failing to comply with statutory requirements, Protestants' good faith argument is rejected.

9. Based upon the foregoing facts and legal authorities, Protestants have not met their burden of proving an exemption and therefore, their 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 THE PROPANE GAS COMPANY d/b/a MY COMPANY, MR. "X" and MS. "Y" be denied. It WAS further DETERMINED that the amount in controversy based upon the revised field audit, 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.