JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-12-19-007 / NOT PRECEDENTIAL**
ID: **CR000008**
DATE: **12-19-00**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural Facts

1. By letter dated March 2, 1999, Claimant made inquiry as to its qualification for an exemption from sales tax on the purchase of natural gas for residential use.

2. By letter dated April 26, 1999, Claimant demanded a response to its initial inquiry.

3. By letter dated August 20, 1999, the Division responded to Claimant's inquiry by requesting additional information and documentation.

4. By letter dated April 27, 2000, the Division denied Claimant's refund request based on the lack of a response to its information request.

5. On May 22, 2000, Claimant filed a ***Written Protest and Demand for Hearing as to Claim for Sales Tax Refund***.

6. By letter dated June 5, 2000, Claimant's protest was scheduled for a hearing before the undersigned on July 18, 2000.

7. The amount in controversy is $1,270.62.

Substantive Facts

1. Claimant is a non-profit corporation which owns and operates a 50-unit apartment complex in ANYTOWN, Oklahoma. The complex consists of four two-story apartment buildings and one building which houses the manager's office, maintenance room and laundry facilities. The apartment buildings consist of efficiencies, one bedroom and two bedroom units.

2. At all times relevant, Claimant had a contract with the United States Department of Housing and Urban Development ("HUD") on all fifty apartment units to receive a housing assistance subsidy. Under the terms of the HUD contract, HUD pays Claimant the difference between the "contract rent amount", exclusive of a utility allowance, and the tenant's share of the contract rent amount which is determined by the tenant's income.

The contract rent amount is determined by Claimant's annual budget which includes all income and expenses. The utility allowance in this case is for electricity only which is the responsibility of each tenant and is separately metered and billed by the utility company to each apartment unit.

3. HUD provides approximately 75% to 80% of the funding for the apartment complex on an annual basis. All income and expenses, inclusive of utilities (natural gas and electric) of the complex are reported to HUD on an annual basis. Any increase in the cost of utilities are recoupable by Claimant.

4. Natural gas for the apartment complex is billed through a master meter. Claimant pays the natural gas bill. The lease agreements with its tenants require Claimant to provide natural gas to the tenants. The tenants' share of the natural gas bill is included in their rent.

5. The building housing the office, laundry and maintenance rooms is approximately 1000 to 1200 square feet in size. The appliances utilizing gas in this building consist of three (3) gas dryers, a hot water heater and the furnace. The amount of natural gas utilized in this building is approximately three percent (3%) of the total natural gas utilized for the entire complex.

6. In the office rents are collected, tenants' rents are adjusted, tenants report their incomes and tenants make maintenance and repair requests.

7. The maintenance room is utilized by the maintenance crew for making repairs and for storage of the lawn mower and tools.

8. The laundry room houses the washers and dryers. The washers and dryers are the property of an outside company. This company does the maintenance and repairs on the washers and dryers. The company pays twenty-five percent (25%) of the revenue from the washers and dryers to Claimant. Claimant reports this income under either a miscellaneous or a vending income category.

7. The laundry room is not restricted in anyway from who can use the facility. Claimant has not by contract agreed to provide the laundry facilities to the tenants. Claimant's contract with HUD does not require laundry facilities, however, the complex was built according to HUD specifications and the laundry room was included in those specifications.

ISSUES AND CONTENTIONS

The issue presented for decision is whether the natural gas is sold exclusively for residential use and is therefore exempt from sales tax.

Claimant contends that the natural gas is sold exclusively for residential use. In support of this contention, Claimant argues that the building housing the office, laundry facilities and the maintenance room qualifies as a "minor building for use of the residents" pursuant to Rule 710:65-13-120 of the *Oklahoma Administrative Code*.

The Division contends that the decision of the Oklahoma Supreme Court in ***Autumn House v. Oklahoma Tax Commission***, 814 P.2d 1036 (Okl. 1991) is controlling and the refund should be denied. In support of this contention, the Division argues that the cases are factually similar. The Division further argues that although the sale of the natural gas may be for the benefit of the residents, the natural gas is not sold for the residents' exclusive use.

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. Natural gas "when sold exclusively for residential use" is exempt from the levy of sales tax. 68 O.S. Supp. 1995, § 1357(6)[1].

3. 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); ***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).

4. "The term 'residential use' means the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, or townhouse used exclusively for domestic purposes." *OAC*, Rule 710:65-13-120(A)[2]. "Residential use includes service to building appurtenant to the residence including garages, barns, and other minor buildings for use of the residents served through the residential meter." *Id.*

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[1]The sales tax exemption on the sale of natural gas sold exclusively for residential use was added by Laws 1981, c. 313, § 2, emerg. eff. June 29, 1981, at the time the Oklahoma Sales Tax Code was recodified. Although the exemption for the sale of natural gas has been amended, most recently in 1993, the substance of the enactment has not changed.

[2]Originally adopted as Rule 13.013.16 of the Oklahoma Tax Commission Permanent Rules (June 30, 1991).

5. The statutory language of Section 1357(6) is plain and unambiguous. ***Autumn House***, *supra* at 1039. The meaning of the term "for residential use" may not be extended "to encompass the more inclusive notion of a purpose". *Id.*

6. In ***Autumn House***, the Supreme Court found:

> Although the taxpayers' use of utilities in the common areas of their apartment complexes is, ultimately, for the benefit of their residential tenants, *such a use is clearly not exclusive. The taxpayers are in commercial enterprises.* Each maintains office areas, maintenance rooms, and other business related facilities as part of the common areas of their business operations. Even the coin-operated laundry facilities provide each apartment complex a certain remuneration, which is allocated to the general funds of the apartment complexes for maintenance and upkeep. (Emphasis original).

7. Here, whether the building housing the office, maintenance room and laundry facility is a "minor building" under Rule 710:65-13-120(A) is irrelevant. The natural gas is not sold for the exclusive use of the residents. A portion of the gas is sold for the use of Claimant and the company owning the washers and dryers. Both Claimant and the other company are in commercial enterprises. Accordingly, the sale of the natural gas is not exempt from sales tax.

8. Claimant's protest to the denial of the claim for refund of sales tax remitted on the purchase of natural gas should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest to the denial of the claim for refund of Claimant be denied.

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.