JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-01-04-003 / NOT PRECEDENTIAL**
ID: **P9800261**
DATE: **01-04-01**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANT CORPORATION is incorporated in the state of Oklahoma.

2. PROTESTANT CORPORATION's principal place of business is ANYCITY, Oklahoma.

3. Between April 1, 1995 and March 31, 1998, PROTESTANT CORPORATION was engaged in the business of selling building materials.

4. During this time period, the following contractors purchased various building materials from PROTESTANT CORPORATION on which sales taxes was not collected: COMPANY A, COMPANY B, and COMPANY C.

5. PROTESTANT CORPORATION delivered the various building materials purchased by COMPANY A, COMPANY B, and COMPANY C to various job sites.

6. PROTESTANT CORPORATION received correspondence from the Sac & Fox Nation conveying letters from the Oklahoma Tax Commission and from their internal offices pleading with PROTESTANT CORPORATION that the Nation is sales tax exempt.

7.PROTESTANT CORPORATION received several letters from the Sac & Fox Nation pleading with PROTESTANT CORPORATION that COMPANY A, COMPANY B, and COMPANY C were performing specific jobs authorized by the Tribe through the Sac & Fox Nation's Housing Authority, built on the Sac & Fox Nation Housing Authority's real estate and were for the benefit of the Sac & Fox Nation.

8. That after a field audit, the Oklahoma Tax Commission issued a letter dated June 19, 1998 proposing to assess sales taxes in the total amount of $11,309.74 consisting of a tax due of $8,518.30, penalty in the amount of $851.54 and accrued interest through June 30, 1998 in the amount of $1,939.90 for the period of April 1, 1995 through March 31, 1998 to PROTESTANT CORPORATION and ITS OFFICERS as principal officers of the corporation.

9. That Protestants filed a protest letter dated July 13, 1999 and such protest was timely submitted to the Oklahoma Tax Commission.

ISSUE

The issue is whether Protestants are relieved of their statutory duty as vendors to collect sales tax when relying upon erroneous information regarding the exempt status of the consumer/user.

CONTENTIONS

Protestants contend that they were acting in good faith and were compelled by the Sac & Fox Nation to exempt contractors from sales tax. Protestants further contend that the Sac & Fox Nation took responsibility for the sales tax exemption granted to three companies and that the Oklahoma Tax Commission should seek reimbursement of the taxes from the Tribe or the three companies, as agents for the Tribe.

The Division contends that Protestants' non-collection is not excused because Protestants have not provided the information required to claim good faith reliance. The Division further contends that the responsibility for collecting and remitting sales tax cannot be shifted from the vendor to the Oklahoma Tax Commission.

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 building materials is subject to sales tax. 68 O.S. Supp. 1999, § 1354(20).

3. Exemption statutes are to be strictly construed against exemptions. *Bert Smith Road Mach. Co. v. Okl. Tax Com'n,* 563 P.2d 641 (Okla. 1977), *Phillips Petroleum Co. v. Okl. Tax Comm.*, 542 P.2d 1303 (Okla. 1975).

4. Protestants claim that based on correspondence with the Sac & Fox Nation, Protestants sold building materials to three contractors, COMPANY A, COMPANY B, and COMPANY C without collecting the required sales tax. (See DEX 3). The correspondence attached a 1988 position letter promulgated by the Business Tax Division of the Commission which attempts to explain the exemption granted to Indian Tribal Governments. This letter was later clarified by the Oklahoma Tax Commission and was reprinted in *Chickasaw Nation v. State ex rel. Okl. Tax Com'n*, 31 F.3d 964 (10th Cir. 1994). The letter dictates that:

> A Tribe may purchase taxable goods and services exempt from sales tax if the Tribe purchases the item directly, makes payment for the purchase directly and if the Tribe is the consumer/user of the item, whether the (sic) itself is used in tribal governmental offices or in a tribally-owned and operated business.

The letter further unequivocally states:

> This exemption does not extend to individuals, corporations, partnerships, or other business or legal entities who are purchasing items which may be used on Indian Country and which are purchased ostensibly "for the Tribe" or for business ventures under tribal license or contract with private parties. The exemption only applies to transactions with a federally-recognized Indian tribe itself.

It is clear that the exemption is granted to only the Tribe itself and that this exemption, as others, must be strictly construed.

5. Protestants were not afforded the benefit of the clarification letter and relied to their detriment upon the 1988 letter and the Tribe's insistence that purchases by specified contractors were tax exempt. Protestants argue that they felt compelled to refrain from collecting such tax by the Sac & Fox Nation. Therefore, Protestants contend that Sac & Fox took on the responsibility of the exemption and the Commission should seek to collect the monies due directly from the Tribe itself or its agents.

6. It is clear that a state has no jurisdiction to enforce sales tax laws or to initiate proceedings on the Sac & Fox Nation for collection of sales taxes. The district court in *Indian Country*, *U.S.A. v. Okl. Tax Com'n,* 829 F.2d 967 (10th Cir. 1987) held: "to the extent that its sales tax laws operate to impose liability on the Creek Nation as a taxpayer, the State's authority is pre-empted by federal law." The State of Oklahoma is granted authority to collect taxes under state law and such preemption precludes the State from impermissibly taxing the Tribe in this manner. The Commission therefore lacks jurisdiction and is prohibited from pursuing collection of sales tax from the Sac & Fox Tribe directly. Therefore, Protestants' argument that the Commission should seek reimbursement from the Sac & Fox Nation is rejected.

7. Protestants alternatively argue that the Commission should relieve Protestants of their statutory duty as a vendor and seek reimbursement instead from the agents of the Sac & Fox Tribe. To do so, the Commission has to ignore the clear mandate of the statutes: Each and every vendor is required to collect from the consumer or user and the consumer or user is required to pay to the vendor as trustee for and on account of the state the sales tax levied by the Oklahoma Sales Tax Code. 68 O.S. Supp. 1991, § 1361(A). "Every person required to collect sales tax, and in the case of a corporation, each principal officer thereof, shall be personally liable for the tax." *Id*.

The Commission cannot arbitrarily ignore the statutes or presume that these construction companies were agents of the Tribe. In a case involving a company, who had a contract with a tribe for its bingo concessions, claiming the sales tax exemption granted to the tribe, the court held that people who take funds that are subject to tax are responsible to the government for its payment regardless of any private arrangement to the contrary. *Enterprise Management Consultants, Inc. v. State ex rel. Ok. Tax Com'n,* 768 P.2d 359, 364 (Okla. 1988). Although no signed agreement existed between the parties, other than the urgings and assurances of the Tribe, the Protestants are nevertheless liable as vendors.

8. However, the *Oklahoma Administrative Code* 710:65-7-6(c) gives a specific context and the requirements by which the statutory duty of a vendor to collect sales taxes may be discharged:

> (c) **General Requirements**. Three requirements must be met before the vendor is relieved of liability.
>
> > (1) **Vendor good faith**. Good faith requires that the vendor strictly comply with statutory requirements.
> >
> > (2) **Timely acceptance from a consumer**. Timely acceptance form a consumer requires that documentation be in the possession of the vendor at the time the exempt transaction occurs. In the case of continued sales to the same purchaser, the vendor must have, on file, a sales tax permit, card, or exemption letter for each renewal interval. If no renewal interval is provided by statute, the renewal period will be deemed three (3) years, except in the case of entities with specific statutory exemptions who have established eligibility as set out in (d)(5) of this Section.
> >
> > (3) **Properly completed documentation certified by the Oklahoma Tax Commission**. Examples of properly completed documentation certified by the Oklahoma Tax Commission are described in (d) of this Section.

Requirements (1) and (2) have not been raised, so the issue at hand is **(3) Properly completed documentation certified by the Oklahoma Tax Commission.**

9. The required documentation has been defined by the Commission as follows:

> (6) **Sales to entities with specific statutory exemptions**. In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this paragraph:
>
> > (A) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and

> (B) A signed statement that the purchase is **authorized by**, and **being made by**, the exempt entity, with funds of the exempt entity and **not** by the individual; and. . . .

Oklahoma Administrative Code 710:65-7-6(d)(6).

Although the Protestants have a copy of the 1988 letter from the Oklahoma Tax Commission recognizing that the Tribe is statutorily or otherwise exempt, the same does not exist for the construction companies in question, COMPANY A, COMPANY B, and COMPANY C. Protestants urge the Court to arbitrarily disregard the specific requirements of these relief provisions with no justification other than they were the "middleman" and that Protestants did not feel as though they had the authority to override or ignore the urgings of the Sac & Fox Tribe. Clearly, as vendors, they have a higher duty than that of the average taxpayer.

In a similar case in which a retailer was assessed for granting exemptions which were not valid, the court found that good faith compliance with the statutes would not relieve the seller of the burden of showing the exemption existed. "Although we agree that the burden placed on vendors is a heavy one, we find no overriding reason to decide this case contrary to the statutory scheme." *In the Matter of Wal-Mart Stores, Inc.,* 817 P.2d 1281, 1284 (Okla. Ct. App. 1991). The result in this case can be no different.

10. Since exemption statutes are to be narrowly construed, so too a vendor may be relieved of liability only if the vendor meets the above requirements. Failing to produce the required documentation, the Protestants have not been relieved of their statutory duty to collect and remit sales tax.

11. Protestants have not met their burden of proving that the proposed assessment is incorrect and therefore, Protestants' protest to the proposed assessment must be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the sales tax protest of PROTESTANT CORPORATION and ITS OFFICERS and as individuals 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.