JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-02-12-002 / NOT PRECEDENTIAL**
ID: **P9800333**
DATE: **02-12-01**
DISPOSITION: **SUSTAINED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. PROTESTANT is a fabricating company located at XXXX W. ANONYMOUS, ANYTOWN , Oklahoma. This protest concerns the sale of goods produced by PROTESTANT to XYZ Equipment for the period January 20, 1997, through January 21, 1998. The sales tax permit #999999, issued to MR. & MRS. ANONYMOUS, owners of, and doing business as, "XYZ", expired January 19, 1997. Sales tax permit #XXXXXX was issued to XYZ, Inc., a new corporation operated by MR. & MRS. ANONYMOUS, effective January 23, 1998. "XYZ" had purchased goods from PROTESTANT with its first sales tax permit, exempt from-sales-taxes, beginning in the year 1996. After "XYZ"'s first sales tax permit expired, "XYZ" continued to purchase goods from PROTESTANT without paying sales tax in reliance on its expired permit number. MR. & MRS. ANONYMOUS then incorporated XYZ, INC. and obtained a new sales tax number on January 23, 1998, and continued to purchase goods from PROTESTANT tax exempt pursuant to their new sales tax permit. The invoices of sales to "XYZ" during the period in which it did not hold a valid sales tax number are located in the Division's Exhibit "F" introduced at trial.

2. The Audit Division of the Oklahoma Tax Commission ("Division") conducted a field audit of PROTESTANT for the period June 1, 1995, through May 31, 1998. During this audit period, the Division determined that "XYZ" had purchased goods exempt from sales tax from PROTESTANT but that "XYZ" did not hold a valid sales tax permit and its purchases from PROTESTANT during the period January 20, 1997, to January 22, 1998 were subject to sales tax. By letter of November 19, 1998, the Division issued its proposed assessment of additional sales tax to PROTESTANT for the audit period as follows:

Sales Tax	$22,168.56
Interest	4,094.40
Penalty	2,216.90
TOTAL	$28,479.86

By letter of November 24, 1998, PROTESTANT requested an extension of time in which to protest the Division's assessment. By letter of December 9, 1998, the Division granted PROTESTANT an extension of time to protest until February 18, 1999. By letter of December 1, 1998, PROTESTANT timely filed their protest against the Division's assessment.

3. MR. ANONYMOUS, owner of "XYZ", testified that he purchased goods from PROTESTANT tax exempt pursuant to his permit number #999999 during the audit period. He did not realize that his permit had expired but continued to use it to receive the exemption from PROTESTANT. MR. ANONYMOUS represented to PROTESTANT that "XYZ" was exempt from sales tax, by virtue of his sales tax number that had expired, for each purchase during the audit period, see Division's Exhibit "J". MR. ANONYMOUS filed a "renewal" business registration form on July 10, 1997, in order to obtain a new permit number, see Division's Exhibit "I". "XYZ" continued to request sales tax exemption from PROTESTANT on its purchases after it filed the business registration form signed by MR. ANONYMOUS. PROTESTANT sold goods to "XYZ" without collecting tax because PROTESTANT believed "XYZ"'s representation that it was validly entitled to the exemption from sales tax. In fact, however, "XYZ" had misrepresented its exempt status to PROTESTANT and improperly failed to pay the sales tax due on its purchases.

ISSUES

Whether PROTESTANT is liable for sales tax on transactions with "XYZ" during the time period that "XYZ" did not hold a sales tax permit under the good faith acceptance exception.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. § 207, 221.

2. The facts of this case clearly show that "XYZ"'s sales tax permit expired and the sales from PROTESTANT to "XYZ" included on the audit are subject to sales tax. The issue framed in this case attempts to determine which party is properly responsible for the delinquent taxes. Title 68 O.S. § 1361.1 relieves a vendor of liability for sales tax upon the condition that the vendor, in good faith, timely accepts proper documentation from the consumer that entitles the consumer to claim the exemption.

OAC 710:65-7-6(d)(1) defines proper documentation as being:

1. A copy of the sales tax permit,

2. A statement that the articles purchased are for resale,

3. The signature of the purchaser,

4. Certification on the face of the invoice that the purchaser is reselling the item, and

5. In the case of purchases made on a regular basis, subsequent purchases may rely on the previous certification.

3. PROTESTANT had sold goods to "XYZ" tax exempt under its first permit and accepted that permit throughout the audit period. A copy of the permit was introduced into evidence but PROTESTANT did not provide a statement from "XYZ", the signature of the purchaser or a certification on the face of the many invoices that were admitted as Division's Exhibit "F". However, the Division's Exhibit "J" does contain a statement from MR. ANONYMOUS, the owner of XYZ, dated May 10, 1999, that he considered "XYZ" to be exempt from tax and represented to PROTESTANT that "XYZ" was exempt from tax under sales tax permit #999999 during the audit period here at issue. This was not "timely" accepted because this documentation was not in PROTESTANT's possession at the time the transaction occurred as required by OAC 710:65-7-6(c)(2) and therefore PROTESTANT is not relieved of liability pursuant to the Section 1361.1 good faith acceptance rule.

4. During the audit period, PROTESTANT sold goods to "XYZ" in 1996 which were legally exempt from sales tax pursuant to "XYZ"'s valid sales tax permit. PROTESTANT and XYZ continued this course of business throughout the audit period based entirely upon "XYZ"'s continuous representation that "XYZ" held a valid permit and was properly exempt from sales tax. In Division's Exhibit "J", "XYZ" admits that it did perpetuate its misrepresentation to PROTESTANT in order to receive the exemption and fully expected PROTESTANT to honor the exemption for each transaction.

In this situation, "XYZ" in the first instance had a duty to properly renew its sales tax permit consistent with its intention to continue its business operations pursuant to 68 O.S. § 1364.

In the second instance PROTESTANT had a duty to obtain proper documentation for each transaction from "XYZ" and review or confirm the status of "XYZ"'s tax permit in order to deny the exemption when "XYZ" did not properly renew their permit, 68 O.S. § 1365(c).

Judging the respective duties of PROTESTANT and XYZ under the Sales Tax Code, "XYZ" had the first and most easily accomplished duty of properly renewing its sales tax permit which would have protected PROTESTANT from this proposed assessment.

PROTESTANT's duty was more difficult in that it had developed a course of dealing with "XYZ" on the basis of a legally entitled exemption and reasonably relied on "XYZ"'s representation that the exemption continued to exist when in fact it did not.

PROTESTANT was then imposed with a more burdensome duty to discover first the date that "XYZ"'s permit expired and second, that the permit was not renewed and the exemption was no longer available. It is not unreasonable that PROTESTANT assumed from its course of dealing with "XYZ" that based on the fact that "XYZ" continued its regular operations, "XYZ" would also make sure that its sales tax permit was timely renewed.

5. Under these circumstances "XYZ" had the greater duty to comply with the Sales Tax code in the first instance to properly renew its sales tax permit which would have prevented this proposed assessment. This finding draws the conclusion that "XYZ" improperly presented a sales tax permit to PROTESTANT in order to obtain an exemption from sales tax. Based on this finding, the Sales Tax Code at 68 O.S. § 1361(A) places the liability for remittance of the tax, interest and penalty due upon "XYZ" as the purchaser and relieves PROTESTANT as the vendor of any liability for the sales tax imposed with respect to such sales.

6. The Protestant's protest to the proposed assessment should be sustained.

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 AND ITS OFFICERS 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.