JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-05-02-010 / NOT PRECEDENTIAL**
ID: **CR970001**
DATE: **05-02-02**
DISPOSITION: **SUSTAINED**
TAX TYPE: **GROSS PRODUCTION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Stipulated Facts

1. PROTESTANT, an oil and gas exploration and production corporation, is the taxpayer which is the subject of this protest.

2. The taxes which are the subject of the protest are gross production tax and petroleum excise tax.

3. On April 16, 1996, PROTESTANT protested the payment of said taxes with regard to the post-production extraction of helium on certain properties. Since January of 1995, PROTESTANT has paid these taxes assessed by the Commission under protest.

4. On July 1,1994, PROTESTANT and PURCHASER A entered into a Gas Receipt and Delivery Agreement.

5. On October 14,1994, PROTESTANT and PURCHASER B entered into a Helium Purchase Agreement.

II. Other Facts Adduced by the Record

1. On October 16, 1996, PROTESTANT tendered payment of $11,747.42 for gross production tax in the amount of $11,590.12 and petroleum excise tax in the amount of $157.30 for the period January, 1995 through June, 1996, on the post production extraction of helium from natural gas. At the time of this payment, PROTESTANT filed a claim for refund of the gross production tax and petroleum excise tax paid on the helium by letter of October 16, 1996, for the full amount of $11,747.42.

2. On December 12, 1996, the Audit Division denied the claim for refund by letter. PROTESTANT timely protested the denial of its claim for refund of gross production tax and petroleum excise tax by letter of December 31, 1996.

3. PROTESTANT either produced natural gas or acquired natural gas that had been produced by others which contained, inter alia, helium. Subsequent to the production of this particular natural gas, after the natural gas had been lifted to the surface from an underground reserve, and "downstream from the wellhead," PROTESTANT extracted or separated the helium element from the natural gas product and thereafter marketed the helium as a separate product from the natural gas.

ISSUE

The sole issue stated by the parties is whether helium contained in the natural gas stream which is separated downstream from the wellhead, is subject to Oklahoma gross production tax and petroleum excise tax.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this claim for refund, 68 O.S. § 227.

2. Title 68 O.S. § 1001(b) imposes a tax equal to seven (7) percent of the gross value on the production of gas. Title 68 O.S. § 1102(A) imposes an excise tax equal to ninety-five one thousandths of one percent (.095 of 1%) of the gross value of all natural gas produced in the State of Oklahoma which is subject to Oklahoma gross production tax. When the natural gas in the case at bar was produced containing the helium and all other elements naturally present in the gas, it was subject to the gross production tax at the moment it was lifted to the surface and severed from the real estate which held it. The Supreme Court has held in Oklahoma Tax Commission v. Sun Oil Co., 1971 OK 100, 489 P.2d 1078, that:

> Oil may be said to be produced for gross production taxation purposes within the meaning of the statute when it is brought to the surface and confined in such a manner as to permit its measurement as to quantity and its testing as to value.

The Division does not argue, and there is no evidence to establish, that the gross production and excise tax was not paid on the natural gas processed by PROTESTANT when the gas was produced, nor is there evidence that the production value or contract price of the gas at the wellhead upon which the two taxes are calculated was less than that paid for other gas of similar quality in that field.

3. The Sun Oil opinion holds that the natural gas was produced for gross production taxation purposes at the time it was capable of being measured as to quantity and tested as to quality at the time and place of production. Section 1001 imposes the gross production tax only once at the time of production as measured by the value of the production at the place of the wellhead. Once the tax has been calculated at the wellhead, the statute contains no provision for further taxation on refined products after that point, nor does it tax the enhanced value of the gas products extracted or sold by PROTESTANT downstream from the wellhead. Once the natural gas has been severed from the real property by production, the tax attaches at that value and the natural gas becomes personal property which PROTESTANT uses to produce other marketable products. Section 1001 does not apply to the extraction of products from natural gas contained by PROTESTANT downstream from the wellhead.

4. The gross production tax does not apply to the value of helium extracted from natural gas downstream from the wellhead after the production of the natural gas from its formation within real property.

5. PROTESTANT's claim for refund should be granted.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the gross production tax and petroleum excise tax refund of PROTESTANT be granted in the amount of $11,747.42.

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.