JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-04-24-10 / NOT PRECEDENTIAL**
ID: **CR020003**
DATE: **04-24-03**
DISPOSITION: **DENIED**
TAX TYPE: **SALES**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about the 10th day of May, 2001, Claimant purchased a CERTAIN ITEMS from XYZ Auctioneers of Oklahoma.

2. Said purchase was made via the internet.

3. Claimant hired ANONYMOUS Transportation of CITYA, OTHER STATE, who, on the direction of Claimant, located and hired ABC Trucking COMPANY to transport the merchandise from Oklahoma to Claimant in OTHER STATE.

4. ABC Trucking took possession of the merchandise in the State of Oklahoma as representative of Claimant.

5. Claimant timely filed for a refund of sales tax pursuant to *Oklahoma Administrative Code 710:65-15-1(b)(2)*.

6. The Division denied payment of said refund pursuant to *Oklahoma Administrative Code 710:65-15-1(b)(1)*.

ADDITIONAL FINDINGS OF FACT

7. The invoice for the ITEMS from XYZ Auctioneers to Claimant provided that "Purchaser agrees above items were sold AS IS, WHERE IS and with all faults and without warranty or guarantee of any kind, either expressed or implied, as to merchantability or fitness for a particular purpose or otherwise. Each item is the sole responsibility of the purchaser from the MOMENT the AUCTIONEER DECLARES THE ITEM SOLD."

8. By letter dated December 14, 2001, Claimant protested the denial of the refund claim and requested a hearing stating, "[T]his piece of equipment was purchased on the sole purpose of being transported to OTHER STATE for exclusive use in THE OTHER STATE. Since the equipment was purchased at an auction, it was our responsibility to line up the trucking and have it shipped to OTHER STATE. Unaware of the fact that it would be used as a reason to deny our refund on taxes."

9. The amount of the sales tax refund claimed is $3,354.75.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, ϶ 207.

2. The sale of tangible personal property in the State of Oklahoma, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code, is subject to an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of the sale. 68 O.S. Supp. 1999, ϶ 1354(A)(1).

3. A sale under the Sales Tax Code consists of "the transfer (within this State) of either title or possession of tangible personal property for a valuable consideration. . . ." 68 O.S. Supp. 1998, ϶ 1352(15).

4. Accordingly, the levy of sales tax is triggered by either the transfer of title of tangible personal property in this state or the transfer of possession of tangible personal property in this state. See, *Liberty Steel Company v. Oklahoma Tax Commission*, 554 P.2d 8 (Okl. 1976); *International Business Machines Corporation v. State of Oklahoma, ex. rel Oklahoma Tax Commission*, 853 P.2d 770 (Okl. 1993).

5. The Oklahoma Supreme Court defined possession as the act, fact or condition of a person having such control of property that he may legally enjoy it to exclusion of all others having no better right than himself. *Ford v. Oklahoma Tax Commission*, 285 P.2d 436, 437 (Okl. 1955). The Court recognized that "possession" as used in the Oklahoma Sales Tax Code "clearly refers to him who has actual physical control of a thing. . . ." *Id*. at 438.

6. In the situation where a purchaser of goods directs their delivery to a designated carrier, the latter becomes the agent of the purchaser, and delivery to the carrier is a legal delivery to the purchaser. *United States v. R. P. Andrew & Co.*, 207 U.S. 229, 240; 28 S.Ct. 100, 104 (1907).

7. The Tax Commission promulgated *Oklahoma Administrative Code 710:65-15-1*, which addresses the sales tax treatment of sales related to interstate commerce. *Oklahoma Administrative Code 710:65-15-1* provides in pertinent part, as follows:

> (b) **Tangible personal property shipped from this state.**
>
> (1) Except in the limited situation provided for by 710:65-13-152.1, if tangible personal property is sold within this State, and possession is taken by the buyer within this State, sales tax applies, even if the property is to be transported out of this State immediately upon delivery.

(2) If tangible personal property is sold within this State and possession is taken by the buyer outside this State, the tax does not apply if the property is not to be used in Oklahoma. Possession is taken by the buyer outside this State only if either of the following is met:

(A) The seller is obligated to personally deliver the tangible personal property outside this State; or

(B) The seller is, by terms of the sales contract, obligated to deliver the tangible personal property to a common carrier or to the mails for transportation outside this State.

* * *

In the instant case, Claimant, in OTHER STATE, purchased via the internet, tangible personal property, i.e. CERTAIN ITEMS, located in the State of Oklahoma. Pursuant to the agreement between the parties, Claimant was required to arrange for shipment of the property. Claimant hired ANONYMOUS Transportation, who, on the direction of Claimant, located and hired ABC Trucking to transport the equipment from Oklahoma to Claimant in THE OTHER STATE. Consequently, possession of the subject equipment was transferred to Claimant at the time the common carrier hired by Claimant took control of the property in Oklahoma. Therefore, Oklahoma sales tax was properly collected on the described transaction.

8. The burden of proof in all proceedings is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *Oklahoma Administrative Code 710:1-5-47*. Claimant failed to provide any evidence that the transaction at issue was not subject to Oklahoma sales tax.

9. Claimant's sales tax refund claim should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the sales tax 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.