

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2003-06-12-14 / PRECEDENTIAL
ID: CR010007
DATE: 06-12-03
DISPOSITION: DENIED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The ABC AUCTION (CLAIMANT) is a non-profit corporation organized for the purpose of receiving donated items and selling them at auction.

2. It was the testimony of THE CHAIRMAN OF THE BOARD of Directors of ABC AUCTION that the board members of the AUCTION are chosen by contact couples, who are representatives from each ABC Church in Oklahoma.

3. Claimant conducts an annual benefit event and all proceeds from the sale, after deduction for advertising, rent and other operating expenses, are channeled to the ABC Central Committee. THE CHAIRMAN explained that the ABC Central Committee is an outreach arm of the combined ABC Churches to provide assistance where needed around the world or in the United States.

4. After the proceeds from the annual event are given to the ABC CENTRAL COMMITTEE, Claimant has no control over how the money is distributed to the various relief efforts.

5. The annual two-day event is held on the ANONYMOUS County Fairgrounds. THE CHAIRMAN estimated that up to 7,000 people have attended a previous sale, and therefore a facility larger than any one of their local churches is required. Additionally, the manpower to put on the event is more than any one church could provide and therefore the church members pool their efforts through the organization provided by the ABC AUCTION.

6. THE PASTOR OF ZZZ ABC Church and a board member of the 16 member board of the ABC AUCTION, testified that the purpose of the Oklahoma ABC AUCTION is to collect funds for the ABC Central Committee for relief purposes. This is accomplished through the annual two-day event. THE PASTOR described the event, stating that Friday evening there is a sale of items and a service consisting of a devotional, music and an offering. Saturday begins with a prayer and devotional, an auction is conducted and many booths are open to sell food, crafts and other similar items.

7. THE PASTOR further testified that the attendees at the annual event are comprised of both members and non-members of ABC churches and come from all over this state and other states, as well as from local communities.

8. Items sold at the annual two-day sale and auction include donated handmade quilts, afghans and comforters, handcrafted wood and metal items, handmade craft items, ethnic ABC items and baked goods, consisting primarily of ethnic foods.

9. THE PASTOR stated that he knows of no restaurants in the area that sell the types of ethnic foods sold at the event, either exclusively or as one of their menu items. The craft items sold at the event, according to his testimony, are similar to those sold at other craft shows.

10. Claimant has collected and remitted sales tax to the State of Oklahoma on the proceeds of the annual sale and auction since its inception.

11. By letter dated April 6, 2001, Claimant requested a refund of sales tax remitted within the past thirty-six (36) months and for a determination that it is not required to collect and remit sales tax on the proceeds from the sale and auction in the future.

12. The amount of refund claimed includes \$8,423.49 for 1998, \$8,408.41 for 1999, and \$9,069.31 for 2000, for a total amount of \$25,901.21.

13. By letter dated June 27, 2001, the Division denied the request for refund stating that no documentation was presented to show that Claimant qualifies as a church or that the sale was not made in competition with others.

14. Claimant protested the denial by letter dated July 24, 2001, and requested a hearing.

ISSUE AND CONTENTIONS

Whether Claimant has meet its burden of proving the right to an exemption under Title 68, Section 1356(7) of the Oklahoma Statutes.

Claimant contends that its operations are dedicated to the same purpose as a church and that its activities are directly related to the mission of the church; thus it is a church, meeting the first test for tax exemption under the statutes. Further, Claimant contends that the items sold are not available for sale from commercial and retail businesses and it is not in direct competition with other persons engaged in the same or similar business.

The Division contends that Claimant has not met its burden of proving that it has the right to an exemption under Title 68, Section 1356(7), but is rather a relief corporation, not a church, and is competing with others selling the same type of items.

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. Sales of tangible personal property made to or by churches are exempt from sales tax, except for sales made in the course of business for profit or savings, competing with others engaged in the same or similar business. 68 O.S. 1993, § 1356(7).

3. Claimant cites to *Oral Roberts University v. Oklahoma Tax Commission*, 714 P.2d 1013 (Okla. 1985), in support of the contention that as a church-sponsored organization it should qualify for the church exemption under Section 1356 of Title 68.

In *Oral Roberts*, the Tax Commission was precluded from unilaterally changing its long-standing policy holding non-profit, church supported schools exempt from sales tax under the statute exempting "churches" from sales tax. The Court stated that generally an administrative agency has the flexibility to correct its own erroneous interpretation of the law. The Court held that where the Tax Commission had consistently construed an ambiguous or uncertain statute for a number of years, without such interpretation having been disturbed by the legislature, and where there were no cogent reasons advanced by the Tax Commission for reversal of its interpretation, the interpretation could not be reversed.

The Court in *Oral Roberts* specifically stated that the "issue of whether this institution of higher learning is a 'church' under 68 O.S. 1981, § 1356(E) is not before us."¹ *Id.* at 1017. *Oral Roberts* does not apply to this proceeding since the Commission has not had a long-standing policy of treating non-profit, church-sponsored relief sales as churches under the applicable exemption statute.

4. Claimant argues that the broad definition of church is supported by Attorney General Opinion 80-231. To the contrary, that opinion draws no legal conclusions whatsoever as to the nature of the entity in the question posed and rather concludes that the exemption question will always involve a factual determination and is therefore unsuitable for resolution by the Attorney General.

¹ The language in 68 O.S. 1981, § 1356(E) is substantially the same as the language in 68 O.S. Supp. 1993, § 1356(7).

5. Claimant cites to 26 U.S.C.A. § 6033 and related treasury regulations dealing with an exemption to churches, their integrated auxiliaries and conventions or associations of churches from federal income tax informational reporting, in support of the conclusion that Claimant falls within these provisions as an integrated auxiliary and therefore has equal status as a church for reporting and taxation. Section 1356(7) of Title 68 does not provide for an exemption for integrated auxiliaries. It is presumed that the legislature would have created a statutory exemption for integrated auxiliaries had it been their intent.

6. Exemption statutes are to be strictly construed against exemptions. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okla. 1977); *Phillips Petroleum Co. v. Oklahoma Tax Commission*, 542 P.2d 1303 (Okla. 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 Ok. 413, 110 P.2d 292 (1941).

The language of the exemption statute at issue herein is specific, only exempting sales by and to churches. It cannot be interpreted to encompass church-supported and/or church-sponsored entities. The fact that an entity is church-supported or church-sponsored does not qualify it for exemption as a church under 68 O.S. Supp. 1993, § 1356(7). When intending to exempt church-supported or church-sponsored entities the Legislature has enacted provisions to do so.²

7. The Oklahoma Supreme Court in *Foster v. Harding*, 426 P.2d 355 (Okla. 1977), reasoned that a mausoleum within a cemetery was not a church simply because a chapel was located on the premises. The Court's decision was based on the fact that the primary purpose for the mausoleum was the proper interment of the deceased rather than the "propagating a particular form of belief." *Foster* at 359.

8. Claimant's sole purpose is to conduct a sale and auction to raise money to be distributed to the ABC Central Committee. Claimant is not a church and therefore does not qualify for the sales tax exemption at Section 1356(7) of Title 68.

9. Assuming arguendo that Claimant is a church, the Commission promulgated 710:65-13-40 which sets forth a test for determining if sales by a church are not in competition with establishments engaged in the same or similar business.

² ² Section 1356(27) of Title 68 exempts from the sales tax levy "sales of tangible personal property or services occurring on or after June 1, 1995, to children's homes which are supported or sponsored by one or more churches, members of which serve as trustees of the home;" 68 O.S. Supp. 1997, § 1356(27).

Section 1356(29) of Title 68 exempts from the sales tax levy "sales of tangible personal property or services to youth camps which are supported or sponsored by one or more churches, members of which serve as trustees of the organization;" 68 O.S. Supp. 1998, § 1356(29).

710:65-13-40. Sales by churches

(a) Sales "by" churches. Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and real practical effect upon putative competition. . . .

Here, the event is conducted once a year with the proceeds, less operating expenses, going to the Oklahoma ABC AUCTION. However, there was no evidence to show that the dominant motive of the purchasers at the event was to make a donation to a church and that the acquisition of the purchased item was merely incidental to the purpose of making a gift to the church. Because of the nature of the particular items sold, the practical effect is that the sales made at the event are, in fact, in competition with like business establishments i.e., craft malls, craft shows, bazaars, flea markets, arts and crafts festivals and cultural events.

10. The fact that Claimant is "not organized for pecuniary profit" is irrelevant to whether the sales at issue herein were made in the "course of business for profit or savings, competing with other persons engaged in the same or a similar business." See, Oklahoma Tax Commission v. Sisters of the Sorrowful Mother, 186 Okl. 339, 97 P.2d 888 (Okl. 1939); Baptist General Convention v. Oklahoma Tax Commission, 196 Okl. 96, 162 P.2d 1012 (Okl. 1945).

11. The burden of proving that a sale was not a taxable sale is upon the person who made the sale. 68 O.S. Supp. 1996, § 1365(C).

12. Claimant failed to meet the two conditions to qualify it for exemption under Section 1356(7) of Title 68; therefore, the claim for refund was properly 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 ABC AUCTION be denied.

OKLAHOMA TAX COMMISSION