

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2010-11-30-04 / NON-PRECEDENTIAL  
**ID:** P-10-145-H  
**DATE:** NOVEMBER 30, 2010  
**DISPOSITION:** SUMMARY DISPOSITION GRANTED  
**TAX TYPE:** SALES TAX EXEMPTION  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

APPLICANT (“Applicant”) appears pro se.<sup>1</sup> The Taxpayer Assistance Division (“Division”), Oklahoma Tax Commission, appears through OTC ATTORNEY 1, Assistant General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

### PROCEDURAL HISTORY

On May 6, 2010, the protest letter was received by the Court Clerk<sup>2</sup> for filing. On May 10, 2010, the Court Clerk sent a memorandum to the Division requesting the protest file. On May 10, 2010, a letter was mailed to the Applicant stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-145-H. The letter also advised the Applicant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*<sup>3</sup>. On May 19, 2010, OTC ATTORNEY 3, Assistant General Counsel, filed an Entry of Appearance as Counsel of record for the Division. On May 24, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>4</sup> and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>5</sup> On May 24, 2010, the Notice of Prehearing Conference was mailed to the last-known address of the Applicant, setting the prehearing conference for June 15, 2010, at 10:30 a.m.<sup>6</sup>

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<sup>1</sup> “[P]ro se” (proh say or see), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK’S LAW DICTIONARY (8<sup>th</sup> ed. 2004), available at <http://westlaw.com>. The Applicant appears through PRESIDENT, Director, Adult Basic Education for Oklahoma City Schools and President of the Applicant. The Applicant also appears by and through SECRETARY, Secretary.

<sup>2</sup> OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

<sup>3</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

<sup>4</sup> OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

<sup>5</sup> *Id.*

<sup>6</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010). The notice was mailed to the Applicant c/o SECRETARY, Secretary at APPLICANT’S ADDRESS.

On June 8, 2010, the Court Clerk received a call from SECRETARY requesting that the prehearing conference be held by telephone, as per the May 24<sup>th</sup> letter. On June 14, 2010, OTC ATTORNEY 3 filed a Request for Continuance of the prehearing conference due to her departure from the Office of General Counsel on June 18, 2010. OTC ATTORNEY 3 also advised that SECRETARY had been contacted and had no objection to the request. On June 14, 2010, OTC ATTORNEY 3 filed a Withdrawal of Counsel with the Court Clerk. On June 21, 2010, OTC ATTORNEY 1 filed an Entry of Appearance as Counsel of record for the Division.

On July 23, 2010, a letter was mailed to the parties setting the prehearing conference for August 17, 2010, at 9:30 a.m.<sup>7</sup> On July 27, 2010, the Division filed its Motion for Summary Disposition (“*Motion*”), with Exhibits A through D attached thereto. The Verification attached to the *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Taxpayer Assistance Division.<sup>8</sup> The Applicant did not file a response to the Division’s *Motion*.

On August 3, 2010, a Notice to Appear (“*Notice*”) was mailed to the parties advising that the Division’s *Motion* was set for oral argument on August 24, 2010, at 1:30 p.m. and that the prehearing conference set for August 17, 2010, was stricken from the docket. On August 24, 2010, OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division. On August 24, 2010, at 1:30 p.m., closed oral argument<sup>9</sup> was held as scheduled. The oral argument of the Division’s *Motion* was made by OTC ATTORNEY 2. Oral argument was presented by PRESIDENT on behalf of the Applicant. Upon the conclusion of oral arguments the record in this matter was closed and the Division’s *Motion* was submitted for decision on August 24, 2010.

### **FINDINGS OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY**

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest, the *Notice*, and the Division’s *Motion*, the undersigned finds:

1. On April 20, 2010, the Applicant, through PRESIDENT, President (“President”), filed an Application for Sales Tax Exemption (“Application”) with the Division. The Applicant is located at APPLICANT’S ADDRESS.<sup>10</sup> Attached to the Application was a copy of a letter dated March 1, 2010, from the Internal Revenue Service (“IRS”) advising that the Applicant had not submitted the necessary documentation required to continue to be recognized as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code (“IRC”).<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See OKLA. ADMIN. CODE § 710:1-5-28(c) (June 25, 1999).

<sup>9</sup> The Applicant, through PRESIDENT, invoked its right to confidentiality as provided by OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2010).

<sup>10</sup> Division’s Exhibit A. The Application reflects the Applicant is not incorporated. The Application does not reflect what type of organization the Applicant is for purposes of qualifying for a sales tax exemption.

<sup>11</sup> Division’s Exhibit B.

2. On April 20, 2010, the Division mailed a letter to the Applicant denying the Application.<sup>12</sup>

3. On May 6, 2010, the protest letter was filed with the Court Clerk.<sup>13</sup>

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.<sup>14</sup>

2. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.<sup>15</sup> The procedures for such motion are as follows:

(1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically

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<sup>12</sup> Division's Exhibit C.

<sup>13</sup> Division's Exhibit D. *See* Procedural History herein.

<sup>14</sup> OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

<sup>15</sup> OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC 710:1-5-10, 710:1-5-40 and 710:1-5-41*. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

3. The rules promulgated pursuant to the Administrative Procedures Act<sup>16</sup> are presumed to be valid and binding on the persons they affect and have the force of law.

4. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code (“Sales Tax Code”).<sup>17</sup> The Sales Tax Code levies “upon all sales,<sup>18</sup> not otherwise

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<sup>16</sup> OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

<sup>17</sup> OKLA. STAT. ANN. tit. 68, § 1350 et seq. (West 2008).

exempted . . . an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds<sup>19</sup> of each sale of . . . tangible personal property. . . .”<sup>20</sup> Oklahoma Statutes authorize incorporated cities, towns, and counties to levy taxes as the Legislature may levy and collect taxes for purposes of state government.<sup>21</sup>

5. An exemption statute is strictly construed against the person asserting an exemption.<sup>22</sup>

6. The exemptions from sales tax for governmental and non-profit entities are contained in Section 1356 of Title 68.<sup>23</sup>

### DISCUSSION

The basis of the Division’s *Motion* is that there is no genuine issue of fact that the Applicant does not qualify for any of the statutory exemptions for nonprofit entities contained in Section 1356 of Title 68.<sup>24</sup>

During oral argument, PRESIDENT described the Applicant, a nonprofit entity, as follows, to-wit:

What we do is offer professional development to—not only to directors and teachers, but with the new legislation<sup>25</sup> we have parental involvement and we try to get our parents involved in the organization. As you know, adult basic

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<sup>18</sup> OKLA. STAT. ANN. tit. 68, § 1352(22)(a) (West 2008):

“Sale” means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:

a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,

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<sup>19</sup> OKLA. STAT. ANN. tit. 68, § 1352(11) (West 2008).

<sup>20</sup> OKLA. STAT. ANN. tit. 68, § 1354(A) (1) (West 2008).

<sup>21</sup> OKLA. STAT. ANN. tit. 68, § 1370 et seq. (West 2008) and OKLA. STAT. ANN. tit. 68, § 2701 (West Supp. 2010).

<sup>22</sup> *Magnolia Petroleum Co. v. Oklahoma Tax Commission*, 1958 OK 124, 326 P.2d 821.

<sup>23</sup> OKLA. STAT. ANN. tit. 68, § 1356 (West 2008).

<sup>24</sup> *Id.*

<sup>25</sup> PRESIDENT did not identify the legislation.

education serves individuals that are seeking a GED,<sup>26</sup> the TANF<sup>27</sup> welfare to work-we are working with those individuals to get them back to work, family literacy, ESL,<sup>28</sup> EL/Civics,<sup>29</sup> the whole gamut of adult education.

PRESIDENT also argued that the Applicant was, as far as she knew, still classified as a public charity and exempt from Federal income tax under 501(c)(3).<sup>30</sup> It appears that the Applicant's position rests on this basic premise, if the Applicant is exempt from Federal income Tax under 501(c)(3) of the IRC, then the Applicant is exempt from the imposition of Oklahoma sales tax. Unfortunately, this is a common misconception.

As pointed out by the Division in its *Motion*, "All sales of tangible personal property are subject to taxation unless the sale is specifically exempted by law... Since [Applicant's] business is not specifically exempt from taxation, the Division correctly denied [Applicant's] request for exemption."<sup>31</sup> The Applicant did not identify any exemption on the Application under which it qualified and the Applicant did not present any information to the Division to evaluate if it did qualify for an exemption, but instead the Applicant relied on its status as being exempt from Federal income tax under 501(c)(3) of the IRC.

There is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

### DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Division's *Motion* should be granted.

OKLAHOMA TAX COMMISSION

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<sup>26</sup> Acronym for General Education Development.

<sup>27</sup> Acronym for Temporary Assistance for Needy Families.

<sup>28</sup> Acronym for English as a Second Language.

<sup>29</sup> Acronym for English Literacy Civics which means, "To effectively participate in education, work, and civic opportunities in this country, immigrants and other limited English proficient persons must not only master English, but be able to understand and navigate governmental, educational, workplace systems and key institutions, such as banking and health care. Congress has reserved funding under the Adult Education and Family Literacy Act (AEFLA) for 'integrated English literacy and civics education services to immigrants and other limited English proficient populations.' Grants awards for EL/Civics Education projects will result in integrated instructional programs and services that incorporate both English literacy instruction and civics education." See <http://www.ede.state.co.us>.

<sup>30</sup> On August 30, 2010, subsequent to hearing and after the record was closed, SECRETARY filed a copy of a letter with the Court Clerk from the IRS dated August 23, 2010, which confirms the Applicant as a Public Charity and exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

<sup>31</sup> *Motion* at 2.

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”