**JURISDICTION:** **OKLAHOMA TAX COMMISSION**
**CITE:** **2011-07-12-05 / NON-PRECEDENTIAL**
**ID:** **P-10-047-H**
**DATE:** **JULY 12, 2011**
**DISPOSITION:** **SUSTAINED**
**TAX TYPE:** **SALES TAX EXEMPTION**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 20th day of May, 2011, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

## PROCEDURAL HISTORY

On March 4, 2010, the Court Clerk[1] received the letter of protest for filing. On March 5, 2010, the Court Clerk sent a memorandum to the Taxpayer Assistance Division with a copy of the protest letter and requested the protest file. On March 9, 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-10-047-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.*[2]

On March 12, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division. On March 12, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[3] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[4]

On April 8, 2010, the Notice of Prehearing Conference was mailed to the last-known address of the Applicant, setting the prehearing conference for April 20, 2010, at 2:00 p.m.[5] On April 9, 2010, due to a scheduling conflict, a second Notice of Prehearing Conference was mailed to the parties setting the prehearing conference for May 10, 2010, at 10:30 a.m.[6]

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[1] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[4] *Id.*

[5] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2010). The notice was mailed to the Applicant c/o DIRECTOR at MAILING ADDRESS, which is the mailing address of the Applicant.

[6] *Id.*

On May 3, 2010, ATTORNEY filed by facsimile an Entry of Appearance as Counsel of record for the Applicant. On May 3, 2010, OTC ATTORNEY filed a Report in Lieu of the prehearing conference. The Division requested that this matter be put on a thirty (30) day status report since the Applicant had just retained ATTORNEY as its Counsel of record. On May 3, 2010, a letter was mailed to Counsel directing the filing of a status report on or before June 18, 2010. On May 26, 2010, Counsel jointly filed a Request to Have Matter Decided on Briefs.

On June 2, 2010, a Scheduling Order was issued with stipulations due on or before July 8, 2010, simultaneous briefs due on or before July 22, 2010, and reply briefs due on or before August 2, 2010, at which time this matter would be submitted for decision.

On July 19, 2010, the Division filed its *Motion for Summary Disposition* ("*Motion*") with Exhibits A-1 through E, attached thereto. The Verification attached to the Division's *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Taxpayer Assistance Division, Oklahoma Tax Commission. On July 21, 2010, a letter was mailed to Counsel acknowledging the filing of the Division's *Motion*, striking the Scheduling Order issued June 2, 2010, and advising ATTORNEY the Applicant could file a response to the Division's *Motion* on or before August 3, 2010, at which time the *Motion* would be submitted for ruling.

There being no response from ATTORNEY, the Division's *Motion* was submitted for ruling on August 10, 2010.

On October 8, 2010, an Order Denying Division's Motion for Summary Disposition was issued and mailed to Counsel, which also ordered that this matter be set for a hearing on the merits. On October 14, 2010, OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division. On October 14, 2010, a letter was mailed to Counsel requesting a teleconference with the undersigned on October 27, 2010, at 9:00 a.m. On October 27, 2010, the teleconference was held as scheduled. On October 28, 2010, a letter was mailed to Counsel that a proposed scheduling order was to be submitted on or before November 12, 2010.

On November 2, 2010, OTC ATTORNEY filed a proposed scheduling order. On November 8, 2010, Counsel submitted a joint Proposed Scheduling Order. On November 23, 2010, the Scheduling Order was issued setting the hearing on January 11, 2011, at 9:30 a.m., with pre-trial briefs or position letters due on or before January 4, 2011.

On January 7, 2011, an Amended Scheduling Order was issued due to a scheduling conflict, striking the hearing set for January 11, 2011, from the docket and resetting the hearing on April 7, 2011, at 9:30 a.m., pre-trial briefs or position letters due on or before March 31, 2011.

On February 17, 2011, a Notice of Substitution of Attorney and Entry of Appearance was filed by OTC ATTORNEY 2 and OTC ATTORNEY 3.[7]

[7] The filing served as a Withdrawal of Counsel as to OTC ATTORNEY.

On March 18, 2011, ATTORNEY filed the Applicant's Brief and Witness and Exhibit List (A-1 through A-16). On March 31, 2011, The Division's Brief was filed, with Exhibits A through U, attached thereto.

On April 7, 2011, at 9:30 a.m. an open hearing[8] was held as scheduled. At hearing, Counsel announced that they had stipulated to the identification, offer, and admittance into evidence of Applicant's Exhibits A-1 through A-10 and A-12 through A-17,[9] and Division's Exhibits A through U. The Applicant called one (1) witness, DIRECTOR, Applicant's Executor Director, who testified about the Application for Sales Tax Exemption and the details of the how the Applicant conducts business. The Division called one (1) witness, SUPERVISOR, Revenue Unit Manager, Taxpayer Assistance Division, who testified about processing the Application for Sales Tax Exemption and as custodian of the Division's records. At the conclusion of the hearing, the record in this matter was closed and this case was submitted for decision on April 7, 2011. On May 20, 2011, the Administrative Law Judge issued Findings, Conclusions and Recommendations in this matter and recommended the protest be denied.

## FINDINGS OF FACTS

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the Applicant's Brief, and the Division's Brief, the undersigned finds:

1. On April 29, 1977, COMPANY received its Certificate of Incorporation from the Oklahoma Secretary of State as a domestic non-profit corporation. COMPANY filed an Amended Certification of Incorporation changing its name to COMPANY d/b/a CRISIS CENTER and filed Amendment of Articles of Incorporation[10] to reflect its purpose as follows, to-wit:

> The purpose for which this corporation is formed is to provide a Christian home with a safe and secure environment, while the unwed teen prepares for and awaits the birth of her baby. This home becomes a place of refuge and hope to hurting women and their unborn children.

2. The Applicant is a privately owned residential two (2) story brick home with a nine (9) bed resident capacity located at ADDRESS. All care is provided without charge to the client. No young women will be refused care due to race or denomination. Acceptance into the program is based upon individual need for housing, willingness to participate in the overall

[8] The Applicant, through ATTORNEY , waived its right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2011).

[9] The Applicant's Exhibit titled "Breakdown of Deprived Children" should have been marked as Applicant's Exhibit 17, and was so labeled at hearing by agreement of Counsel.

[10] Applicant's Exhibits A-2 through A-3. *See* Division's Exhibits C, K, and O.

program and her willingness to abide by policies during her stay at the home. If the child is in state custody, the Court Order is an item required for admission.[11]

3. On or about June 4, 2002, the Applicant submitted an Application for License to the Oklahoma Department of Human Services ("OKDHS") as a "Residential Child Care Facility," with a maximum number of children accepted for care as nine (9) plus one (1) infant.[12]

4. On or about December 1, 2002, OKDHS issued to Applicant, OKDHS License Number ######, to operate a Residential Child Care Facility, under the provisions of the Oklahoma Child Care Facilities Licensing Act of 1963; Oklahoma Statutes Title 10, Sections 401 *et seq.*, for a maximum number of Ten (10) children.[13]

5. On June 23, 2008, the Applicant received a letter from OKDHS,[14] which states in pertinent part, as follows, to-wit:

> Your agency provides Residential Maternity & Infant services to children in the custody of the Department.

6. The Applicant continues to operate as a "Residential Child Care Facility" under OKDHS License Number ######.[15] The Applicant has a contract with OKDHS, which funds up to three (3) beds for young women in OKDHS custody at $33.00 per day. The contract became effective in 2007. OKDHS made payments during the last two (2) fiscal years,[16] as follows, to-wit:

| Fiscal Year | Payment |
|---|---|
| 05/01/08-04/30/09 | $20,734.00 |
| 05/01/09-04/30/10 | $ 9,637.00 |

[11] Applicant's Exhibit A-10. *See* Division's Exhibits E through G, and P. Testimony of DIRECTOR.

[12] Division's Exhibit A. The OKDHS Application has three (3) different licensing options to choose from: (1) Child Placing Agency; (2) Residential Child Care Facility; and (3) Children's Shelter. *See* Division's Exhibits S through T.

[13] Division's Exhibit L. The Applicant is subject to "Residential Child Care Facility" visits by DHS. *See* Division's Exhibits B and D.

[14] Applicant's Exhibit A-15.

[15] Testimony of DIRECTOR. Division's Exhibit U.

[16] *Id*. Applicant's Exhibit A-16.

7. The Applicant also receives funding from the Oklahoma Office of Juvenile Affairs ("OJA") grants. OJA made payments during the last (2) fiscal years,[17] as follows, to-wit:

| Fiscal Year | Payment |
|---|---|
| 05/01/08-04/30/09 | $13,500.00 |
| 05/01/09-04/30/10 | $ 4,792.00 |

8. On January 22, 2010, the Division received by facsimile, an Application for Sales Tax Exemption ("Application")[18] from the Applicant, with the following attachments thereto:

- Copy of letter dated March 24, 1998, from the IRS to the Applicant confirming its exempt status as a 501(c)(3) corporation.[19]
- Copy of letter dated October 23, 2000, from the IRS to the Applicant confirming amendment of the articles of incorporation to state that the Applicant was formed to provide a Christian home for unwed teens and that the Applicant had changed its name from COMPANY to COMPANY, d/b/a CRISIS CENTER.[20]
- Copy of Amended/Not for Profit Certificate of Incorporation dated September 11, 2000, from Oklahoma Secretary of State for Applicant.[21]
- Copy of License for "Residential Child Care" dated December 1, 2002, from the Department of Human Services to Applicant.[22]

The Application was submitted on behalf of the Applicant by DIRECTOR, Executive Director. DIRECTOR did not check any of the boxes on the Application to indicate which exemption was being claimed by the Applicant.

9. On February 12, 2010, the Division received a letter by facsimile from the Applicant, through DIRECTOR stating "…[Applicant] is a residential group home that provides shelter to pregnant teen girls age 12-18. These young women stay at our facility approximately 5-6 months."[23]

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[17] *Id.*

[18] Applicant's Exhibit A-1. *See* Division's Exhibit H.

[19] Applicant's Exhibits A-4 through A-5. *See* Division's Exhibits I through J. *See also* 26 U.S.C.A. § 501(c)(3) and 26 U.S.C.A. §§ 508-509.

[20] *Id.*

[21] *See* Note 10, *supra*.

[22] Division's Exhibit L.

[23] Applicant's Exhibit A-6. *See* Division's Exhibit M.

10. On February 17, 2010, the Division sent the Applicant a letter stating, "Your application for sales tax exemption in Oklahoma can not be processed without additional information. Per Okla. Admin. Code §710:65-13-1 et seq. the entities that qualify for sales tax exemption in Oklahoma are specifically set out by the State Legislature. Please provide the following: *A copy of your Articles of Incorporation [and] Indication of the exemption you are applying for.*"[24] (Emphasis original).

11. On February 22, 2010, the Division received by facsimile, copies of the Applicant's Certificate of Incorporation dated April 29, 1977, and Amended Certificate of Incorporation, along with a partial copy of the Amendment of Articles of Incorporation.[25]

12. The Applicant's website repeats the stated purpose and adds that the Applicant has a warm, home-like atmosphere to help each young woman be as comfortable and secure as possible during her residence, and all care is provided without charge to the client. No young woman will be refused care due to race or denomination. The Applicant also has a staff nurse, provides numerous services, including but not exclusive of spiritual counseling, mentoring moms programs, and provides hygiene products and bedding. The Applicant's website notes that Applicant "…is licensed by the Oklahoma Department of Human Services."[26]

13. The Applicant's current (revised 04/15/2010) "Policy and Procedures Manual" at viii states, "The programs of [Applicant] are designed primarily for expectant teen mothers, ages 17 and under living in Oklahoma. A program for parent education and counseling is available to expectant teen father, ages 17 and under.…," and at II(A)(2), "The Residential Program is designed for female adolescents of ages 17 and under."[27]

14. On February 24, 2010, the Division sent a letter denying the Application. The denial letter indicates that the Applicant is claiming the exemption for abused, neglected or abandoned children, which is not the stated purpose of the Applicant per its Amended Articles of Incorporation.[28]

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[24] Applicant's Exhibit A-7. *See* Division's Exhibit N.

[25] Applicant's Exhibits A-2 through A-3. *See* Division's Exhibit O. *See also* Note 10, *supra.*

[26] *See* Note 11, *supra*. The Applicant's website address is WEB ADDRESS.

[27] Division's Exhibit F. *See* Division's Exhibit E, the Applicant's "Policy and Procedures Manual" (Revised 01/05/07) at viii, which contains the same language.

[28] Applicant's Exhibit A-8. *See* Division's Exhibit Q.

15. On March 4, 2010, the Division received a protest[29] to the denial of the Application. The basis of the protest is stated in pertinent part:

> [Applicant] was denied this exemption as stated in the letter received from SUPERVISOR because, "the purpose of your organization is not specifically to shelter abused, neglected or abandoned children from birth to age eighteen." Not only do we provide shelter to abused, neglected or abandoned young women, we provide a safe and secure environment for their unborn children as well. Although not stated directly, it is implied that we serve those who are abused, neglected or abandoned. Every young woman that is served by [Applicant] fits into the states specifically worded category.
>
> If an organization provides a safe and secure shelter; safe and secure shelter implies the need to feel safe, typical language used when addressing abused, neglected or abandoned young women. Also, providing a place of refuge and hope to hurting young women is typical language addressing abused, neglected and abandoned young women. I do not understand the criteria by which [Applicant] does not qualify for this exemption.
>
> SUPERVISOR explained to me as per our phone conversation on Tuesday, March 2, 2010, that the state has not made a specific determination about places that house pregnant young women. I believe that women under the age of 18 and their unborn infants qualify as children between birth and age eighteen.

16. The Applicant provided a "Breakdown of Deprived Children" served through November 10, 2010,[30] which states as follows, to-wit:

> Thirty-five (35) out of sixty-eight (68) young women that [Applicant] has served were confirmed abused, neglected or abandoned. The terminology that OKDHS uses to remove a child from their parent's custody is "deprived", not specifically abused, neglected or abandoned. Forty-four (44) of the young women served by [Applicant] have been in DHS custody and five (5) in OJA custody. From the limited documentation found, it was determined that at least 6 of those nineteen (19) private placements were in fact young women who either lived at or below poverty level or were homeless.
>
> Given these facts, fifty-five (55) of sixty-eight (68) of the young women that [Applicant] has served have substantiated a need for assistance. The remaining 13 came to [Applicant] for assistance at a very difficult point in their lives.

[29] Applicant's Exhibit A-9. *See* Division's Exhibit R.

[30] Testimony of DIRECTOR. Applicant's Exhibit A-17.

| Year | Number of Residents | | Confirmed Abused, neglected or abandoned** |
|---|---|---|---|
| 2002 | 02 | 00 | |
| 2003 | 08 | 04 | |
| 2004 | 08 | 06 | ***2 of 6 were classified deprived-Also 1 not, included in the 6 was DHS custody but no document found as to the reason why client was in the custody [sic] |
| 2005 | 09 | 05 | ***2 not included in 5 were in DHS custody but no indication as to why there [sic] were in custody |
| 2006 | 11 | 08 | ***3 of the 8 classified as deprived |
| 2007 | 10 | 06 | ***1 of 6 classified as deprived |
| 2008 | 06 | 04 | |
| 2009 | 05 | 02 | |
| 2010 | *9 | 06 | |
| Totals | 68 | 41 | |

Note: Residents were counted in the year they arrived at [Applicant].
*until present-November 30, 2010
** "Deprived Child" defined in 10A O.S. Section 1-1-105(20)[31]
***This documentation was so noted in a court order of one of the residents of [Applicant].

17. The Applicant provided Profit & Loss YTD Comparisons,[32] which are summarized as follows, to-wit:

| Income | 04/08 | 05/07-04/08 |
|---|---|---|
| Grants | 1,794.10 | 18,487.02 |
| DHS Income | 2,746.29 | 11,752.94 |
| Donations | 1,512.00 | 30,419.09 |
| Fund Raisers | 40.00 | 22,112.00 |
| Cost of Auction Item | 0.00 | (200.00) |
| Total Income | 6,092.39 | 82,571.05 |
| Less Expenses | 8,104.98 | 77,713.97 |
| Net Income | (2,012.59) | 4,857.08 |

[31] OKLA. STAT. ANN. tit. 10A, § 1-1-105(20) (West 2009). *See* OKLA. STAT. ANN. tit. 10A, § 1-1-105(2) and (46) (West 2009) for definitions of "Abuse" and "Neglect" under the Oklahoma Children's Code, OKLA. STAT. ANN. tit. 10A, § 1-1-101 *et seq.* (West 2009).

[32] Applicant's Exhibits A-12 through A-14.

| Income | 04/09 | 05/08-04/09 |
|---|---|---|
| Grants | 0.00 | 13,500.72 |
| DHS Income | 1,254.00 | 20,734.60 |
| Donations | 2,215.00 | 62,144.28 |
| Fund Raisers | 0.00 | 23,539.65 |
| Interest Earned | 0.00 | 9.89 |
| Total Income | 3,469.00 | 119,929.14 |
| Less Expenses | 6,338.44 | 83,620.53 |
| Net Income | (2,869.44) | 36,308.61 |

| Income | 04/10 | 05/09-04/10 |
|---|---|---|
| Grants | 0.00 | 4,792.36 |
| DHS Income | 1,023.00 | 9,637.00 |
| Donations | 1,763.00 | 73,126.74 |
| Donations Dedicated | 0.00 | 7,928.75 |
| Fund Raisers | 0.00 | 47,236.74 |
| Interest Earned | 0.00 | 69.64 |
| Total Income | 2,786.00 | 142,791.23 |
| Less Expenses | 9,036.63 | 106,581.56 |
| Net Income | (6,250.63) | 36,209.67 |

## CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[33]

2. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[34]

3. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code ("Sales Tax Code").[35] The Sales Tax Code levies "upon all sales,[36] not otherwise

[33] OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

[34] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[35] OKLA. STAT. ANN. tit. 68, § 1350 et seq. (West 2008).

[36] 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,

exempted . . . an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds[37] of each sale of . . . tangible personal property. . . ."[38] Oklahoma Statutes authorize incorporated cities, towns, and counties to levy taxes as the Legislature may levy and collect taxes for purposes of state government.[39]

4. The Sales Tax Code, in pertinent part, provides exemptions[40] from sales tax on property or services purchased by nonprofit entities, as follows, to-wit:

> 68. Sales of tangible personal property or services to any organization *which is a shelter for abused, neglected, or abandoned children* and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.A., Section 501(c)(3); provided, until July 1, 2008, such exemption shall apply only to eligible shelters for children from birth to age twelve (12) and after July 1, 2008, such exemption shall apply to eligible shelters for children from birth to age eighteen (18); (Emphasis added.)

5. Goal of any inquiry into the meaning of a legislative act is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. Where a statute is plain and unambiguous, it will not be subject to judicial construction, but will be given the effect its language dictates. Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict with other statutes is shown to exist, may rules of statutory construction be employed.[41]

6. Tax exemptions, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction, or credit. Section 1356 of Title 68 is an exemption statute, not a tax levying statute; and as such, it must be strictly construed unless authority for the exemption is clearly expressed.[42]

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…

[37] OKLA. STAT. ANN. tit. 68, § 1352(12) (West 2008).

[38] OKLA. STAT. ANN. tit. 68, § 1354(A)(1) (West 2008).

[39] OKLA. STAT. ANN. tit. 68, § 1370 et seq. (West 2008) and OKLA. STAT. ANN. tit. 68, § 2701 (West Supp. 2010).

[40] OKLA. STAT. ANN. tit. 68, § 1356(68) (West 2008).

[41] *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

[42] *Id.*

7. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[43] A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respect.[44]

8. The Tax Commission Rule ("Rule")[45] states as follows, to-wit:

> (a) **Qualification for shelters for abused, neglected, or abandoned children from birth to age eighteen.** Sales of tangible personal property and services to an organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, *which is a shelter for abused, neglected, or abandoned children* from birth to age twelve are exempt from sales tax and after July 1, 2008, the exemption shall apply to eligible shelters for children from birth to age eighteen. (Emphasis added.)
>
> (b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:
>
> > (1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501 (c)(3); and
> >
> > (2) Documentation showing that the organization is a shelter for abused, neglected, or abandoned children from birth to twelve or beginning July 1, 2008 is a shelter for children from birth to age eighteen.

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[43] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

> …"preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[44] *See Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[45] OKLA. ADMIN. CODE § 710:65-13-355 (July 1, 2008).

(3) A written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;
(B) By-laws;
(C) Brochure;
(D) Intake documents or other forms used to obtain information from clients which specifically reflect age of children and reason for being sheltered; or
(E) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only sales of goods or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax. (Emphasis original).

## APPLICANT'S POSITION

The Applicant "…believes that it qualifies for a Sales Tax Exemption under more than one of the exemptions provided in 68 O.S. §1356. After receipt of information from [Applicant], the [Division] treated the [Applicant] Application for Sales Tax Exemption as falling solely under 68 O.S. §1356(68). [Applicant] certainly submits that it clearly qualifies for this exemption as it is most certainly a shelter for abused, neglected or abandoned children as provided in the exemption. …Clearly, [Applicant] has provided proof from the IRS that it is exempt from federal income taxation. Further, [Applicant] has provided documentation that supports a finding that the organization provides a shelter for abused, neglected or abandoned children."[46]

## DIVISION'S POSITION

The Division's position is (1) The Applicant is not a shelter as defined by Oklahoma DHS licensing standards and therefore does not fall within the ambit of 68 O.S. §1356(68); (2) Because reasonable minds can differ as to whether or not [Applicant] qualifies for exemption as a "shelter" the ambiguity surrounding the use of the word "shelter" in the statute is fatal to the [Applicant's] claim that it is exempt under Title 68, Section 1356(68); and (3) [Applicant's] assertion that it also qualifies under other exemption statutes is not ripe for adjudication in the matter now before the court."[47]

[46] Applicant's Brief at 1.

[47] Division's Brief at 2, 6, and 8.

## DISCUSSION

The Protestant relies on the language contained in the *Order Denying Division's Motion for Summary Disposition* ("*Order*") filed October 8, 2010, that "…Section 1356(68) of Title 68 uses very broad language to describe a nonprofit entity, as 'a shelter for abused, neglected, or abandoned children…' Neither the Sales Tax Code nor the Tax Commission Rules contain a definition of 'a shelter for abused, neglected, or abandoned children.'"[48] The Applicant states, "Accordingly, [Applicant] submits that the services it provides are provided as a shelter for abused, neglected, or abandoned children."[49]

The Applicant's quotation from the *Order* is accurate, but what the Applicant fails to acknowledge is the *Order* addressed the standard of review which the Division had to meet in order for the Division's *Motion for Summary Deposition* to be granted. The *Order* expresses the standard of review stating in pertinent part that "For Summary Judgment to be appropriate, the trial court must not only find there is no substantial controversy as to any material fact, but also that reasonable people could not reach differing conclusions from the undisputed facts."[50]

In a hearing on the merits, the burden of proof shall be upon the Applicant to show in what respect the action or proposed action of the Tax Commission is incorrect by a "preponderance of the evidence," which means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not,[51] and as noted by the Division, "Exemption statutes which exempt property from taxation are to be strictly construed against the allowance of the exemption."[52]

There is not really a dispute as to the basic facts in this matter, which can be summarized as follows:

- Applicant is a domestic Not for Profit Corporation formed for the purpose "to provide a Christian home with a safe and secure environment, while the unwed teen prepares for and awaits the birth of her baby. This home becomes a place of refuge and hope to hurting women and their unborn children." The Applicant's General Policies & Procedures, Section II, (A)(1), Intake and Admission Criteria" states, "Female adolescents are admitted to agency programs based upon their inability to remain with

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[48] Applicant's Brief at 2.

[49] *Id.*

[50] Order at 11, citing, *Fulton v. People Lease Corporation*, ___ P.3d ___, 2010 OK CIV APP 84. (Citations omitted.)

[51] *See* Notes 42 through 43, *supra*.

[52] Division's Brief at 6. (Citations omitted.)

their family or legal guardian. Acceptance into a program is based upon the severity of the problem, medical necessity, psychiatric diagnosis (if applicable) and the agency's ability to provide safety, security, and an optimal therapeutic experience."[53]

- The programs of [Applicant] are designed primarily for expectant teen mothers, ages 17 and under living in Oklahoma.
- Applicant has exempt status as a 501(c)(3) corporation from the IRS.
- Applicant has been licensed by OKDHS as a "Residential Child Care Facility" under License Number ###### since December 1, 2002.[54] Applicant has a contract with OKDHS, which funds up to three (3) beds for young women in OKDHS custody at $33.00 per day. The contract became effective in 2007.

The Applicant "…submits that it clearly qualifies for this exemption as it is most certainly a shelter for abused, neglected or abandoned children as provided in the exemption."[55] "Further, [Applicant] has provided documentation that supports a finding that the organization provided a shelter for abused, neglected or abandoned children."[56] Part of that documentation is from OKDHS, which is supplemented by documentation and OKDHS Rules from the Division's exhibits.

The Division asserts that the Applicant "…claims by implication that since it provides shelter it is a shelter[57] and that this is clearly not the correct reading of the statute. The Division argues that the Legislature's use of the words, 'abused', 'neglected' or 'abandoned' as well as using the word 'shelter' in its adjective form to characterize or limit the scope of the word 'organization' requires a very narrow or technical reading of the statute when dealing in the context of abused neglected or abandoned children rather than a broad reading as [Applicant] would have the Court rule."[58] As asserted by the Division, the Applicant's interpretation would in essence reword the Statute to read, "Sales of tangible personal property or services to any organization *which provides shelter* for abused, neglected, or abandoned children…"

The Division illustrates its position by pointing out that the Applicant is licensed as a Residential Care Facility by OKDHS, not as a "Residential Children's Shelter," which under OKDHS Rules describes a "shelter" as "…an emergency response for children in crisis due to removal from their home following allegations of abuse or neglect or as a temporary respite for

[53] *See* Note 27, *supra*.

[54] Division's Exhibit U.

[55] Applicant's Brief at 1.

[56] Applicant's Brief at 2.

[57] Division's Exhibit R.

[58] Division's Brief at 7.

children in DHS custody whose placement is disrupted,"[59] which is not the stated purpose of the Applicant,[60] and which the Applicant fails to address in its Brief.

We do not subscribe to the Division's interpretation of the statute. As noted by the Administrative Law Judge, there is no real dispute as to the basic facts in this matter. It is clear that all of the people served by protestant are abused, neglected or abandoned children under the age of eighteen years. The Division has noted that neither the Oklahoma Sales Tax Code nor the Oklahoma Tax Commission rules provide a definition of the word "shelter." Section 1 of title 25 of the Oklahoma Statues provides that "words used in any statute are to be understood in their ordinary sense, except where a contrary intention plainly appears." This principle has been endorsed by the Oklahoma Supreme Court. In *Curtis v. Board of Education of Sayre Public Schools*, 914 P.2d 656 the Court held "In the absence of a contrary definition, words in a statute "are to be given the same meaning as that attributed to them by ordinary and common definitions."

Webster's Dictionary defines shelter as "something that covers or affords protection." It is clear that protestant affords protection to the juveniles it serves. Under the ordinary meaning of the word "shelter," protestant is a shelter for abused, neglected or abandoned children.

**DISPOSITION**

The Oklahoma Tax Commission orders that the protest in this matter be sustained.

OKLAHOMA TAX COMMISSION

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."

[59] OKLA. ADMIN. CODE § 340:75-10-8.

[60] *See* Note 10, *supra*.