JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2013-04-30-02 / NON-PRECEDENTIAL**
ID: **P-12-200-K**
DATE: **APRIL 30, 2013**
DISPOSITION: **DENIED**
TAX TYPE: **SALES/ EXEMPT STATUS**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, COMPANY is represented by DIRECTOR, Executive Director of Protestant. The Taxpayer Assistance Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

On or about September 26, 2012, Protestant filed an *Application for Sales Tax Exemption* ("*Application*") denoting it was a "church". The Division reviewed the *Application* and documentation submitted in support thereof, determined that Protestant did not qualify as a "church" and by letter dated October 5, 2012, notified Protestant that the *Application* had been denied. Protestant timely protested the denial by letter dated October 28, 2012.

On November 6, 2012, the Division referred the protest to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2].

A pre-hearing teleconference was scheduled for November 29, 2012, by *Prehearing Teleconference Notice* issued November 6, 2012.[3] The teleconference was rescheduled for December 10, 2012, by an *Amended Prehearing Teleconference Notice* issued November 26, 2012. Pursuant to the teleconference, a hearing was scheduled for January 29, 2013, by *Notice of Hearing* issued December 12, 2012.

A closed hearing was held as scheduled.[4] Protestant's Executive Director gave a statement in regard to the purpose of Protestant, its activities and the reasons for the protest. WEBMASTER, Website Designer, Graphic Artist and Administrator of Protestant's website testified with respect to the contents of the website, number of subscribers and Protestant's profile on blogtv. Protestant's Exhibits 1 and 2 were admitted into evidence. MANAGER, Revenue Unit Manager of the Division testified in regard to her review of the *Application* and the reasons for the denial. Division's

---

1 68 O.S. 2011, § 201 et seq., as amended.

2 Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

3 *OAC*, 710:1-5-28(a).

4 Confidentiality of the proceedings under 68 O.S. 2011, § 205 was invoked.

Exhibits A through L were admitted into evidence. Upon conclusion of the hearing, the record was closed and the protest was submitted for decision.[5]

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing, exhibits received into evidence and the pleadings of the parties, the undersigned finds:

1. Protestant was incorporated as a domestic not for profit corporation on May 6, 2003. Division's Exhibit D.

2. Protestant's *Bylaws* recite that it was "organized and [would be] operated exclusively for religious and charitable purposes." Division's Exhibit H. Protestant's mission "is to increase knowledge of the Bible by providing religious training and instruction not only within our immediate community but worldwide." *Id.*

3. By an advance ruling dated September 12, 2003, the Internal Revenue Service ("IRS") determined that Protestant was exempt from federal income tax under I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3). Division's Exhibit C. As a caveat, the ruling provided, "we are not now making a final determination of your foundation status under [I.R.C. § 509(a)] * * * [h]owever, we have determined that you can reasonably expect to be a publicly supported organization described in [I.R.C. §§ 509(a) (1) and 170(b) (1) (A) (vi)]." *Id*.

4. By letter dated March 19, 2008, the IRS confirmed Protestant's classification as a public charity under I.R.C. § 170(b) (1) (A) (vi), rather than a private foundation under I.R.C. § 509(a). Division's Exhibit F.

5. On or about May 13, 2004, Protestant filed an Application for Sales Tax Exemption indicating it was a "church". Protestant's Exhibit 1. Pursuant to this application, Protestant received a sales tax permit.[6] Testimony of DIRECTOR. According to DIRECTOR, she has called the Tax Commission several times over the years and has continually been advised that Protestant is not exempt.

6. On September 26, 2012, Protestant filed the *Application for Sales Tax Exemption* ("*Application*") at issue herein, denoting its organization type as a church. Division's Exhibit A.

---

[5] *OAC*, 710:1-5-39.

[6] The Division stipulated that Protestant was issued a sales tax permit.

7. The Revenue Unit Manager reviewed the *Application* and documentation submitted in support thereof and determined that Protestant "is not considered a church". Testimony of MANAGER. According to MANAGER, "a ministry is not exempted by statute", and "the statutes [cited] on the IRS letter is for a ministry." See, Division's Exhibit F.

8. By letter dated October 5, 2012, the Division notified Protestant that the *Application* had been denied because the "entity does not fall squarely within the exemption statute under which the organization claims it qualifies." Division's Exhibit B.

9. Protestant timely protested the denial by letter dated October 28, 2012. Division's Exhibit E.

10. DIRECTOR testified that she not only conducts street ministry, but "work"/"preaches" from her home via an internet application called blogtv. She further testified that she has issued "flyers", maintained a website since Protestant was started and has "numerous followers" through the internet, citing the "Visitors Counters" to the website which as of January 25, 2013 stood at 1688. Division's Exhibit J. She further stated that she has not asked the IRS to reclassify Protestant and does not have any stationary with Protestant's letterhead. Further, DIRECTOR could not identify any of Protestant's followers by name, but could upon request produce letters from people thanking her for her ministry.

11. Protestant's brochure indicates that "[s]ervices" are held from 1:00 p.m. to 2:00 p.m. on Sundays at http://www.blogtv.com/people/DIRECTOR. Division's Exhibit G. MANAGER testified that she visited the website where the services were to be held on Sunday, January 13, 2013, between 1:00 and 2:00 p.m. and no services were being held.

12. Screen shots of Protestant's profile page on the blogtv website taken on December 5, 2012, January 14, 2013 and January 29, 2013, reflect that Protestant has been a member since September 13, 2011. Division's Exhibits I, K and L. The December 5, 2012 screen shot indicates that Protestant had performed four (4) live shows since becoming a member. Division's Exhibit K. The remaining screen shots reflect an additional live show had been staged. Division's Exhibits I and L. The January 14, 2013 screen shot reflects one (1) subscriber. Division's Exhibit I.

13. The screen shot of Protestant's website reflects the performance of "Live Show * * * Sunday's * * * 1:00 PM to 2:00 PM * * * <u>NAME LIVE</u>". Division's Exhibit. According to WEBMASTER, the live performance on blogtv is also shown on Protestant's website. WEBMASTER testified that people can access the

testimonials of DIRECTOR and other evangelists, live or pre-recorded videos, photos and Protestant's address and phone number on Protestant's website. He further stated that the video page of Protestant's website does not contain any of Protestant's videos because they have not done any pre-recorded videos and that there are no recorded shows on the live page of blog TV's website because they can't upload videos to blogtv. Further, WEBMASTER testified that the counter on Protestant's website is one (1) click per IP address.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Protestant sustained its burden of proof to show that it is a "church" within the meaning of the law.

Protestant contends that it is a church and entitled to the exemption. In support of this contention, Protestant would show that it is an organization exempt from federal income taxation pursuant to I.R.C. § 501(c) (3), that it holds religious services at 1:00 p.m. every Sunday via the internet, that public notice of the place and time of the services is provided by the website and other brochures, and that it has a body of believers as reflected by the visitor counter on its website.

The Division contends that Protestant has not shown it is a church. In support of this contention, the Division argues that although Protestant has documented its exemption from federal income taxation pursuant to I.R.C. § 501(c) (3), that same letter classifies Protestant as a public charity as opposed to a church. The Division further argues that Protestant does not occupy a physical location, but conducts its ministry through the use of a website. The Division further argues that notwithstanding whether the visitor counter provides evidence of how many people have logged onto the website, the act of accessing the website does not show the person is a follower or believer. The Division further argues that the fact Protestant has hosted five live shows with one subscriber over a period of sixteen months neither constitutes holding regular services nor is indicative the website has a body of believers or followers. Finally, the Division argues that Protestant refers to itself publicly as a "religious ministry" and a "ministry and street evangelism program" as opposed to a church.

CONCLUSIONS OF LAW

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207(c) and (d).

2. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code ("Code").[7] An excise tax is levied upon the gross receipts or gross proceeds of all sales not otherwise exempted by the Code. 68 O.S. 2011, § 1354(A).

[7] 68 O.S. 2011, § 1350 et seq., as amended.

3. Specifically exempted from the levy of sales tax is the "[s]ale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business". 68 O.S. 2011, § 1356(7).

4. Pursuant to its authority to administer and enforce each and every provision of any state tax law[8], the Oklahoma Tax Commission with respect to the exemption for churches promulgated *OAC* 710:65-13-40 and 710:65-19-293. *OAC* 710:65-13-40 provides in part:

> (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.
>
> * * * * *
>
> (b) **Sales 'to' churches**. Generally, sales made directly to a church are exempt from sales and use tax. Only sales purchased by the church, invoiced to the church, and paid for by funds or check directly from the church, will qualify for the exemption. * * *
>
> * * * * *
>
> **(d) Application process. Application for exemption is made by** submitting to the Taxpayer Assistance Division, * * *a completed Form 13-16A, * * * along with supporting documentation as follows:
>
> (1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(C) (3); and
>
> (2) Documentation which shows that the church consists of a body of believers which holds religious services and public notification of the place and time of those services such as a copy of a newspaper or yellow pages ad, newsletter or bulletin sent to regular attendees or distributed during a service.[9] (Emphasis original).

OAC 710:65-19-293 provides in part:

> Religious organizations and institutions, * * * are not exempt from the payment of sales or use taxes when purchasing or using property subject to these taxes. Further, such organizations and institutions must comply with the provisions of the Sales Tax Code which require the collection of sales tax and the filing of sales tax returns when engaging in the business of selling

---

8 68 O.S. 2011, § 203.

9 Subsection (d) was added at 27 Ok Reg 2308, eff 7-11-10 to update the application process for sales tax exemption qualification purposes.

tangible personal property or when engaging in the business of operating a place of amusement or entertainment.

5. Rules promulgated pursuant to the Administrative Procedures Act[10], are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2011, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2011, § 308.2(C). Further, the legislature is deemed to adopt an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. ***Branch Trucking Co. v. Oklahoma Tax Commission***, 1990 OK 41, 801 P.2d 686.

The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, ***Arkansas Louisiana Gas Co. v. Travis***, 1984 OK 33, 682 P.2d 225; ***Boydston v. State***, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. ***Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission***, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence. ***State ex rel. Hart v. Parham***, 1966 OK 9, 412 P.2d 142.

6. Tax exemptions depend entirely on legislative grace and are strictly construed against the exemption. ***Blitz U.S.A Inc. v. Oklahoma Tax Commission***, 2003 OK 50, ¶ 14, 75 P.3d 883, 888. Strict construction refuses to extend the law by implication or equitable consideration and confines its operations to cases clearly within the letter of the statute, as well as within its spirit or reason. ***State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County***, 1952 OK 241, 206 Okla. 699, 246 P.2d 368. Courts cannot enlarge the taxing act's ambit to make its provisions applicable to cases not clearly within the legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language. ***Globe Life and Accident Insurance Company v. Oklahoma Tax Commission***, 1996 OK 39, 913 P.2d 1322, 1327.

7. In administrative proceedings, the burden of proof is on the taxpayer to show in what respect the action or proposed action of the Oklahoma Tax Commission is incorrect. *OAC* 710:1-5-47. ***In re Adway Properties, Inc.***, 2006 OK CIV APP 14, 130 P.3d 302; ***Geoffrey, Inc. v. Oklahoma Tax Commission***, 2006 OK CIV APP 27, 132 P.3d 632. The burden of proof standard is "preponderance of evidence." 2 Am.Jur.2d *Administrative Law* § 357. "Preponderance of evidence" means "[e]vidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not * * * evidence which is more

[10] 75 O.S. 2011, § 250 et seq., § 301 et seq.

> credible and convincing to the mind * * * that which best accords with reason and probability." BLACK'S LAW DICTIONARY 1064 (5th ed. 1979). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the existence of the facts supporting the claim are more probable than their nonexistence. 2 Am.Jur.2d *Administrative Law* § 357. If the taxpayer fails to prove a prima facie case, the protest may be denied solely on the grounds of failure to prove sufficient facts which would entitle the taxpayer to the requested relief. *OAC* 710:1-5-47; ***Continental Oil Company v. Oklahoma Tax Commission***, 1976 OK 23, 570 P.2d 315.

ANALYSIS

The Division's scrutiny of the *Application* is clearly justified since it serves the legislative mandate of distinguishing between tax avoidance schemes utilizing religion and legitimate churches. And, while the IRS' classification of Protestant is not determinative of the issue, it is an important factor since the IRS is under the same mandate with respect to the Internal Revenue Code.

Protestant asserts that it meets all of the elements required to be characterized as a church. However, Protestant's case is predicated on implications extracted through circumstantial evidence, and when considered in the proper context do not support the conclusion that Protestant is a church.

The record shows that Protestant has appeared live via the internet; however, the record is devoid of any evidence that these appearances constitute "services[11]" as opposed to commentaries or testimonials. Further, the record shows that people have logged onto Protestant's website as reflected by the visitor counter; however, the record is devoid of any evidence to show that any of these people are regular attendees or believers. In fact, what the record shows is that Protestant has put on five (5) shows over a sixteen (16) month period with one (1) subscriber and cannot identify any follower by name.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the sales tax exemption permit application of Protestant, COMPANY, be denied.

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.

---

[11] As used in OAC 710:65-13-40(d), the plain and ordinary meaning of the word services is "a meeting for worship". Webster's Ninth New Collegiate Dictionary, 1076 (1987).

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."