

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-02-24-21 / NON-PRECEDENTIAL
ID: P-85-302
DATE: FEBRUARY 24, 1987
DISPOSITION: DENIED
TAX TYPE: GROSS PRODUCTION
APPEAL: NO APPEAL TAKEN

ORDER

This comes before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed herein on the 5th day of February, 1987, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 5th day of February, 1987, the above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was had, at which hearing Protestant appeared by REPRESENTATIVE 1, and the Gross Production Tax Section of the Business Tax Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, Attorney. Testifying on behalf of Protestant company were REPRESENTATIVE 1 and REPRESENTATIVE 2, and testifying on behalf of the Gross Production Tax Section of the Business Tax Division were WITNESS 1 and WITNESS 2. Exhibits, not herein itemized, were received into evidence and this case was submitted for a decision.

STATEMENT OF FACTS

From the date of its incorporation until July, 1984, COMPANY X was a shell corporation. In July, 1984, OIL COMPANY, the operator of a salt water disposal system, filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code, and COMPANY X took over as the operator of the business. Protestant began selling oil in July, 1982, but was not licensed as a reclaimer by the Oklahoma Tax Commission until October 19, 1984.

The Gross Production Tax Section of the Business Tax Division discovered that between January, 1983 and January, 1985, Protestant had made thirteen (13) sales of oil, upon which the gross production tax was not paid. In all of the other sales made by Protestant during this period, the purchaser of the oil paid the tax. The Gross Production Tax Section of the Business Tax Division issued a proposed assessment to Protestant for gross production and petroleum excise taxes, penalty and interest in the total amount of One Thousand One Hundred Eighteen Dollars and Fifty-Four Cents (\$1,118.54). Protestant timely protested the proposed assessment.

ISSUES AND CONTENTIONS

The sole issue herein is whether Protestant is liable for the gross production and petroleum excise taxes, penalty and interest on the oil that it sold to reclaimers, and upon which no taxes have been paid.

The Protestant contends that the auditors from the Gross Production Tax Section of the Business Tax Division told it to protest any taxes assessed on oil sold before COMPANY X obtained its reclaiming license for the reason that the purchasers should have paid the tax on those sales. Protestant also contends that to receive taxes incurred by OIL COMPANY, the Gross Production Tax Section of the Business Tax Division must file a claim with the United States Bankruptcy Court.

The Gross Production Tax Section of the Business Tax Division contends that whether Protestant had a reclaimers license at the time it sold the oil is irrelevant to Protestant's tax liability. The Gross Production Tax Section of the Business Tax Division relies on 68 O.S.A. § 1009(c) to support its contention. The Gross Production Tax Section of the Business Tax Division concedes that it is barred from all collection activities against OIL COMPANY, except for filing a claim with the United States Bankruptcy Court. The tax liability of COMPANY X, however, is within the jurisdiction of the Oklahoma Tax Commission.

The assessed gross production and petroleum excise tax, penalty and interest attributable to the Protestant, COMPANY X, was Four Hundred Seventy Dollars (\$470.00) inclusive of penalty and interest in the amount of Thirty-Nine Dollars and Ten Cents (\$39.10) and Forty-Eight Dollars and Twenty-One Cents (\$48.21), respectively.

APPLICABLE LAW

Title 68 O.S.A. § 1009(c) provides that "on all petroleum oil extracted from tank bottoms, pit oil, or liquid hydrocarbons, the gross production tax shall be paid by the operator of the reclaiming plant, unless the tax levied by this article has already been paid thereon."

By taking waste material containing oil from its salt water disposal system and selling it to oil reclaimers, Protestant company is acting as a reclaimer even though during part of the assessment period Protestant was not licensed as such. It is the reclaiming and selling of the oil which is the taxable event, not whether a reclaimer-seller is appropriately licensed.

The Gross Production Tax Section of the Business Tax Division is barred, as it conceded during the hearing, from pursuing collection activities against OIL COMPANY by the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C.A. 362.

CONCLUSIONS

In view of the above and foregoing findings of fact and conclusions of law applicable thereto, the undersigned Administrative Law Judge concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That 68 O.S.A. § 1009(c) levies a gross production tax upon “all petroleum oil extracted from tank bottoms, pit oil, or liquid hydrocarbons.”
- (3) That the act of reclaiming oil makes one a reclaimer and not the act of acquiring a license.
- (4) That the automatic stay provisions of the United States Bankruptcy Code bar the Oklahoma Tax Commission from any collection activities against OIL COMPANY except for the filing of a claim with the United States Bankruptcy Court.
- (5) That the gross production tax protest of COMPANY X be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the gross production tax protest of COMPANY X be denied, that the assessment of the Gross Production Tax Section of the Business Tax Division be sustained, and that the Protestant be required to pay the amount of the gross production and petroleum excise tax, penalty and interest assessed and accrued from the due date until paid.

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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.