

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 87-07-14-33 / NON-PRECEDENTIAL  
**ID:** P-86-378  
**DATE:** JULY 14, 1987  
**DISPOSITION:** DENIED  
**TAX TYPE:** SALES  
**APPEAL:** NO APPEAL TAKEN

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled protest comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. This case was submitted for a decision without a hearing by agreement of the parties.

### **STATEMENT OF FACTS**

The Sales Tax Division conducted a field audit of the files and records of Protestant for the period July 1, 1983 through February 28, 1986. An assessment of additional sales tax, penalty and interest was proposed on May 9, 1986 for the period of July 1, 1983 through February 28, 1986, for tax in the amount of One Thousand Six Hundred Seventy-one Dollars and Ninety-six Cents (\$1,671.96), interest of Four Hundred Thirty-four Dollars and Twenty-five Cents (\$434.25), and penalty of One Hundred Sixty-seven Dollars and Nineteen Cents (\$167.19) for an aggregate amount of Two Thousand Two Hundred Seventy-three Dollars and Forty Cents (\$2,273.40). The proposed assessment was based on the fact that, during the audit period, Protestant made sales of computers, computer parts and other related items to DATA COMPANY without collecting or remitting sales tax.

A timely protest of the proposed assessment was received by the Sales Tax Division on June 3, 1986. The protest letter indicated that Protestant did not concur with the findings of the audit. In that letter, Protestant states that sales tax was not collected on the subject transactions with DATA COMPANY because when purchasing items from Protestant, DATA COMPANY presented Protestant with a sales tax permit which allows consumers or users to purchase items exempt from sales tax in certain circumstances. Prior to DATA COMPANY purchasing the items on which the tax at issue herein was assessed, DATA COMPANY'S sales tax permit, Number 123, was cancelled by the Sales Tax Division of the Oklahoma Tax Commission.

### **CONTENTIONS OF PROTESTANT**

Protestant contends that since it was presented a sales tax permit and a resale statement by vendee when the items were purchased, it should not be held liable for the applicable sales tax, even though the permit was invalid at the time of presentation.

**CONTENTIONS OF THE DIVISION**

The Division contends that during the audit period Protestant sold items of tangible personal property that were subject to sales tax, without collecting, reporting or remitting sales tax thereon. The vendor, pursuant to Title 68 O.S.1981, § 1361 et seq., is responsible for the collection and remittance of sales tax on all sales of tangible personal property.

**ISSUE**

Whether a vendor is liable for remittance of the sales tax when he collects no sales tax from the vendee based upon the vendee's erroneous assertion that a sales tax permit is validly held.

**APPLICABLE LAW**

This action arises under the Oklahoma Sales Tax Code, specifically 68 O.S.1981, §§ 1352(R) and 1361(A) and (B), and the Oklahoma Tax Commission has jurisdiction under the Uniform Tax Procedure Code, as amended, specifically 68 O.S.1981, § 203. Section 1361 of Title 68 provides in pertinent part:

§ 1361. Consumer to pay tax—vendor to collect tax—penalties for failure to collect

(A) The tax levied by this article shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by this article, and in the case of a corporation, each principal officer thereof, shall be personally liable for said tax.

(B) Vendors shall add the tax imposed by this article, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by this article, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

Protestant's activity in this state is that of a vendor under Section 1352(R)(1) which provides:

§ 1352. Definitions

(R) "Vendor" shall mean or include:

(1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article:

Protestant states that sales tax should not be collected from it on its sales to vendee because, in essence, Protestant had no reason to believe the vendee did not possess a valid sales tax permit. However, Protestant's remedy against failure of the vendee to pay the tax is statutorily prescribed under Section 1361(B). The Oklahoma Tax Commission does not, therefore, look to the vendee since the statutorily prescribed duty is upon the vendor. The Division has no authority to proceed against the vendee under Oklahoma sales tax law. Protestant's remedy is to proceed against the vendee, based on its reliance on vendee's representation that it did possess a valid permit.

### CONCLUSIONS

In view of the above and foregoing factual situation and applicable law relevant thereto, the Administrative Law Judge concludes as follows:

(1) The Oklahoma Tax Commission has jurisdiction to hear this protest under 68 O.S. 1981, § 207.

(2) This protest is governed by the following provisions of the Oklahoma Sales Tax Code:

68 O.S. 1981, §§ 152(R)(1), 1361(A) and (B)

(3) Section 1361(A) provides that the sales tax is to be paid by the consumer to the vendor, and that the vendor shall be liable for said tax. Section 1361(B) provides that the tax shall be a debt from the consumer to the vendor until paid and shall be recoverable at law in the same manner as other debts.

(4) The Oklahoma Sales Tax Code does not provide for the collection of the sales tax due from the vendee. In the event that the tax is not collected by the vendor from the vendee, the vendor is liable for payment of the tax under Section 1361 (A).

(5) The assessment of sales tax, penalty and interest for the period between and including July 1, 1983 through February 28, 1986 in the following amounts, plus any accrued interest or penalty is due and payable, to wit: sales tax in the amount of One Thousand Six Hundred Seventy-one Dollars and Ninety-six Cents (\$1,671.96), interest in the amount of Four Hundred Thirty-four Dollars and Twenty-five Cents (\$434.25) and penalty in the amount of One Hundred Sixty-seven Dollars and Nineteen Cents (\$167.19) for an aggregate amount of Two Thousand Two Hundred Seventy-three Dollars and Forty Cents (\$2,273.40).

**DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT 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.