

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-09-01-16 / NON-PRECEDENTIAL
ID: P-86-452
DATE: SEPTEMBER 1, 1987
DISPOSITION: SUSTAINED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. A hearing was had, at which hearing the Protestant appeared on her own behalf and the Business Tax Division of the Oklahoma Tax Commission appeared through OTC ATTORNEY, Attorney. The Protestant testified on behalf of herself and EMPLOYEE ONE testified on behalf of the Business Tax Division. Exhibits, not herein itemized, were received into evidence and this case was submitted for a decision.

STATEMENT OF FACTS

Protestant is a self-employed freelance public relations consultant. She has been operating this business since its inception in January of 1985 from an extra room in her home. Before Protestant began operating as BUSINESS, she called the Information and Referral Office number listed in the blue pages of the telephone book to determine if she needed a sales tax permit and where and how to obtain one. She was informed that she did not need a sales tax permit. To make sure that she was setting up the business properly, she asked a friend to call the same number and ask the same question, to which the friend received the same response.

Again on July 9, 1986, Protestant called the Referral number and spoke with EMPLOYEE TWO. As outlined in Exhibit No. 2 Protestant informed EMPLOYEE TWO that Protestant was a home-based public relations consultant who occasionally handled printing for clients. She also told EMPLOYEE TWO that she was presently paying sales tax on any goods purchased instead of purchasing them exempt as items purchased for resale as allowed under the provisions of 68 O.S. 1981, § 1357(D). She then asked if she needed a sales tax number. EMPLOYEE TWO replied that as long as Protestant was paying the sales tax when making purchases that she was fine.

When Protestant received notice that she was going to be audited, she called the Business Tax Audit Office and explained to a woman in the department the current way which she was doing business: paying sales tax on all supplies, adding her creative services and selling the finished product. Protestant also explained to the woman in the Business Tax Audit Office that she had called the Information Office previously to make sure that she had been doing everything correctly and had been assured by the Information Office that she was in fact in proper compliance with the law. The woman in the Audit Office responded to Protestant's information by again assuring her that Protestant was proceeding properly, that the information she had received was correct and that the audit was routine.

Protestant upon audit was able to show the auditor every receipt for items purchased for her business for the past sixteen months. However, the auditor, AUDITOR, explained to Protestant that the information she had been consistently receiving from the Information and Referral Office was incorrect and that she, the auditor, would have to issue an assessment.

The Business Tax Division audited Protestant for the period January 1, 1985, through June 30, 1986. On August 26, 1986, the Business Tax Division assessed Protestant for additional sales tax, interest and penalty. The original assessment was later revised, as follows:

Sales Tax	\$1,348.15
Interest	116.67
Penalty	118.90
Additional Interest (to 5-15-87)	<u>141.55</u>
TOTAL	\$1,725.27

The basis of the assessment was the sale of tangible personal property, the finished product the Protestant sold, which consisted of the supplies on which tax was originally paid and the Protestant's creative services. Protestant had purchased all personal property, paying the sales tax for all supplies. Protestant was able to provide the auditor with all sales receipts. Protestant added her creative services before billing clients for the total amount. On September 9, 1986, Protestant filed a timely protest to the assessment.

After numerous inquiries, the Protestant was issued a sales tax permit on November 1, 1986, and from that date forward, the Protestant has bought her supplies exempt and has charged, collected and remitted sales tax timely.

ISSUES AND CONTENTIONS

The sole issue herein is whether a Protestant who has received consistent, incorrect advice from the Tax Commission Information and Referral Office and from the Business Tax Audit Department is liable for taxes based on an assessment which was the direct result of following the same advice given by Tax Commission employees on numerous occasions.

Protestant contends that she repeatedly received incorrect advice from the Oklahoma Tax Commission Information and Referral Office and the Business Tax Audit Department. The Protestant inquired on more than one occasion if she needed a sales tax permit and was consistently told that she did not. Consequently, the Protestant continued to pay sales tax on the purchase of her supplies and did not charge sales tax on the sale of the finished product.

Protestant contends that she did all she could to comply with the law and that the assessment in question is a direct result of incorrect information from the Oklahoma Tax Commission Information and Referral Office.

The Business Tax Division contends that 68 O.S. 1981, § 1354(A) imposes a tax upon the gross proceeds of the sale of tangible personal property and that 68 O.S. 1981, § 1352(F) does not allow a deduction from gross proceeds for labor service performed.

APPLICABLE LAW

68 O.S. 1985, § 1354(A) levies sales tax upon:

...all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of three and one-fourth percent (3¼%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property;

68 O.S. 1985, § 1357(D) exempts from sales tax:

Sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the State, provided that such sales to residents of this State are made to persons to whom sales tax permits have been issued as provided in this Article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit.

It was not the intent of the Legislature that the tax laws of this State be applied in a void. Statutes must be applied to the facts of each case. The assessment herein is a direct result of a taxpayer relying on the consistently incorrect advice of the Business Tax Division Information and Referral Office. Protestant was consistently advised by the Business Tax Division that she did not need a permit since she was adding her creative services to tangible personal property on which she had paid sales tax.

Herein, no question exists that Protestant paid sales tax upon items which she could have purchased exempt as sales for resale had she been issued a sales tax permit as she requested, but was told she did not need. Protestant was able to show all of the receipts for supplies which she purchased and to which she added only her creative services before reselling.

Each case must be judged by its own factual situation. In this case, Protestant consistently received the same incorrect advice from the Business Tax Division. It was Protestant's uncontroverted testimony that she called the Business Tax Division's Information and Referral Office on numerous occasions and received the same incorrect advice.

Based upon the uncontroverted testimony of the Protestant and the fact that the assessment in question is a direct result of the Protestant relying on the advice of the agency charged with administering the state tax laws, the undersigned recommends that the protest of PROTESTANT be sustained.

CONCLUSIONS

On the basis of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge finds as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That Protestant called the Information and Referral Office of the Business Tax Division on numerous occasions and received the same incorrect advice: that she did not need a sales tax permit since she was paying sales tax on the supplies which she purchased.
- (3) That Protestant was reasonable in relying on the advice of the Business Tax Division and should not be penalized for relying on the advice of the Division of the Tax Commission which is responsible for administering the Sales Tax Code.
- (4) That the Sales Tax Protest of PROTESTANT be sustained.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest of PROTESTANT 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.