

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 86-03-11-56 / NON-PRECEDENTIAL  
**ID:** P-85-261  
**DATE:** MARCH 11, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** DOCUMENTARY STAMP  
**APPEAL:** NO APPEAL TAKEN

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled cause comes on for consideration pursuant to assignment made to ADMINISTRATIVE LAW JUDGE by the Oklahoma Tax Commission, and hearing had, at which hearing Protestant appeared representing himself and his WIFE, and the Documentary Stamp Tax Section of the Ad Valorem Division of the Oklahoma Tax Commission appeared by its attorneys, ASSISTANT GENERAL COUNSEL 1 and ASSISTANT GENERAL COUNSEL 2. Opening statements were made by the respective parties and a stipulation of fact was thereafter submitted along with exhibits which, were received into evidence although not itemized herein. The PROTESTANT testified on his own behalf and FIELD AUDITOR testified on behalf of the Ad Valorem Division of the Oklahoma Tax Commission. Closing arguments were made by the respective parties and the case was submitted for a decision.

**STATEMENT OF FACTS**

On or about August 1, 1983, GRANTORS A conveyed Lots Seventeen (17), Eighteen (18), Nineteen (19), and Twenty (20), Block Five (5), ADDITION to the CITY, COUNTY, Oklahoma, to PROTESTANTS herein. This deed was recorded at Book XXX, Page XXX, of the COUNTY Clerk's Office. On or about March 28, 1983, GRANTORS B conveyed Lot Thirty-four (34), ESTATES South, a subdivision in the Northwest Quarter (NW<sup>1</sup>/<sub>4</sub>) of Section X (XX), Township X North (TXN), Range X East (RXE) of the Indian Meridian, COUNTY, Oklahoma, less and except any and all mineral rights which are held by previous owners, to PROTESTANTS herein. Said deed was recorded at Book XXX, Page XXXX, of the COUNTY Clerk's Office. Neither deed reflected that documentary stamps were attached when filed at the COUNTY Clerk's Office. The Ad Valorem Division of the Oklahoma Tax Commission, on or about May 16, 1985, issued a proposed assessment in the amount of Forty-nine Dollars and Fifty Cents (\$49.50), plus penalty and interest, for delinquent documentary stamps based upon the above recited deeds which conveyed property to the Protestants herein. The Protestants, on or about June 8, 1985 filed their written objection to the proposed assessment and requested a hearing before the Oklahoma Tax Commission in regard to the assessment for documentary stamp tax.

The Protestant testified that he was the holder of mortgages covering the above referenced real property, that the parties were in default on said mortgages, that based thereon he prepared warranty deeds and had the respective parties execute the warranty deeds therein conveying the respective real property in lieu of foreclosure on the mortgages. The Protestant testified that he could have done this exactly the same way by accepting a quit claim deed or foreclosing on the property, but that he chose the warranty deed procedure because he felt that

this was the most fair and proper method in which to obtain a marketable title to the property outside of foreclosure.

FIELD AUDITOR of the Ad Valorem Division of the Oklahoma Tax Commission, testified that he was reviewing documents at the COUNTY Clerk's Office and observed the warranty deeds conveying property to the Protestants and noticed that documentary stamps had not been affixed thereto and, based upon the dollar amount of mortgage shown from the records at the COUNTY Clerk's Office, determined the amount of documentary stamps necessary for each of the respective pieces of property as to the warranty deeds filed with the COUNTY Clerk's Office and that subsequent thereto, assessment letters were issued to the Protestants.

### **PROTESTANTS' CONTENTION**

The Protestant contends that in view of the fact no actual money was exchanged between the seller and the purchaser the transaction was exempt and that no documentary stamp tax should be applicable to a deed in lieu of foreclosure.

### **DIVISION'S CONTENTION**

The Division contends that the only exemptions available to the imposition of the documentary stamp tax are those found within Section 5102 of Title 68 of the Oklahoma Statutes and that in view of the fact there is no exemption for a deed in lieu of foreclosure that the documentary stamp tax as per the assessment is correct and proper.

### **ISSUE**

The sole issue presented is whether or not a deed in lieu of foreclosure requires the affixing of documentary stamps.

### **ARGUMENTS AND AUTHORITY**

In order for the Protestant to prevail in his contention as per his protest concerning the application and the imposition of the documentary stamp tax to the fact situation presented, there must be found within the documentary stamp tax provisions as per Section 5102 of Title 68 of the Oklahoma Statutes an exemption for a deed in lieu of foreclosure. The Protestant testified that he personally prepared the warranty deeds concerning the property in question and the warranty deeds recite that they are a "deed in lieu of foreclosure, no stamps required". Review of the provisions of the documentary stamp tax article reflect that Section 5101 imposes a tax on:

"...a deed, instrument or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers...."

Section 5101 of Title 68 of the Oklahoma Statutes defines "sold" as a transfer of an interest for a valuable consideration, which may involve money or anything of value, and the term "consideration" to be the actual value exchanged or paid, whether money or otherwise.

Therefore, whether or not actual money was exchanged between the seller and purchaser is irrelevant to the facts at issue.

The tax imposed by Section 5101 of Title 68 shall not apply if one of thirteen specific exemptions are applicable to the fact situation of a respective transaction, those exemptions contained in Section 5102 of Title 68 of the Oklahoma Statutes.

Review of Section 5102 of Title 68 of the Oklahoma Statutes do not recite an exemption for a deed in lieu of foreclosure as the Protestant has alleged in his protest and throughout the hearing, but rather our attention is directed to an Attorney General's Opinion No. 75-104 which holds that a deed in lieu of foreclosure is not specifically exempted from the application of the documentary stamp tax as provided in Section 5101 of Title 68 of the Oklahoma Statutes.

Therefore, the Protestant's contention that a deed in lieu of foreclosure does not require the affixing of documentary stamps is incorrect in view of the Attorney General's Opinion and the well established rule that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption. See Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (1951); Bert Smith Machinery Co., Inc. v. Oklahoma Tax Commission, 563 P.2d 641 (1977); Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1303 (Okl. 1975); and London Square Village, Inc. v. Oklahoma County Equalization and Excise Board, 559 P.2d 1224 (1976).

### **CONCLUSION**

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the exemption provisions of Section 5102 of Title 68 of the Oklahoma Statutes do not exempt the documentary stamp tax imposed by Section 5101 of Title 68 of the Oklahoma Statutes in regard to a deed in lieu of foreclosure.
- (3) That the assessment by the Ad Valorem Division of the Oklahoma Tax Commission in the amount of Forty-nine Dollars and Fifty Cents (\$49.50) plus penalty and interest representing documentary stamp tax was correct and proper and as per the statutory authority granted to the Oklahoma Tax Commission.
- (4) That the protest of PROTESTANT AND WIFE be denied.

### **DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANTS be denied, that the assessment of the Ad Valorem Division for documentary stamp tax be sustained, and that the PROTESTANTS be required to pay the amount of the

documentary stamp tax as assessed, plus the penalty and the interest assessed and accrued from the due date until paid.

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.