

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-03-25-12 / NON-PRECEDENTIAL
ID: P-85-076
DATE: MARCH 25, 1986
DISPOSITION: DENIED
TAX TYPE: AIRCRAFT EXCISE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

On or about January 29, 1985, the Sales and Use Tax Division issued an assessment letter to PROTESTANT, advising the Protestant that pursuant to documents filed at the Federal Aviation Administration an aircraft excise tax was being assessed against the Protestant for the purchase of an aircraft, registration number XXXXX, said purchase by the Protestant dated August, 1984. The amount of the excise tax assessed for the purchase of said aircraft was Four Thousand Five Hundred Fifty Dollars (\$4,550.00), interest to the date of the assessment of Three Hundred Forty-One Dollars Twenty-Five Cents (\$341.25) and penalty in the amount of Four Hundred Fifty-Five Dollars (\$455.00) for a total assessed amount of Five Thousand Three Hundred Forty-Six Dollars and Twenty-Five Cents (\$5,346.25). Subsequent to the assessment the PROTESTANT filed his Protest Letter dated February 18, 1985, also signed by his BROTHER, stating that the aircraft was registered in the name of PROTESTANT and that the registration of the aircraft in the name of PROTESTANT was for "financial business purposes" and that there was an exemption claimed by the Protestant therein contending that no aircraft excise taxes should be charged.

PROTESTANT testified that he and his BROTHER had a dozer business and that said business was a partnership which had been dissolved and that PROTESTANT took the aircraft as part of the dissolution of the partnership.

The evidence admitted reflected that BROTHER and an individual named CO-OWNER were co-owners of the aircraft in question pursuant to Federal Aviation Administration aircraft registration documents dated January 27, 1981, said documents reflecting that each individual was co-owner of said aircraft as per Exhibit S-1 and S-2. Exhibit S-3 reflects an Aircraft Bill of Sale dated August 17, 1984 from BROTHER and CO-OWNER to PROTESTANT, said document filed with the Federal Aviation Administration November 6, 1984, and Exhibit S-1 reflects an Aircraft Registration Application filed with the Federal Aviation Administration reflecting the owner of the subject aircraft as of November 6, 1984 as PROTESTANT, said document signed by Protestant.

Concurrently on November 6, 1984 filed with the Federal Aviation Administration was a Supplemental Aircraft Chattel Mortgage and Security Agreement which reflects that the original mortgage held by BANK OF BIG CITY as mortgagee and BROTHER and CO-OWNER as mortgagors had in fact transferred and assigned said mortgage property to PROTESTANT and that the mortgagee, BANK OF BIG CITY, consents to said transfer of said aircraft to

PROTESTANT by the original mortgagors, BROTHER and CO-OWNER. The supplemental mortgage also recites that PROTESTANT ratifies and grants the first and prior security interest of the BANK OF BIG CITY in and to the mortgage property as security for the payment of the indebtedness evidenced by the note in the principal amount of One Hundred Sixty-Nine Thousand Five Hundred Dollars (\$169,500.00) payable on demand on or before January 31, 1985. Said Supplemental Mortgage was signed by the PROTESTANT and by the Senior Vice-President of the BANK OF BIG CITY, Oklahoma, executed and delivered on the 17th day of August, 1984.

PROTESTANT'S CONTENTIONS

The Protestant contends that the actual change in registration as per the Federal Aviation Administration records concerning the aircraft was necessitated for "financial business purposes"; that, in actuality, there was no monetary transfer or consideration for the transfer of said aircraft; and that irrespective of the official documents filed with the Federal Aviation Administration, the aircraft's ownership has remained with BROTHER.

Therefore, in view of the foregoing, the Protestant claims that he is entitled to the statutory exemption claimed under Section 6003 of Title 68 of the Oklahoma Statutes.

DIVISION'S CONTENTIONS

The Division contends that pursuant to the Aircraft Excise Tax, Section 6000 et seq. of Title 68 of the Oklahoma Statutes, there was in fact, as per the documents and evidence, a transfer of legal ownership of said aircraft to the Protestant, that the assessment for Aircraft Excise Tax is correct and proper and that the Protestant is not entitled to the exemption claimed as per his protest.

ISSUES

The issues presented in the case at bar is twofold in that the first issue presented is whether or not there was a transfer of legal ownership of the subject aircraft, and whether or of the partnership with his BROTHER, in which the Protestant allegedly was the recipient of the aircraft as part of the dissolution of the partnership.

The evidence admitted at the hearing reflects that the PROTESTANT, as of November 6, 1984, was the owner of an aircraft, registration number XXXXX, and pursuant to the provisions of Section 6002 of Title 68 of the Oklahoma Statutes Aircraft Excise Tax was in fact due and owing at the time of the transfer of the aircraft from the co-owners, BROTHER and CO-OWNER, to the Protestant dated November 6, 1984. Section 6002 of Title 68 of the Oklahoma Statutes states:

Beginning on and after July 1, 1984, there shall be levied an excise tax of two percent (2%) of the purchase price of each aircraft that is to be registered with the Federal Aviation Administration, upon the transfer of legal ownership of any such aircraft or the use of any such aircraft within this state.

The excise tax levied pursuant to the provisions of Sections 2 through 5 of this act is in lieu of all other taxes on the transfer or the first registration in this state on aircraft, including optional equipment and accessories attached thereto at the time of sale and sold as a part thereof, except annual aircraft registration fees. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state, and shall be collected by the Oklahoma Tax commission at the time of the issuance of a certificate of registration for any such aircraft. the excise tax levied pursuant to the provisions of this section shall be delinquent from and after the twentieth day after the legal ownership or possession of any aircraft is obtained. Any person failing or refusing to pay the tax provided for in this section on or before the date of delinquency shall pay, in addition to the tax, a penalty of ten percent (10%) on the total amount of tax due. Interest shall be collected on the total delinquent tax at the rate of one and one-half percent (1½%) per month from the date of the delinquency until said tax is paid.

There is little question but that the provisions of Section 6002 of Title 68 of the Oklahoma Statutes imposes an aircraft excise tax upon the transfer of legal ownership of aircraft within the State of Oklahoma.

The Protestant's contention that there was no monetary consideration between he and his brother for the transfer of the subject aircraft is of little consequence since, under the applicable statutes, when a conveyance of an aircraft occurs without monetary consideration, the tax liability is to be based upon the fair market value of the aircraft pursuant to the provisions of Section 6001 of Title 68 of the Oklahoma Statutes, and that based thereon, the Sales and Use Tax Division Aircraft Section of the Oklahoma Tax Commission computed the fair market value of the subject aircraft by using the Aircraft Blue Book Price Digest. (Exhibit S-13) It should be noted that the Protestant did not dispute the valuation figures of the aircraft in question, nor the amount of the actual assessment based upon those figures.

Protestant contends that no Aircraft Excise Tax should be due on the "financial business purpose" transfer of the aircraft from his brother and the other co-owner to the Protestant since such transfer would be exempt from the Aircraft Excise Tax. The exemption provisions of the Aircraft Excise Tax are contained in Section 6003 of Title 68 of the Oklahoma Statutes and a review of the ten exemptions contained within the provisions of Section 6003 do not support the contention of the Protestant in regard to his claimed exemption.

The settled law of this State is that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption and, in the case at bar, the Protestant has wholly failed to submit sufficient evidence to support his claimed exemption in regard to the transfer of the subject aircraft from the original co-owners to the Protestant. Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (1951); Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1303 (1975), Bert Smith Machinery Company Inc. v. Oklahoma Tax Commission, 563 P.2d 641 (1977).

CONCLUSION

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

(1) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the PROTESTANT is the record owner of the subject aircraft as reflected in the records filed with the Federal Aviation Administration and as such the aircraft excise tax, pursuant to the provisions of Section 6002 of Title 68 of the Oklahoma Statutes, is applicable to the transfer in question.

(3) That exemption statutes are to be strictly construed against the person or entity claiming the exemption, and in view of the fact the Protestant failed to present any evidence to substantiate his claimed exemption pursuant to the provisions of Section 6003 of Title 68 of the Oklahoma Statutes, his claimed exemption is denied.

(4) That the protest of PROTESTANT is denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied, that the assessment for aircraft excise tax issued by the Sales and Use Tax Division of the Oklahoma Tax Commission be sustained, and that the PROTESTANT, be required to pay the amount of the tax, penalty and interest as assessed plus any additional interest accrued from the date of the assessment 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.