

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 86-04-01-06 / NON-PRECEDENTIAL  
**ID:** P-85-147  
**DATE:** APRIL 1, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** AIRCRAFT EXCISE  
**APPEAL:** NO APPEAL TAKEN

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

The above styled cause comes on for consideration before ALJ, Presiding Administrative Law Judge, pursuant to assignment regularly made by the Oklahoma Tax Commission, and hearing had on November 15, 1985, at which hearing the Protestant, although three times called in open Court, appeared not nor by representative, and the Aircraft Section of the Sales and Use Tax Division appeared by OTC ATTORNEY, Attorney, and ASSISTANT, Legal Research Assistant.

Exhibits which are not herein itemized were offered and received into evidence, and ADMINISTRATOR, Administrator of the Aircraft Section, testified as a witness in behalf of said Section and Division.

### **STATEMENT OF THE CASE**

(1) PROTESTANT, Protestant herein, purchased Aircraft No. XXX from COMPANY and Aircraft Bill of Sale, dated January 19, 1985, transferring title of the aircraft to PROTESTANT was filed, recorded and registered with the Federal Aviation Administration in February, 1985. Upon receipt of this information by the Division from the FAA, Protestant was notified by the Division of his liability for excise tax due on the aircraft.

(2) Protestant responded to the notice by calling and discussing with Division personnel the value of the aircraft. PROTESTANT informed them that he had paid a salvage price of Thirty Thousand Dollars (\$30,000.00). The Division thereafter amended its assessment to Six Hundred Dollars (\$600.00) based upon the information received during the telephone conversation.

(3) Protestant paid the Six Hundred Dollars (\$600.00) by check under protest.

### **ISSUE AND CONTENTIONS**

The issue is simply whether the Division properly assessed the excise tax on the aircraft purchased by PROTESTANT or whether PROTESTANT should be refunded the Six Hundred Dollars (\$600.00) he paid as assessed.

The Protestant asserts that he is qualified to receive an agricultural exemption from the excise tax levied. It is here noted that Protestant received notice of the hearing, as evidenced by the return receipt, but he failed to appear at the hearing and meet his burden of proving that he was entitled to the exemption claimed.

The Division contends that Protestant was properly assessed under the provisions of 68 O.S. §6001 et seq. (1984), and that Protestant did not pay sales or use tax on the acquisition of the airplane. Protestant has not disputed the value used in computing the tax liability.

In Oklahoma, aircraft excise tax is levied pursuant to §6001 et seq., supra. The specific section delineating the amount of tax to be levied is found at Title 68 O.S. §6002 (1984) which 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 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 (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.”

The exemptions from payment of the aircraft excise tax are shown in §6003, but no agricultural exemption is allowed in such section.

The settled law of this state is that, absent a self-executing constitutional provision, the power to exempt from taxation lies solely with the Oklahoma Legislature; Pryor v. Bryan, 11 Okla. 357, 66 P. 348 (1901); County Assessor, Okl. County v. United Brotherhood, et al. Local 329, 202 Okla. 162, 212 P.2d 790 (1949). In addition, a tax exemption is never to be implied, Board of Equalization of Tulsa County v. Indian Territory Illuminating Oil Co., 159 Okla. 15, 13 P.2d 585 (1932).

### CONCLUSIONS

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That Title 68 O.S. §6002 (1984) levies a two percent (2%) excise tax upon the transfer of legal ownership of aircraft. That Protestant owed the tax immediately upon the transfer to him of Aircraft No. XXX in January, 1985.

(3) That no agricultural exemption from aircraft excise tax is provided by statute. Such exemption must be granted by the Legislature and cannot be implied by this administrative agency.

(4) That the Division properly assessed the Six Hundred Dollars (\$600.00) tax which was paid by Protestant, and he is not entitled to a refund thereof.

### **DISPOSITION**

In view of the above and foregoing findings of fact and law applicable thereto, the OKLAHOMA TAX COMMISSION ORDERS that the protest herein be denied and the claim for refund also 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.