

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-09-30-02 / NON-PRECEDENTIAL
ID: P-85-148
DATE: SEPTEMBER 30, 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 pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission and hearing had, at which hearing Protestant, PROTESTANT, appeared by and through his attorney, ATTORNEY, and the Sales and Use Tax Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY of the General Counsel's office. Opening statements were made and exhibits, not herein itemized, were received into evidence.

STATEMENT OF FACTS

AVIATION COMPANY is a wholly owned subsidiary of CORPORATION, of which one hundred percent (100%) of the common stock is owned by PROTESTANT. AVIATION COMPANY was the owner of an aircraft, Registration Number XXX, which it purchased in 1978 from SELLER. On or about March 28, 1985, an Aircraft Bill of Sale was filed with the Federal Aviation Administration. The Bill of Sale listed PROTESTANT as purchaser and AVIATION COMPANY as seller.

On or about March 28, 1985, an Aircraft. Registration Application on an aircraft with Registration Number XXX was filed with the Federal Aviation Administration listing PROTESTANT as applicant. Also filed with the Federal Aviation Administration on or about March 28, 1985 was a chattel mortgage, wherein PROTESTANT mortgaged an aircraft with Registration Number XXX for Five Hundred Fifty Thousand Dollars (\$550,000.00). Assessment of excise tax, interest and penalty thereon against the sale of said aircraft was made on May 17, 1985 in the amount of Eleven Thousand Dollars (\$11,000.00) for excise tax, interest in the amount of Three Hundred Thirty Dollars (\$330.00) and penalty in the amount of One Thousand One Hundred Dollars (\$1,100.00) for a total amount of Twelve Thousand Four Hundred Thirty Dollars (\$12,430.00). Protest of the proposed assessment was timely filed and received by the Sales and Use Tax Division of the Oklahoma Tax Commission on June 12, 1985.

CONTENTIONS OF THE PROTESTANT

Protestant asserts three propositions in support of his protest. The first is that the imposition of the tax is improper in this case because no transfer of legal ownership occurred. Secondly, Protestant states, the change in record title is exempt from taxation. Finally, Protestant asserts that a Settlement Agreement between he and a representative of the Legal Division of the Oklahoma Tax Commission bars imposition of the tax.

CONTENTIONS OF THE DIVISION

The Sales and Use Tax Division of the Oklahoma Tax Commission contends that the transfer of legal ownership to the Saberliner Aircraft, Registration Number XXX, is a taxable event under the Aircraft Excise Tax Code, 68 O.S. Supp. 1984 § 6002; moreover, there is no specific exemption provided for this kind of transaction under either the Aircraft Excise Tax Code or the Oklahoma Sales and Use Tax Codes respectively.

APPLICABLE LAW

Section 6002 of Title 68 of the Oklahoma Statutes provides as follows:

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.

Section 6003 of Title 68 of the Oklahoma Statutes provides specific exemptions from the imposition of the aircraft excise tax, to-wit:

The following aircraft shall be exempt from provisions of this article:

(A) aircraft manufactured within this state under an F.A.A. approved certificate and which are owned and in the physical possession of the manufacturer of said aircraft. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

(B) aircraft owned by dealers and in the dealer's inventory, not including aircraft that are used personally or for business. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

(C) aircraft of the federal government, any agency thereof, any territory or possession, any state government, agency, or political subdivision thereof;

(D) aircraft transferred from one corporation to another corporation pursuant to corporate reorganization. For the purpose of this section the term reorganization means a statutory merger, consolidation, or acquisition;

(E) aircraft purchased outside this state and brought into the state to be used by commercial airlines;

(F) aircraft transferred in connection with the dissolution or liquidation of a corporation and only if included in a payment in kind to the shareholders;

(G) aircraft transferred to a corporation for the purpose of organizing such corporation. However, the former owners of the aircraft must have control of the corporation in proportion to their interest in the aircraft prior to the transfer;

(H) aircraft transferred to a partnership when the organization of the partnership is by the former owners of the aircraft. However, the former owners of the aircraft must have control of the partnership in proportion to their interest in the aircraft prior to the transfer;

(I) aircraft transferred from a partnership to the members of said partnership and if made in payment in kind in the dissolution of said partnership; and

(J) aircraft transferred or conveyed to a partner or other person who after such sale owns a joint interest in the aircraft and on which the sales or use tax levied pursuant to the provisions of this title or the excise tax levied pursuant to the provisions of Sections 2 through 5 of this act have previously been paid on the aircraft.

Protestant states that the term “legal ownership” is not defined under this section of the Oklahoma Tax Code, but is defined under the Vehicle Tax Act, 68 O.S. 1981 § 2101(1), as “the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law or in any other manner.” Protestant contends that the transfer of record title is not synonymous with transfer of ownership, and the mere change of record title had no effect on Protestant’s control of the aircraft. Protestant concludes from its reading of 68 O.S. 1984 Supp. § 6001 et seq. that the Legislature did not intend to tax this kind of transaction.

Protestant’s contention that, under the exemption provisions of 68 O.S. 1984 Supp. § 6003(D), the aircraft should be exempt because the change in record title was part of an overall plan to informally reorganize both corporate entities controlled by Protestant and alternately, the Protestant contends that Subsection (F) of § 6003 exempts aircraft transferred in connection with the dissolution or liquidation of a corporation if included in payment in kind to its shareholders.

Protestant interprets this wording to mean that it could have transferred ownership of the aircraft as part of a liquidation of one of its subsidiaries.

These contentions are neither reflective of the facts presented at the hearing nor of the exhibits admitted. There was not a corporate transfer of the aircraft at issue nor was there a legal dissolution or liquidation of the corporate entity and therein a payment in kind to the shareholders.

The basis for the Sales and Use Tax Division of the Oklahoma Tax Commission's assessment is that a sale took place, based on the filing of the Bill of Sale and Aircraft Registration Application, which is evidence of compliance with Federal law requiring recordation of every transfer of any interest in a civil aircraft per 49 U.S.C. § 1403(c).

The Sales and Use Tax Division of the Oklahoma Tax Commission also relies on principles of statutory construction in arguing that Protestant must show the existence of a specific statutory provision exempting its transaction from imposition of the tax. The Sales and Use Tax Division of the Oklahoma Tax Commission cites Bert Smith Road Machinery Co. v. Oklahoma Tax Commission, 563 P.2d 641 (Okla. 1977), for this, and the proposition that the Protestant has the burden of showing that he falls within the exemption.

Concerning the purported unexecuted "settlement agreement", Protestant contends that the attorneys for the General Counsel's office of the Oklahoma Tax Commission suggested an agreement from Protestant in January, 1986. The "settlement agreement" was never executed by the Commissioners of the Oklahoma Tax Commission. Protestant was advised in late February, 1986 that the "settlement agreement" was repudiated.

Finally, Protestant requests that, should the protest be denied as to the assessment, the penalty and interest be waived due to the mistaken reasons for his nonpayment of the tax, as previously explained, and the long delay in processing his protest.

Section 220 of Title 68 of the Oklahoma Statutes provides:

§ 220. Waiver or remission of interest or penalties

(a) The interest or penalty or any portion thereof ordinarily accruing by reason of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment may be waived or remitted by the Tax Commission provided the taxpayer's failure to pay the tax is satisfactorily explained to the Tax Commission, or provided such failure has resulted from a mistake by the taxpayer of either the law or the facts subjecting him to such tax, or inability to pay such interest or penalty resulting from insolvency.

(b) The waiver or remission of all or any part of any such interest or penalties in excess of Five Hundred Dollars (\$500.00) shall not become effective unless approved by one of the judges of the district court of Oklahoma County after a full hearing thereon. The application for the approval of such waiver or

remission shall be filed in the office of the court clerk of said court at least twenty (20) days prior to the entry of the order of the judge finally approving or disapproving the waiver or remission. The order so entered shall be a final order of the district court of said county.

Protestant states that it would be unfair to assess either penalty or interest for the delays caused by the circumstances, and the Tax Commission should, under the authority of § 220, waive the penalty and interest and assess only the initial tax.

CONCLUSIONS OF LAW

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) This is a case of first impression before the Oklahoma Tax Commission under 68 O.S. 1984 Supp., § 6001 et seq.
- (3) The exemption provisions of taxation statutes are to be strictly construed. Protestant has the burden of showing that he falls within the exemption provisions of a statute.

Protestant is not a corporation and the Protestant did not meet its burden of proof in establishing that the transfer of ownership of the subject aircraft was made pursuant to a statutory merger, consolidation or acquisition.

(4) Protestant did not establish that failure to pay the tax was due to a mistake of the facts or law subjecting him to such tax inasmuch as the informal reorganization plan, which apparently prompted the transfer of ownership, is not clearly within the exemption provisions of § 6003, and thus, Protestant is not within the waiver provisions under § 220.

(5) The Commissioners of the Oklahoma Tax Commission and they alone are the individuals vested with and granted authority to review and enter into an agreement to compound, settle and/or compromise any controversy relating to taxes administered by the Oklahoma Tax Commission under the directive of Title 68 O.S. § 219.

The unexecuted "settlement agreement" is therefore immaterial concerning the imposition of tax as directed by the statute contained within the Aircraft Excise Tax Act, Title 68 O.S. § 6001 et seq.

(6) The transfer of title to an airplane from a corporate entity to an individual, even if the purchasing individual is the sole stockholder in the seller corporation, is a taxable event under 68 O.S. 1984 Supp., § 6002.

(7) The amount of the assessment as follows, tax in the amount of Eleven Thousand Dollars (\$11,000.00), interest in the amount of Three Hundred Thirty Dollars (\$330.00) to

May 17, 1985, and penalty in the amount of One Thousand One Hundred Dollars (\$1,100.00), plus accrued interest, should be upheld.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied, and that the assessment including excise tax, penalty and interest in the amount of Twelve Thousand Four Hundred Thirty Dollars (\$12,430.00) is correct and proper and that interest continue to accrue thereon 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.