

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 86-09-30-03 / NON-PRECEDENTIAL  
**ID:** P-85-292  
**DATE:** SEPTEMBER 30, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** AIRCRAFT EXCISE  
**APPEAL:** NO APPEAL TAKEN

### **ORDER**

This comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed therein on the 8th day of September, 1986, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

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

NOW on this 8<sup>th</sup> day of September, 1986, the above styled cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Presiding Administrative Law Judge. Hearing was had, at which hearing the Protestant appeared not, nor by attorney although three times called in open court. The Division appeared by OTC ATTORNEY, Attorney, and ASSISTANT, Legal Research Assistant. ADMINISTRATOR, Aircraft Administrator, testified on behalf of the Division. Exhibits, not herein itemized, were received into evidence, and the case was submitted for a proposed decision.

### **STATEMENT OF FACTS**

On May 20, 1985, the Division acted upon information it had received from records provided by the Federal Aviation Administration (FAA) and notified Protestant of its liability for excise tax upon its aircraft. The issuance of this notice triggered a series of correspondence between the Division and the Protestant's President, PRESIDENT.

On June 4, 1985, PRESIDENT wrote to the Division and denied that Protestant was liable for excise tax on the aircraft because the airplane was neither purchased nor kept in Oklahoma. The Division responded to such letter by letter of June 17, 1985, in which PRESIDENT was requested to supply the Division with documentation establishing that the airplane was not based in Oklahoma. The Division further suggested that PRESIDENT ask the Protestant to change the registration address with the FAA to reflect the correct base for the aircraft.

PRESIDENT wrote to the Division on June 20, 1985, and stated that the owner of the aircraft was an Oklahoma corporation and that for this reason he would not be able to change the

address on the aircraft registration to reflect the aircraft's home base. PRESIDENT also requested that the Division specify what documentation the Division required to establish the actual base for the aircraft.

On June 26, 1985, the Division responded to PRESIDENT'S request by letter. The Division stated that to be able to withdraw the assessment, the Division needed documents showing that Protestant had paid personal property tax to Texas on the aircraft. On July 29, 1985, the Division again wrote to PRESIDENT and asked that he comply with the Division's request in the letter of June 26, 1985, and send to the Division documentation establishing that the tax on the aircraft had been paid to Texas.

On August 26, 1985, after receiving no response to either its June 26 or its July 29 letters, the Division computed the amount of the proposed assessment and mailed it to PRESIDENT and to the Protestant by certified mail. PRESIDENT responded by writing to the Division on September 11, 1985 in protest to the proposed assessment. PRESIDENT does not question the amount of the assessment, only the Protestant's liability for the assessment.

### ISSUES AND CONTENTIONS

The sole issue is whether Protestant is liable for excise tax on an aircraft registered with the Federal Aviation Administration showing an Oklahoma address when Protestant has failed to meet its burden of proving that it has paid excise or similar taxes on the aircraft to another state.

Protestant contends that it is not liable for excise tax on the airplane because the plane was neither purchased nor kept in Oklahoma. Protestant's President also claims that even though the aircraft is not based in Oklahoma, Protestant cannot change the registration address with the Federal Aviation Administration because the airplane is owned by an Oklahoma corporation.

The Division contends that Protestant has not supported its claim that the aircraft was not sold, purchased or kept in Oklahoma. The Division also contends that the tax becomes due upon the transfer of legal ownership whether or not a purchase is involved. The Division asserts that it has properly assessed the excise tax under the provisions of 68 O.S.A. §6002.

### APPLICABLE LAW

The section of the Oklahoma Tax Code which levies airplane excise tax is 68 O.S.A. §6002. Said section states 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. (Emphasis Added)

The aircraft at issue was acquired by Protestant, an Oklahoma corporation. Protestant registered the aircraft with the FAA using the Protestant's Oklahoma address. Protestant did not pay sales or use tax or excise tax on the aircraft to this state, and Protestant has offered no proof that such taxes were paid elsewhere. Therefore, pursuant to the authority granted under 68 O.S.A. §6001, et seq., the Division properly assessed the Protestant for the excise tax.

Protestant failed to provide the documentation requested of it by the Division. Had Protestant done so, Protestant may have met its burden of proof. Protestant also failed to file a brief or to attend the hearing. Protestant has not supported its contentions and is, therefore, liable for excise tax, interest and penalty on the "transfer of legal ownership" of the aircraft.

Under the levy provision, the taxable moment arises whenever there occurs either a "transfer of legal ownership or the use of any such aircraft within this state." As this section emphasizes, no sale or purchase of an aircraft need occur to trigger liability only a "transfer of legal ownership" of an aircraft. In support of its position, the Division relies on 68 O.S.A. §6001(B) which states:

(B) Purchase price is defined as the total amount paid for the aircraft whether paid in money or otherwise. Purchase price is further defined as the fair market value when no current purchase is involved. (Emphasis Added)

Subsection B specifically contemplates that an aircraft may be acquired without an actual sale or purchase by providing that the definition of purchase price for purposes of the tax levying statute shall be "the fair market value when no current purchase is involved." Therefore, since no purchase is actually required in order to trigger the tax levy, the taxable moment occurs whenever there has been a "transfer of legal ownership . . . within this state."

### CONCLUSIONS

In view of the above and foregoing Findings of Fact and Conclusions of Law, the undersigned concludes as follows:

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter;
- (2) That 68 O.S.A. §6002 levies an excise tax on aircraft which is due upon the “transfer of legal ownership.”
- (3) That 68 O.S.A. §6002 does not only tax transfers of legal ownership which are the result of purchases, but taxes all transfers of legal ownership.
- (4) That Protestant has failed to meet its burden of proof that the aircraft has a base outside of Oklahoma in that Protestant has not changed the aircraft’s address on its registration with the FAA. Protestant has also failed to supply proof that it has paid taxes on this aircraft to another state.
- (5) That the Division properly assessed the excise tax under the provisions of 68 O.S.A. §6002;
- (6) That the protest herein should be denied.

#### **DISPOSITION**

IT IS THE ORDER OF the OKLAHOMA TAX COMMISSION that the protest herein be denied and that the Protestant be required to pay the excise tax, as assessed, plus penalty and interest 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.