

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 86-09-30-04 / NON-PRECEDENTIAL
ID: P-85-301
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 8th 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 Protestant appeared by Attorney, ATTORNEY, and the Division appeared by Attorney, OTC ATTORNEY, and Legal Research Assistant, ASSISTANT. Exhibits, not herein itemized, were received into evidence. Closing arguments were presented, and the case was submitted for a proposed decision.

STATEMENT OF FACTS

On August 15, 1985, the Division notified Protestant of its liability for excise tax, interest and penalty for an aircraft which Protestant had purchased. Protestant did not respond to the Division's notice. On October 21, 1985, the Division issued a proposed assessment. Said assessment was based on information the Division had received from the Federal Aviation Administration (FAA). Protestant filed a timely protest to the assessment in which Protestant claimed that it was qualified to receive a dealer's exemption from the tax levied.

ISSUES AND CONTENTIONS

The sole issue is whether Protestant is qualified to receive the exemption for aircraft purchased by dealers provided in 68 O.S.A. §6003(B).

Protestant contends that it purchased the aircraft for the purpose of resale prior to its application for an exemption license. Protestant contends that it is a dealer in the sale of aircraft and that the aircraft in question was purchased for the express purpose of resale and was only

used for delivery and demonstration. The aircraft, Protestant asserts should therefore be exempt from registration requirements because Protestant later purchased an exemption license.

Protestant further asserts that the exemption statute does not state or imply that only aircraft purchased after the purchase of an exemption license is exempt. Protestant contends that the language of the statute indicates the contrary, that aircraft purchased prior to the purchase of a license would also be exempt once the exemption license is purchased by the dealer.

Protestant also contends that the statutes dealing with taxation of aircraft, 3 O.S.A. §254(c) and 68 O.S.A. §6003(B) are ambiguous because these statutes can be interpreted to exempt all aircraft owned by a dealer upon purchase of an exemption license, or to only exempt those aircraft purchased after the license is received by the dealer. Protestant also contends that since these statutes are ambiguous, any doubt concerning them must be resolved in the Protestant's favor. To support this contention Protestant relies on C. H. Leavell and Company v. Oklahoma Tax Commission, 450 P.2d 211 (Okla. 1968), Neumann v. Oklahoma Tax Commission, 596 P.2d 530 (Okla. 1979), and Wilson v. Oklahoma Tax Commission, 594 P.2d 1210 (Okla. 1979).

The Division contends that Protestant does not qualify for the exemption in 68 O.S.A. §600.3(B) because Protestant did not have a dealer's aircraft exemption license and, therefore, was not a dealer at the time it purchased the aircraft. The Division asserts that Protestant's becoming a dealer and acquiring a license after the purchase of the aircraft does not exempt Protestant from the excise tax because the levy provision in 68 O.S.A. §6002 states that the tax shall be due at the time of the transfer of legal ownership.

The Division relies on Board of Equalization of Tulsa County v. Indian Territory Eliminating Oil Company, 159 Okla. 15, 13 P.2d 585 (1932) for the proposition that a tax exemption is never to be implied. The Division also contends that the statutory provisions in question are clearly expressed and may not be modified.

APPLICABLE LAW

Aircraft excise tax is levied under the provisions of 68 O.S.A. §6002 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 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 exemption Protestant contends it is entitled to is found in 68 O.S.A. §6003(B) which states:

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

* * *

(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;

To be exempt from this tax, the first criteria is that the aircraft be owned by someone who is a dealer at the time of the transfer of ownership. It is claimed by Protestant that by becoming a dealer after acquiring the aircraft, Protestant can escape excise tax liability. However, §6002, the levy provision, states that the tax shall be due at the time of the transfer of legal ownership." Protestant is seeking to modify the mandate of the Legislature by requesting the undersigned to interpret §6002 to not require that the tax be due upon the transfer of legal ownership if one is considering acquiring a dealer's license.

The exemption provision also imposes the condition that "Said aircraft shall have an aircraft exemption license as provided for in §254 of Title 3 of the Oklahoma Statutes." In order to qualify for the exemption, therefore, Protestant must not only be a dealer, but must have also acquired the exemption license referred to in §6003(B).

Protestant has stated in its protest letter that it is an aircraft dealer. Yet, Protestant also states that it has just filed its application for an aircraft dealer's license. The taxing scheme herein imposes the dual requirement that an entity shall have become a dealer and shall have acquired an exemption license prior to the time that the tax liability becomes due. Because Protestant has failed to accomplish either of these conditions before the liability attached, Protestant is not entitled to the exemption provided in 68 O.S.A. §6003(B).

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. 16, 212 P.2d 790 (1949). Also settled law is that 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

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 the excise tax levied by 68 O.S.A. S6002. is due at “the time of the transfer of legal ownership or first registration in this state.”
- (3) That at the time when the tax became due under §6002, Protestant was not a dealer and had not yet acquired an exemption license. Protestant is, therefore, not eligible to receive the exemption provided in 68 O.S.A. §6003(B), and therefore is liable for the taxes as assessed.
- (4) That the protest herein should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of COMPANY be denied, that the assessment of the Aircraft Excise subdivision of the Sales and Use Tax Division be upheld, and that the Protestant be required to pay the amount of delinquent tax 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.