JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **86-09-30-06 / NON-PRECEDENTIAL**
ID: **P-86-337**
DATE: **SEPTEMBER 30, 1986**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE 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, failed to appear and the Motor Vehicle Division of the Oklahoma Tax Commission appeared by and through their legal representative, OTC ATTORNEY, of the General Counsel's office. An opening statement: was made by OTC ATTORNEY for the Motor Vehicle Division of the Oklahoma Tax Commission and exhibits, not itemized herein, were received into evidence.

The Protestant did in fact receive notice of the original hearing and thereafter requested, through the General Counsel's office, a continuance, and based upon said request, this matter was passed. Upon an attempt to notify Protestant as to the date of the hearing continued at Protestant's request, said notice, sent by certified mail, was returned to the Administrative Law Judge's office as unclaimed, said envelope showing that three attempts were made by the United States Post Office to deliver the notice of the continued said hearing. The Protestant has, following his initial contact with the General Counsel's office requesting a continuance of the original setting of said hearing, failed to notify the Motor Vehicle Division of the Oklahoma Tax Commission, the General Counsel's office or the Administrative Law Judge's office concerning the protest filed with the Motor Vehicle Division of the Oklahoma Tax Commission.

STATEMENT OF FACTS

The facts of this case were taken from the exhibits submitted at the hearing which reflect that on or about August 14, 1985, the Protestant, through his agent, AGENT, made application for Oklahoma Certificate of Title for a 1985 Freightliner truck with the motor license agency in TOWN, Oklahoma. Upon making the application for Oklahoma Certificate of Title, the Protestant presented the motor license agent with a title and registration certificate issued by the State of Arkansas on April 21, 1985. This information was transmitted to the Motor Vehicle Division of the Oklahoma Tax Commission and upon receipt of the application information by the Motor Vehicle Division of the Oklahoma Tax Commission, an Oklahoma Certificate of Title was assigned to the Protestant following the surrender of the Arkansas title to the above referenced truck.

The Motor Vehicle Division of the Oklahoma Tax Commission did, prior to the issuance of Certificate of Title, discover that the documentation provided at the time of the application for Oklahoma Certificate of Title did not support a claim for exemption from the motor vehicle excise tax pursuant to 68 O.S. § 2105(b) and thereafter, on June 13, 1986, the Protestant was

assessed excise tax in the amount of Two Thousand One Hundred Thirteen Dollars ($2,113.00) plus interest. Subsequent to the assessment of the motor vehicle excise tax June 13, 1986, the Protestant did file his protest in a timely manner on July 7, 1986.

ISSUES AND CONTENTIONS

It is the Protestant's contention that he did not file for a title for the 1985 Freightliner truck and in view of the fact that his truck had been titled in Nebraska since August, 1985, being the date of the purchase of said vehicle, that he would be exempt from the payment of the motor vehicle excise tax.

It is the contention of the Motor Vehicle Division of the Oklahoma Tax Commission that the documentation provided by the Protestant through his agent, AGENT, which was processed, was in fact an application for title and that, as such, the information provided does not support any claim for exemption from the payment of the motor vehicle excise tax.

The issue in this matter is whether or not the claimed exemption pursuant to § 2105(b) of Title 68 of the Oklahoma Statutes would in fact be applicable to the facts as submitted at this hearing as such pertained to the Protestant herein.

APPLICABLE LAW

The Oklahoma Vehicle License and Registration Act provides that the owner of every vehicle in the State of Oklahoma must possess a Certificate of Title as proof of ownership of said vehicle and that an application for a Certificate of Title may be made to the Oklahoma Tax Commission or any motor license agent. After the application is made with a motor license agent, the application and the information contained therein shall be transmitted to the Oklahoma Tax Commission by the motor license agent and upon receipt of this application and the information from the motor license agent, the Oklahoma Tax Commission shall issue an Oklahoma Certificate of Title which shall be mailed to the applicant and confirmation of such issuance provided to the motor license agent. Title 47, O.S. 1985, § 1105.

The Oklahoma Motor Vehicle License Registration Act also provides that every owner of a vehicle who does possess a Certificate of Title shall, prior to using the vehicle in the State of Oklahoma, make an application for the registration of such vehicle with a motor license agent and the application shall contain such information as shall be required by the Oklahoma Tax Commission. 47 O.S. 1985, § 1112.

Contemporaneous with the provisions of the Oklahoma Vehicle License Registration Act is the Vehicle Excise Tax Act found within the provisions of Title 68 O.S. 1985, § 2101 et seq. The purpose of the Vehicle Excise Tax Act is to provide funds for general governmental functions of state government for the State of Oklahoma and the revenues derived under this article are to be apportioned and distributed by the Oklahoma Tax Commission as directed under the provisions of the Oklahoma Vehicle License and Registration Act.

68 O.S. 1985, § 2103(a) provides for an excise tax on the transfer of legal ownership, use and first registration of vehicles in the State of Oklahoma as follows:

> (a) There is hereby levied an excise tax of three and one-fourth percent (3¼%) of the value of each vehicle, upon the transfer of legal ownership of any such vehicle registered in this state and upon the use of any such vehicle registered in this state and upon the use of any such vehicle registered for the first time in this state, except as otherwise provided in Sections 2101 through 2108 of this title. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Tax Commission at the time of the issuance of a certificate of title for any such vehicle. . .

68 O.S. 1985, § 2105 provides for exemptions to the above cited levy of excise tax, the specific provision dealing with the case at hand being § 2105(b) which states:

> An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by the Oklahoma Tax Code for:
>
> (b) Any vehicle brought into this state by a person formerly living in another state, who has owned and registered said vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in this state.

Protestant has failed to provide any documentation to support his protest that his 1985 Freightliner truck had been titled in the State of Nebraska since purchased August, 1985. Rather the evidence reflects that he, through his agent, applied for an Oklahoma Certificate of Title and presented what purported to be title and registration certificates issued by the State. of Arkansas dated April 21, 1985.

There is a plethora of Oklahoma Supreme Court cases which direct the application of the well established rule that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption, and based upon the evidence presented in this case, the claimed exemption by the Protestant as per Section 2105(b) supra is unsubstantiated and therefore not applicable. See Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (1951); Bert Smith Machinery Company, Inc. v. Oklahoma Tax Commission, 563 P.2d 641 (1977); London Square Village, Inc. v. Oklahoma County Equalization and Excise Board, 559 P.2d 1224 (1976); and Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1303 (1975).

CONCLUSIONS

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

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

(2) That exemption statutes are strictly construed against the exemption. In light of the statutory directive set forth in Title 68 O.S. 1985, § 2105(b), the Protestant fails to qualify for the exemption therein provided.

(3) That the protest of PROTESTANT is denied and that the assessment by the Motor Vehicle Division of the Oklahoma Tax Commission for excise tax in the amount of Two Thousand One Hundred Thirteen Dollars ($2,113.00) and any additional interest and/or penalty that may accrue from the date of the assessment until paid in full is correct and proper.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT, Protestant herein, be denied and that the assessment of excise tax in the amount of Two Thousand One Hundred Thirteen Dollars ($2,113.00) be deemed correct and proper and that any additional penalty and/or interest should continue to accrue thereon from the date of said assessment until the entire assessment and additional penalty accrued thereon is paid in full.

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.