

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-10-15-02 / NON-PRECEDENTIAL
ID: P-86-303
DATE: OCTOBER 15, 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 but did, by way of affidavit, request that REPRESENTATIVE be permitted to represent him at the hearing. The Motor Vehicle Division of the Oklahoma Tax Commission appeared by and through their legal representative, OTC ATTORNEY, of the General Counsels Office of the Oklahoma Tax Commission.

The court was advised by REPRESENTATIVE that the Protestant herein, PROTESTANT, did in fact request that his case be determined and that he would abide by the decision in the Matter of the Vehicle Excise Tax Protest of REPRESENTATIVE d/b/a BUSINESS, docketed as P-86-299, and further advised that any facts and/or statements that were made in that proceeding would be adopted in toto in this proceeding. OTC ATTORNEY, representing the Motor Vehicle Division of the Oklahoma Tax Commission, consented to this stipulation by REPRESENTATIVE, representing the Protestant herein, PROTESTANT. Certain exhibits, not itemized herein, were received into evidence on the motion of the Administrative Law Judge and the case was submitted for a decision.

STATEMENT OF FACTS

The facts of this case are taken from the exhibits admitted at the hearing, which reflect that on April 24, 1986, the Protestant, by and through its agent, AGENT, made application for Oklahoma Certificate of Title for the following vehicle with the motor license agency in TOWN, Oklahoma, being a 1986 Utility Trailer. The 1986 Utility Trailer had not previously been registered in the State of Oklahoma. Subsequent to the application for Oklahoma Certificate of Title, the Protestant presented to the motor license agent what purported to be title and registration certificates issued for the above referenced vehicles by the State of Arkansas dated January 24, 1986. Upon receipt of said application and information by the Motor Vehicle Division of the Oklahoma Tax Commission, an Oklahoma Certificate of Title was assigned to the Protestant for the 1986 Utility Trailer to be issued when Protestant surrendered the Arkansas title for the 1986 Utility Trailer.

The Motor Vehicle Division of the Oklahoma Tax Commission, upon review of the information and application presented by the Protestant, discovered that the documentation provided at the time the application for Oklahoma Certificate of Title was made that the claimed exemption from the vehicle excise tax was in fact invalid. Thereafter, on June 26, 1986, the Motor Vehicle Division of the Oklahoma Tax Commission did issue an assessment for excise tax

and penalty in the total amount of Nine Hundred Seventy-Five Dollars and No Cents (\$975.00) as follows:

<u>YEAR AND MAKE</u>	<u>EXCISE TAX</u>	<u>PENALTY @ \$. 25/DAY</u>	<u>TOTAL TAX & PENALTY</u>
1986 Utility	955.00	\$20.00	\$975.00

Upon receipt of the assessment dated June 26, 1986, the Protestant did file his protest in a timely manner, dated June 30, 1986.

ISSUES AND CONTENTIONS

It is the Protestant's contention that he was unaware that the Oklahoma Certificate of Title had been applied for and further, that had he been aware that he would have owed vehicle excise tax, the application for Oklahoma Certificate of Title would not have been made.

The Motor Vehicle Division of the Oklahoma Tax Commission contends that the documentation provided by the Protestant by and through his agent at the time the application for Oklahoma Certificate of Title was processed did not support any claim for exemption from the payment of the vehicle excise tax, pursuant to Title 68 § 2105.

The issue in this matter is whether or not the Protestant, under the facts and circumstances presented, would in fact be entitled to an exemption pursuant to Title 68 O.S. § 2105.

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.

Title 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. . .

Title 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 its protest that the 1986 Utility Trailer at issue had in fact been titled in the State of Arkansas as per the documentation provided to the Motor Vehicle Division of the Oklahoma Tax Commission. Rather, the evidence reflects that the Protestant, through its agent, applied for Oklahoma Certificate of Title for the vehicle in question and presented what purported to be title and registration certificate issued by the State of Arkansas on January 24, 1986. This documentation determined to be incorrect, based upon information received from the Office of Motor Vehicles for the State of Arkansas, which states that the vehicle at issue has never been titled or registered in the State of Arkansas in the name of the Protestant.

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 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) 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) The protest of PROTESTANT, Protestant herein, is denied and that the assessment by the Motor Vehicle Division of the Oklahoma Tax Commission for excise tax and penalty in the amount of Nine Hundred Seventy-Five Dollars and No Cents (\$975.00) 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 and penalty in the amount of Nine Hundred Seventy-Five Dollars and No Cents (\$975.00) be deemed correct and proper and that any additional penalty and/or interest applicable thereto should continue to accrue thereon from the date of said assessment until the entire assessment and additional penalty and interest accruing 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.