

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-10-21-01 / NON-PRECEDENTIAL
ID: P-86-360
DATE: OCTOBER 21, 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, HUSBAND AND WIFE d/b/a TRUCKING COMPANY, 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 of the Oklahoma Tax Commission.

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 record will reflect that the Protestant was mailed notice of said hearing by certified mail but that the United States Post Office stamped on the face of said certified letter "Return to Sender, Refused". The testimony of ADMINISTRATOR, Administrator for the Prorate and Reciprocity Section of the Motor Vehicle Division of the Oklahoma Tax Commission, was taken concerning the assessment and the protest filed by the Protestant dated July 12, 1986. Following the testimony of ADMINISTRATOR, the case was submitted for a decision.

STATEMENT OF FACTS

The facts of this case are taken from the exhibits submitted at the hearing which reflect that on December 27, 1985 and May 22, 1986, the Protestant, by and through its agent, AGENT, made application for Oklahoma Certificates of Title for the following vehicles with the motor license agency in TOWN, Oklahoma: 1986 Freightliner tractor, 1983 Peterbilt tractor and 1986 Great Dane trailer. The facts reflect that these vehicles had not been previously registered in the State of Oklahoma.

Upon making application for Oklahoma Certificates of Title, the Protestant presented the motor license agent in TOWN, Oklahoma with what purported to be title and registration certificates issued for the above referenced vehicles by the State of Arkansas on January 29, 1986. Under the provisions of Title 47 O.S. § 1105, the Protestant's application 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, Oklahoma Certificates of Title were assigned to the Protestant to be issued as soon as the Protestant surrendered the Arkansas titles for the vehicles above mentioned.

Upon review of the information submitted by the Motor Vehicle Division of the Oklahoma Tax Commission, it was discovered that the documentation provided at the time the

applications for Oklahoma Certificates of Title were processed did not support a claim for exemption for the motor vehicle excise tax pursuant to Title 68 § 2105(b) and thereafter, on June 23, 1986 and July 9, 1986, the Motor Vehicle Division of the Oklahoma Tax Commission assessed vehicle excise tax and penalty in the amount of Three Thousand Six Hundred Forty-Five Dollars and Twenty-Five Cents (\$3,645.25), representing vehicle excise tax and penalty for the respective vehicles as follows:

<u>YEAR AND MAKE VEHICLE IDENTIFICATION</u>	<u>COST</u>	<u>EXCISE TAX</u>	<u>PENALTY @ \$.25/DAY</u>	<u>TOTAL TAX & PENALTY</u>
1986 Freightliner 1FUPYSYB1GP259115	\$74,500.00	\$2,421.25	\$48.50	\$2,469.75
1983 Peterbilt 1XP6D28XX3DN15639	57,500.00	512.00	6.75	518.75
1986 Great Dane 1GRAA9225GB049901	20,000.00	650.00	6.75	<u>656.75</u>
			TOTAL	\$3,645.25

Upon receipt of the assessments dated June 23, 1986 and July 9, 1986, the Protestant filed its protest in a timely manner on July 12, 1986.

ISSUES AND CONTENTIONS

It is the Protestant's contention that its vehicles had been titled and registered in another state for more than sixty (60) days prior to its applications for Oklahoma Certificates of Title and, as such, is exempt, pursuant to § 2105(b) of Title 68 of the Oklahoma Statutes, from the payment of the vehicle excise tax.

It is the Motor Vehicle Division of the Oklahoma Tax Commission's contention that the documentation provided by the Protestant at the time the applications for Oklahoma Certificates of Title were processed did not support a claim for exemption from the payment of the vehicle excise tax in view of the fact that information received from the Office of Motor Vehicles of the State of Arkansas reflect that said vehicles had not in fact been properly titled or registered in the State of Arkansas under the name of HUSBAND AND WIFE d/b/a TRUCKING COMPANY.

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 their protest that their 1986 Freightliner, 1983 Peterbilt and 1986 Great Dane had been titled in the State of Arkansas as

alleged. Rather the evidence reflects that Protestant, through their agent, applied for Oklahoma Certificates of Title and presented what purported to be title and registration certificates issued by the State of Arkansas on January 29, 1986.

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) 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 HUSBAND AND WIFE d/b/a TRUCKING COMPANY 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 Three Thousand Six Hundred Forty-Five Dollars and Twenty-Five Cents (\$3,645.25) 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 HUSBAND AND WIFE d/b/a TRUCKING COMPANY, Protestant herein, be denied and that the assessment of excise tax and penalty in the amount of Three Thousand Six Hundred Forty-Five Dollars and Twenty-Five Cents (\$3,645.25) 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.