JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **86-12-16-10 / NON-PRECEDENTIAL**
ID: **P-86-455**
DATE: **DECEMBER 16, 1986**
DISPOSITION: **DENIED**
TAX TYPE: **DOCUMENTARY STAMP**
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, Oklahoma Tax Commission. A hearing was had, at which hearing Protestant appeared not, nor by attorney, after being called three times in open court. Protestant had received notice of the hearing by certified mail and had signed and returned a receipt indicating that he had received the notice. The Documentary Stamp Section of the Ad Valorem Division of the Oklahoma Tax Commission appeared by Attorney OTC ATTORNEY. Exhibits, not herein itemized, were received into evidence. SUPERVISOR, Supervisor of the Documentary Stamps Section of the Ad Valorem Division, testified on behalf of the Division and the case was submitted for a decision.

STATEMENT OF FACTS

On October 23, 1984, an allodial deed was filed with the COUNTY Clerk whereby GRANTOR, as grantor, conveyed to PROTESTANT, as grantee, for the consideration of Forty-four Thousand Thirty-two and Nine Hundred Ninety-nine Thousandths (44,032.999) ounces of fine silver, the following described tracts of land:

Land Tract No. 1
Southwest Quarter (SW¼) of Section XX (XX) in Township XX (XX) North of Range XX (XX) West of the Indian Meridian, in COUNTY, Oklahoma.

Land Tract No. 2
Northwest Quarter (NW¼) of Section XX (XX) in Township XX (XX) North of Range XX (XX) West of the Indian Meridian in COUNTY, Oklahoma.

Land Tract No. 3
Northeast Quarter (NE¼) of Section XX (XX) in Township XX (XX) North of Range XX (XX) West of the Indian Meridian in COUNTY, Oklahoma.

Land Tract No. 4
Southwest Quarter (SW¼) of Section XX (XX) in Township XX (XX) North of Range XX (XX) West of the Indian Meridian in COUNTY, Oklahoma.

On June 11, 1985, SUPERVISOR, Chief of the Documentary Stamp Section of the Ad Valorem Division, sent a letter to PROTESTANT, Protestant, requesting Protestant to submit evidence of exemption from documentary stamp tax or to affix the proper amount of

documentary stamps to the deed recorded on the COUNTY Registry of Deeds, Book XXX, Page XXX, a deed from GRANTOR, grantor, to PROTESTANT, grantee, conveying the above stated property. This letter indicated to Protestant that the property conveyed has a fair market value of Three Hundred Eight Thousand, Two Hundred Twenty-four Dollars ($308,224.00) and that Four Hundred Sixty-two Dollars and Seventy-five Cents ($462.75) of documentary stamps are required to be affixed to the deed.

On July 23, 1985, SUPERVISOR sent a letter to Protestant requesting a reply to the June 11, 1985 letter. On August 29, 1985, SUPERVISOR sent a certified letter with return receipt requested to Protestant stating there had been no response to the above letters and requested a response within ten (10) days. The return receipt was returned dated August 31, 1985.

On October 4, 1985, the Ad Valorem Division, by certified letter with return receipt requested, sent the Protestant a proposed assessment of Four Hundred Sixty-two Dollars and Seventy-five Cents ($462.75) tax, plus any penalty and interest for delinquent documentary stamps. The return receipt was returned dated October 9, 1985.

By letter dated November 12, 1985, and received November 14, 1985, Protestant indicated to the Documentary Stamp Section of the Ad Valorem Division that he did not agree with the proposed assessment. Title 68 O.S.A. § 221(c) provides a taxpayer with a period of thirty (30) days after the mailing of a proposed assessment to file a written, signed protest with the Tax Commission. The proposed assessment in this case was mailed to Protestant on October 4, 1985. Protestant did not object to the assessment until after the thirty (30) day statutory period had expired.

On April 16, 1986, the Ad Valorem Division issued a Tax Warrant in COUNTY against Protestant in the amount of Six Hundred Thirty-five Dollars and Thirty-nine Cents ($635.39) together with interest on the total tax at the rate of eighteen percent (18%) per annum for delinquent documentary stamp tax.

ISSUES AND CONTENTIONS

The sole issue herein is whether a taxpayer who has not timely filed a protest and has failed to show that he falls within one of the statutory exemptions to the documentary stamp tax is liable for said tax upon the transfer of property to the taxpayer as grantee.

The Protestant contends that no documentary stamp tax is due because Protestant has secured a sovereign nation status and therefore owes no duties to any state. Protestant also contends that there is no money in existence which the State of Oklahoma may accept in payment of any alleged tax liability because Congress is only allowed to produce gold and silver coin money under the United States Constitution, Article I, Sections 8 and 10.

The Documentary Stamp Section of the Ad Valorem Tax Division contends that the Oklahoma Tax Commission has the authority to collect stamp taxes pursuant to Article X, Section 12 of the Oklahoma Constitution. The Documentary Stamp Section of the Ad Valorem

Tax Division also contends that Protestant has failed to show a statutory exemption which applies to him, and that Protestant's letter of protest was not timely filed.

APPLICABLE LAW

Title 68 O.S.A. § 5101(A) imposes a documentary stamp tax on:

> . . . each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds One Hundred Dollars ($100.00). The tax shall be at the rate of seventy-five cents ($0.75) for each Five Hundred Dollars ($500.00) of the consideration or any fractional part thereof.

Title 68 O.S.A. § 5102 sets forth thirteen (13) exemptions from the documentary stamp tax. Protestant has not claimed that any of the statutory exemptions apply to this case. Protestant, having relinquished his national citizenship by letter, claims that Oklahoma has no jurisdiction to tax him.

The Protestant is correct only in that this protest involves a jurisdictional question. Title 68 O.S.A. § 221(c) provides as follows:

> Within thirty (30) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a written protest under oath, signed by himself or his duly authorized agent, setting out therein:

Title 68 O.S.A. § 221(e) further provides:

> If the taxpayer fails to file a written protest within the thirty (30) days' period herein provided for or within the period as extended by the Commission, then the <u>proposed assessment, without further action of the Tax Commission, shall become final</u> and absolute <u>at the expiration of thirty (30) days</u> from the date same is mailed to the taxpayer or at the expiration of the period as extended by the Tax Commission. (Emphasis added)

In <u>Matter of Request of Hamm Production Co., For an Extension of Time in Which to Protest Proposed Gross Production Tax Assessment Issued on July 21, 1981</u>, 671 P.2d 50 (1983), the Supreme Court of Oklahoma held:

> [t]hat failure of the taxpayer to file either its protest or application for extension to file its protest within the thirty day period allowed by § 221(c) resulted in the proposed assessment becoming final and the <u>Commission was without jurisdiction thereafter to grant an extension of time in which to file protest under the provisions of § 221(f)</u>. (Emphasis added)

In Matter of Phillips Petroleum Co., 652 P.2d 283 (Okl. 1982), the Supreme Court of Oklahoma interpreted Section 221 of Title 68 and held that:

> A clear reading of the statute indicates that any protest against a tax assessment must be made within thirty (30) days from the mailing date or the assessment becomes final. . . . By operation of the statute the assessment became final after the 30th day of silence by Phillips. (Emphasis added)

The Oklahoma Tax Commission no longer has jurisdiction to seriously entertain the Protestant's contentions. The Commission does, however, have jurisdiction to collect documentary stamp taxes. Article X, Section 12 of the Oklahoma Constitution provides that the Legislature shall have power to provide for the levy and collection of certain specific forms of taxes among which are "stamp, registration, production or other specific taxes".

In City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139 (Okl. 1982), the Supreme Court of Oklahoma held that the Oklahoma Constitution vests the whole matter of taxation exclusively within the power of the Legislature.

In re Thomas' Estate, 192 Okl. 409, 136 P.2d 929 (1943), the Oklahoma Supreme Court held that the levying of taxes is a "legislative function" and not a "judicial function" and that the Legislature may choose the department of government or officer to levy, assess and collect taxes. Therefore, the Legislature, pursuant to Article X, Section 12, has the authority to levy and collect stamp taxes. By enacting Title 68 O.S. (Supp. 1985) § 5101 et seq., the Legislature has exercised its authority to levy and collect stamp taxes granted by the Oklahoma Constitution.

The Legislature has delegated this grant of authority over taxes, pursuant to the Oklahoma Constitution, to the Oklahoma Tax Commission in 68 O.S. 1981, §§ 103 and 203. Section 203 provides in pertinent part that:

> …at all times, [the Tax Commission may] exercise such authority as may be necessary to administer and enforce each and every provision of any State tax law.

The State of Oklahoma, has validly provided for a documentary stamp tax upon its citizens. The authority to collect documentary stamp taxes, as provided for by the Oklahoma Constitution, has been delegated to the Oklahoma Tax Commission by the Oklahoma Legislature.

CONCLUSIONS

In view of the above and foregoing findings of fact and law applicable thereto, the undersigned Administrative Law Judge concludes as follows:

(1) That the Oklahoma Tax Commission no longer has jurisdiction to consider this protest, the letter of protest having been filed outside the thirty (30) day statutory limit set out in 68 O.S.A. § 221(c).

(2) That the Oklahoma Tax Commission does have the authority to collect documentary stamp tax. This authority was delegated to the Oklahoma Tax Commission by the Oklahoma Legislature.

(3) That Protestant has failed in his burden of proving that he is exempt from the documentary stamp tax.

(4) That the Protest of PROTESTANT should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied, that the assessment of the Documentary Stamp Section of the Ad Valorem Division for documentary stamp tax be sustained, and that the Protestant, PROTESTANT, be required to pay the amount of the documentary stamp tax as assessed, plus the penalty and the interest assessed and accrued 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.