

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-04-21-56 / NON-PRECEDENTIAL
ID: P-86-166 / P-86-167
DATE: APRIL 21, 1987
DISPOSITION: DENIED
TAX TYPE: AIRCRAFT 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 by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. The parties agreed to consolidate the above matters and to submit the cause without a hearing.

PROTESTANT ONE and PROTESTANT TWO, father and son, d/b/a NAME (hereinafter Protestants) are represented by ATTORNEY, Attorney, and the Aircraft Excise Section of the Motor Vehicle Division (hereinafter Division) is represented by OTC ATTORNEY, Attorney for the General Counsel’s Office of the Oklahoma Tax Commission.

The parties filed their briefs in support of their respective positions, and the case was submitted for a decision.

STATEMENT OF FACTS

On April 14, 1986, and on May 9, 1986, the Aircraft Excise Section of the Motor Vehicle Division issued proposed excise tax assessments on the two aircraft involved in the above styled protest as follows:

PROTESTANT ONE d/b/a NAME
Aircraft No. NXXXXX

Tax	\$3,347.50
Interest	251.06
Penalty	<u>334.75</u>
TOTAL	\$3,933.31

PROTESTANT TWO d/b/a NAME
Aircraft No. NZZZZZ

Tax	\$3,249.97
Interest	292.50
Penalty	<u>325.00</u>
TOTAL	\$3,867.47

Protestants filed timely protests to the assessments in question on May 12, 1986. At a pre-hearing conference on January 29, 1987, the following stipulations of fact were agreed to between the parties.

1. Cases P-86-166 and P-86-167 to be consolidated and Protestants waive confidentiality pursuant to 68 O.S. § 205 with respect to the facts necessarily presented in briefs of the issues herein.

2. The aircraft assessed are specially designed mechanisms for use in applying fertilizers, pharmaceuticals and biologicals to farm crops. The aircraft are restricted to such use by regulation of the Federal Aviation Administration.

3. Protestants waive oral hearing under 68 O.S. § 221 and elect to present the case on briefs on or before March 2, 1986, as agreed by the parties.

CONTENTIONS

The Protestants contend that the agricultural exemption contained in 68 O.S. 1981, § 1358 is applicable to the instant case. The Protestants also contend that the Oklahoma Tax Commission is precluded from taxing the aircraft in question, under the Supremacy Clause of the United States Constitution.

The Division contends that 68 O.S. 1981, § 1358 is inapplicable to the instant case, since that section pertains to sales taxes, and the assessment in issue is of aircraft excise tax. Additionally, the Division contends that there are no exemptions within the Aircraft Excise Tax Act for aircraft used for agricultural purposes. Furthermore, the Division contends that there is no violation of the Supremacy Clause of the United States Constitution, since no federal action preempting the field exists.

ISSUES

(1) Whether there are any exemptions for agricultural use contained within the Aircraft Excise Tax Act, found at 68 O.S. 1984 Supp., §§ 6001 et seq.

(2) Whether the exemption found in the Sales Tax Code at 68 O.S. 1981, § 1358 is applicable to the instant case.

(3) Whether there is any federal action which would preempt the Oklahoma Tax Commission under the Supremacy Clause of the United States Constitution, found at Article VI, Clause 2.

APPLICABLE LAW

In 1984, the Oklahoma Legislature enacted the Aircraft Excise Tax Act, found at 68 O.S. Supp. 1984, §§ 6001 et seq. Section 6002 levies the tax as follows:

Beginning on and after July 1, 1984, there shall be levied an excise tax of three and one-fourth percent (3¼%) 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 6001 through 6004 of this title 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 Protestants do not contest that the levy of the tax is lawful, since the aircraft in question were indeed purchased after July 1, 1984. Rather, the Protestants contend that the aircraft in question are exempt from the levy, since they are used specifically for agricultural purposes.

Section 6003 sets out numerous exemptions to the tax imposed by the Aircraft Excise Tax Act. However, nowhere within Section 6003 is an exemption for aircraft used for agricultural purposes.

The Protestants would contend that they are exempt from the levy of the Aircraft Excise Tax by virtue of 68 O.S. Supp. 1985, § 1358(E)(1), (2) and (3), and (F). Those provisions exempt from the levy of the sales tax various sales of agricultural fertilizer, pharmaceuticals and biologicals, and certain machinery used in the distribution of said fertilizers and pharmaceuticals.

The Division does not dispute that the aircraft assessed are specifically designed mechanisms for use in applying fertilizers, pharmaceuticals and other biologicals to farm crops. Further, if the aircraft in issue were in fact assessed sales tax, they would, arguably, be exempt from the imposition of the sales tax. However, the assessments in issue are pursuant to the Aircraft Excise Tax Act found at 68 O.S. Supp. 1984, § 6001 et seq.

As recited earlier in these Findings, the levy of the airplane excise tax, pursuant to Section 6002 is in lieu of all other taxes on the transfer or the first registration in this State on aircraft. And again, there are no exemptions contained within Section 6003 for aircraft utilized for agricultural purposes.

It is a well established rule that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption, and the Oklahoma Tax Commission does not have the authority to grant an exemption where the Legislature has not. Bert Smith Road Machinery Company v. Oklahoma Tax Commission, 563 P.2d 641 (Okla. 1977); Dairy Queen of Oklahoma, Inc., v. Oklahoma Tax Commission, 238 P.2d 800 (Okla. 1951).

The language of the Aircraft Excise Tax Act is clear and unambiguous. Where the language and intent of the Legislature is clearly expressed within the statutory provisions, there

is no room for construction, analogy or extrapolation. In the Matter of Phillips Petroleum Company, 652 P.2d 283 (Okla. 1982). Accordingly, the sales tax agricultural exemptions found in Section 1358 of the Sales Tax Code cannot be analogized or extrapolated to apply to the Aircraft Excise Tax where the Legislature has expressed no intent to do so. Legislative language and intent must be the governing principle in interpreting statutes, and as such, the “presumption is that the Legislature expressed its intent in the statute and that it intended what it expressed.” Darnell v. Chrysler Corp., 687 P.2d 132, 134 (Okla. 1984).

Based upon the above and foregoing, it is clear that the assessment is not only proper but it is in fact statutorily mandated. There is simply no authority for the Oklahoma Tax Commission to grant an exemption where none exists.

With respect to the Supremacy Clause argument put forth by the Protestants, there has been no specific federal statute or federal act cited which would preempt the State of Oklahoma in this field. As such, this argument must fail.

CONCLUSIONS

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That there are no exemptions contained within the Aircraft Excise Tax Act, found at 68 O.S. Supp. 1984, §§ 6001 et seq. that would exempt the subject transactions.
- (3) The sales tax exemptions contained within 68 O.S. Supp. 1985, § 1358 are inapplicable to the instant case.
- (4) There is insufficient authority cited to substantiate the constitutional issues raised by the Protestants.
- (5) That the assessments of the Aircraft Excise Section of the Motor Vehicle Division of April 14, 1986, and May 9, 1986, are proper.
- (6) That the protest of PROTESTANT ONE and PROTESTANT TWO d/b/a NAME should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Aircraft Excise Tax Protest of PROTESTANT ONE and PROTESTANT TWO, d/b/a NAME, be denied.

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.