JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-01-27-013 / NOT PRECEDENTIAL**
ID: **UP960006**
DATE: **01-27-98**
DISPOSITION: **SUSTAINED**
TAX TYPE: **UNCLAIMED PROPERTY**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the files and records, including the information and documentation, and position letters filed herein, the undersigned finds:

1. At issue in this cause is property reported and remitted to the Tax Commission by ANONYMOUS INDUSTRIES, INC., in 1993 and 1994.

2. The property consists of proceeds from mineral interests in and to certain properties located in AN ANONYMOUS County, State of Oklahoma.

3. ANONYMOUS INDUSTRIES, INC., reported and remitted to the Tax Commission the total sum of $1,934.37 in the name of THE LISTED OWNER (hereinafter "Listed Owner"), last known address P. O. Box XX, ANONYMOUS CITY, Oklahoma.

4. Claimant filed a claim to one-third (_) of the abandoned property. Included with the claim was (1) a Death Certificate reflecting that the Listed Owner died on February 10, 1984; (2) a signed Division Order dated January 22, 1971, listing the Listed Owner's mineral interest and address as P. O. Box XX, ANONYMOUS CITY, Oklahoma; (3) an Affidavit of Death and Heirship indicating that the Listed Owner was predeceased by his wife, that the Listed Owner had three (3) children one of whom is the Claimant herein and that any assets of the Listed Owner were to be distributed in equal shares to his three (3) children; and (4) an Agreement of Distribution dated January 19, 1996, executed by the heirs.

5. Claimant also submitted an executed and notarized Claim for Abandoned Property form which sets forth his agreement to indemnify and hold the state harmless for any loss resulting from payment of his claim.

6. By letter dated April 4, 1996, the Division denied Claimant's claim to the unclaimed property. The Division's denial was based on the failure of Claimant to provide "[a] certified copy of Letters of Administration, Letters Testamentary, or Decree of Distribution of the estate of the [listed owner] as required by Title 60 OS 1994 Supp., § 674.2."

7. By letter dated April 23, 1996, Claimant protested the Division's denial of the claim.

ISSUE

The issue presented for decision is whether the Claimant has legally established an interest in and to the unclaimed property held by the Tax Commission in the name of the Listed Owner.

APPLICABLE LAW

All funds received by the Tax Commission under the provisions of the Uniform Unclaimed Property Act (1981)[1], including the proceeds from the sale of abandoned property, shall be deposited in the Unclaimed Property Fund, the principal of which constitutes a trust fund for persons claiming any interest in the property delivered to the Tax Commission. 60 O.S. 1991, § 668. The authority and responsibility for the control and management of all monies in the Unclaimed Property Fund is vested in the Tax Commission. 60 O.S. 1991, § 669.

The Tax Commission's authority over the control and management of the Unclaimed Property Fund includes the responsibility to determine from time to time, what amount of unclaimed property should be retained as a reserve in order to ensure that all claims presented by persons ***legally establishing*** a right to any such unclaimed property are paid promptly. 60 O.S. 1991, § 670. All amounts in excess of the necessary reserve are to be paid into the State Treasury to the credit of the General Revenue Fund. *Id.* When monies are deposited to the credit of the General Revenue Fund, all rights of any owner to resort against such money shall terminate, but the right of any person ***legally establishing*** his claim to any unclaimed property shall be preserved and the value thereof shall be paid from the reserve. *Id.*

A person claiming an interest in any property valued at Fifty Dollars ($50.00) or more delivered to the Tax Commission may file a claim on a prescribed and verified form. 60 O.S. 1991, § 674(a). The date of filing the claim is deemed to be the date it is received by the Tax Commission with all supporting documentation. *Id.* The Tax Commission is required to consider each claim within ninety (90) days after the filing thereof and give written notice to the Claimant if the claim is denied in whole or in part. 60 O.S. 1991, § 674(b).

Where the owner of any property to which a person claims an interest is determined to be deceased, the property shall remain in the custody of the Tax Commission until certain documentation legally establishing claimant's interest is provided. 60 O.S. Supp. 1994, § 674.2.[2] Section 674.2, as amended, requires receipt of the following documentation before any property shall be paid over or delivered to the Claimant:

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[1] 60 O.S. 1991, §651 et seq.

[2] 1994 Okla. Sess. Laws, Chapter 304. Effective date-September 1, 1994.

> 1. A certified copy of letters of administration or letters testamentary from the probate of the estate of the decedent naming the claimant as the personal representative of the estate of the decedent; or
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> 2. A certified copy of the decree of distribution from the probate of the estate of the decedent determining the claimant to be entitled to receive such property through the estate of the decedent; or
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> 3. If the value of the property is One Thousand Dollars ($1,000.00) or less, a signed affidavit executed by the claimant stating that the claimant is entitled to receive such property, the reason the claimant is entitled to receive such property, that there has been no probate of the estate of the deceased owner, that no such probate is contemplated and that claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property.[3]

The Commission has determined that Section 674.2 is a remedial or procedural statute which does not create, enlarge, diminish, or destroy a vested right, but only the remedy sought. Oklahoma Tax Commission 94-12-13-029. In so holding, the Commission applied the provisions of Section 674.2 to all pending claims, actions or proceedings notwithstanding whether the claims were filed prior to the enactment of Section 674.2. *Id.*

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Commission. 60 O.S. 1991, § 675(a).

2. The evidence submitted in this cause shows that the listed owner of the unclaimed property to which Claimant has filed a claim is deceased. Accordingly, the provisions of Section 674.2 of the Uniform Unclaimed Property Act (1981) are applicable to the claim.

3. The evidence further shows that the value of the property to which the claim was filed is less than $1,000.00, that no probate of the estate of the deceased Listed Owner was had or is contemplated and that Claimant submitted an Affidavit setting forth his agreement to indemnify and hold the state harmless for any loss resulting from payment of the claim.

4. The provisions of Section 674.2(3), as amended, are applicable to these proceedings. Oklahoma Tax Commission Order No. 94-12-13-029. See, *Phillips v. H.H. Marr Grocery Co.*, 295 P.2d 765 (Okl. 1956). Accordingly, the undersigned finds that the claim filed by Claimant to the abandoned property satisfies the statutory requirements for legally establishing his claim and that the denial of this claim was erroneous.

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[3] Amended by Laws 1996, c. 334, § 6, eff. November 1, 1996.

5. Claimant's protest to the denial of his claim to the abandoned property held in the name of LISTED OWNER should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of CLAIMANT be sustained.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.