JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-02-12-010 / NOT PRECEDENTIAL**
ID: **SJ970010**
DATE: **02-12-98**
DISPOSITION: **DENIED**
TAX TYPE: **BOAT AND MOTOR REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the record of the proceedings held on October 22, 1997, and the exhibits received into evidence, the undersigned finds:

1. On or about May 24, 1995, COMPLAINANT purchased two (2) 1994 Tigershark Barracudas from RESPONDENT.

2. The Marine Purchase Agreement lists the Barracudas as demonstrators. The Agreement also reports that the models were used and sold "as is".

3. According to COMPLAINANT, he immediately started experiencing problems with the Barracudas. In an attempt to remedy the problems, COMPLAINANT was advised that the Barracudas had a design defect and that the Manufacturer would cure the defect without charge through its warranty program. Thereafter, COMPLAINANT was advised that the warranty did not apply because the Barracudas were salvage personal watercraft.

4. Copies of computer screens for the Barracudas in question from THE MANUFACTURER of the Tigershark Barracudas, indicate that the Barracudas were in-house demonstrators sold through THE MANUFACTURER'S Salvage Department.

5. A letter from the Attorney for THE MANUFACTURER reflects that the term "salvage" is used for any product which is returned and later resold. The letter further provides that the term does not mean the boat was damaged or used.

6. According to MR. ANONYMOUS, THE MANUFACTURER promoted these units as demonstrators which had never been used, but were to be sold "as is". He was assured by THE MANUFACTURER that the units were not salvage units.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission, 63 O.S. 1991, §4042; that the license of a new and used boat and motor dealer may be suspended or revoked for a violation of any of the provisions of Section 4041 of the Oklahoma Vessel and Motor Registration Act, 63 O.S. 1991 § 4001 et seq.; and that the evidence presented does not prove a violation of any of the provision of Section 4041 by RESPONDENT.

DISPOSITION

THEREFORE, IT WAS DETERMINED that the complaint of COMPLAINANT, against RESPONDENT, RESPONDENT "A" d/b/a RESPONDENT "B", be denied.

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.