JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-02-08-005 / NOT PRECEDENTIAL**
ID: **P9700188**
DATE: **02-08-00**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION / TITLE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

A. PARTIES:

1. Motor Vehicle Division, Oklahoma Tax Commission, State of Oklahoma, hereinafter ("Commission"), and;

2. PROTESTANT, ANONYMOUS CITY, OKLAHOMA an Oklahoma corporation, in good standing with the State of Oklahoma, hereinafter ("Protestant").

B. CHRONOLOGICAL ORDER OF EVENTS:

1. "Protestant" is a company offering vehicle leases and rentals for the use and benefit of its customers and had done so for a number of years.

2. On May 13, 1997, the "Commission" issued a letter to the "Protestant" indicating that certain vehicles were registered as rental vehicles and rental tax had not been paid. The letter requested that if rental tax was being paid to please return a copy of the permit number showing the rental tax as paid.

3. On May 20, 1997, PRESIDENT of PROTESTANT, issued a letter to AN ANONYMOUS Administrator, Motor Vehicle Division. The letter stated that the vehicle leases were normally two years in length and rental terms usually 12 months and never less that 90 days. Further that they do pay excise tax on the leases and sales tax on the rentals. The letter further stated that they had successful audits by the Tax Commission.

4. On June 20, 1997, the "Commission" issued a letter to the "Protestant" stating that the vehicles audited did not meet the definition of "rental vehicle", therefore all taxes were due. The "Commission" assessed $21,627.00 for additional registration fees and $55,508.00 for excise tax, for a total of $77,135.00. The "Protestant" was given notice that a written request for a hearing must be made within 30 days.

5. On July 2, 1997, a protest letter was timely filed by the attorney for "Protestant".

6. On July 8, 1997, the Administrative Law Judge gave notice of a prehearing conference and set the same for August 13, 1997, at 10:00 p.m., at Room 1-16, M.C. Connors Building, 2501 Lincoln Boulevard, Oklahoma City, Oklahoma.

7. On August 13, 1997, at 10:00 a.m., a telephonic prehearing conference was held. The Administrative Law Judge, and Assistant General Counsel, were physically present in the Judge's office, and THE ATTORNEY for PROTESTANT, telephoned said office and all three parties were placed on conference speaker phone.

8. That on February 13, 1996, the Commission presented a letter to the Protestant whereas an audit had been completed for the period of January 1, 1993, through December 30, 1995, indicating that no additional Sales, Use and Withholding Tax was due.

9. That on February 13, 1996, the Commission presented a letter to the Protestant whereas an audit had been completed for the period of July 1, 1993, through June 30, 1996, indicating that no additional Franchise Tax was due.

C. PREHEARING CONFERENCE ISSUES AND FINDINGS:

1. The parties agreed that 71 vehicles were the subject of the audit. A copy of the audit has been previously supplied by the "Commission" to the "Protestant".

2. The "Protestant" declared that of the 71 vehicles at issue only 40 vehicles remained in its ownership. "Protestant" stated that excise tax and registration fees were due and payable on these 40 vehicles per the amount of said audit. The "Protestant" does not dispute the amount of the excise tax or the additional registration fees that were assessed on said 40 vehicles by the "Commission".

3. The "Protestant" denies owing any excise tax or registration fees on the remaining 31 vehicles for the reason that said vehicles are no longer in its ownership. The "Protestant" does not dispute the amount of the excise tax or the additional registration fees that were assessed on said 31 vehicles by the "Commission".

4. On August 18, 1997, the Court issued a "Pre-Hearing Conference Order" directing the "Commission" to prepare an initial draft of the stipulations and to forward the same to "Protestant" for review on or before September 19, 1997.

D. LEGAL ISSUES:

1. PROTESTANT'S POSITION:

a. The issue before the court concerns the payment of excise tax and additional registration fees on 31 vehicles no longer owned by "Protestant". The vehicles were transferred to third parties prior to notice of being out of compliance with applicable tax regulations. The Protestant does not own or have title to the said vehicles and knows not where the vehicles may be found. The "Commission" has a specific remedy for collection of said excise tax and fee as provided in Title 68 O.S. § 2108. An agent for the "Commission" may demand payment of the tax by the owner and upon failure to pay, seize and hold the vehicle and have the sheriff sell the vehicle for payment of tax and fee. This remedy for nonpayment of tax is Title 68 O.S. § 2108, which is a specific remedy for the Commission to collect the excise tax which should take precedence over any general statute.

b. The "Commission" is barred from the collection of the above said tax and fee from "Protestant" because the vehicles have been sold to third parties and are no longer in the possession of "Protestant".

c. That during the audit referred to in paragraph B 8 & 9, the Protestant was assured that it was in compliance with applicable regulations of the Commission. That at no time did the Protestant misrepresent its business operation to any tag agent or other party as to how it was conducting business and believed that it was in full compliance with the law.

d. The Commission is attempting to say that because the rental permit was not applied for, that this constituted a failure to report which would allow the Commission to assess a tax. The fact is that the Protestant could not have received a rental tax permit if it had been applied for; therefore, they could not have filed a report for a permit for which they were not qualified. The issue before this Court is the remedy for collection of excise tax.

2. COMMISSION'S POSITION:

a. That on all the above stated 71 vehicles, the "Protestant" paid an initial registration fee of $15.00 and a $10.00 fee in lieu of the standard fee based on factory delivered price plus an administrative fee of $4.75, and when rounded, amounts to a $30.00 fee for the initial registration, Title 47 O.S. 1120.1. Upon payment of $30.00, the "Protestant" was granted a special title on each vehicle.

b. That "Protestant", by applying for and receiving the special titles as rental

vehicles, was exempt from paying excise tax and registration fees on each rental vehicle. The "Protestant" did not apply for a Rental Tax Permit nor did they ever pay any rental tax on the vehicles subject to this protest, as provided for in Title 68 O.S. § 2110.

c. The "Protestant", by his own admission, does not qualify for the exemption from excise tax or registration fee. A letter from PROTESTANT, dated May 20, 1997, states that the rental terms for the vehicles are never less than 90 days. One legal requirement to qualify for the exemption of excise tax is that the vehicle shall not be rented to the same person for a period exceeding 90 days. Title 68 O.S. § 2105.

d. The "Commission" has statutory power to determine that a tax is due and propose the assessment of taxes if no return or report has been filed. The taxpayer has a right to protest said assessment and have the cause presented to an Administrative Law Judge. The statutory power and procedure is set forth in Title 68 O.S. § 221. An Administrative Law Judge ruling, in favor of the "Commission", permits collection of said Judgment as provided in Title 68 O.S. § 215.

e. The Court should find and Order that the "Protestant" owes the excise tax and registration fees as assessed by the "Commission."

Additional findings of fact:

1. By Order issued July 1, 1999, the parties were directed to respond to the question "whether a portion of the disputed assessment of excise taxes and registration fees is barred by the provisions of 68 O.S. Supp. 1996, § 223(a).

2. The Division responded by admitting that the excise tax assessment is subject to a three (3) year limitation as provided in Section 223 and that the assessment of registration fees is subject to a two (2) year limitation as provided in 47 O.S. 1991, § 1115(E).

3. The Division further admitted that fourteen (14) vehicles are currently the subject of this protest and that the amount in controversy is inclusive of the excise tax assessment in the amount of $11,791.00 and the assessment of registration fees in the amount of $4,543.00.

4. Protestant responded by stating that it could not agree to the amount in controversy since "[t]hese numbers fail to take into consideration the commercial registration which would have been available to [Protestant] had the tax commission provided the correct information to the taxpayer."

ISSUE AND CONTENTIONS

Three issues are presented for decision. The first issue is whether the statutes authorize the collection of excise taxes and registration fees from the former owner of a vehicle after legal ownership of the vehicle has been transferred to another. The second issue is whether the Division is estopped from attempting to collect the taxes and fees from Protestant because Protestant was assured that it was in compliance with the law and applicable regulations by a tag agent. The third issue is whether the commercial registration rates are applicable to any of the subject vehicles.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Motor vehicle excise tax is levied and shall be collected upon the transfer of legal ownership of any vehicle registered in this state, upon the use of any vehicle registered in this state or upon the use of any vehicle registered for the first time in this state; 68 O.S. 1991, § 2103(A)(1), and upon all subsequent transfers of legal ownership. 68 O.S. 1991, § 2103(A)(2). The tax is due at the time of the transfer of legal ownership or first registration and shall be collected at the time of the issuance of a certificate of title. Id.

3. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle. 47 O.S. 1991, § 1112. All motor vehicles registered with a permanent nonexpiring license plate pursuant to Section 1113 of the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq., unless otherwise specifically provided, shall be registered annually; 47 O.S. 1991, § 1115(A), and a fee shall be paid. 47 O.S. 1991, §§ 1132 and 1132.1.

4. Here, Protestant was not entitled to register the vehicles in question as rental vehicles. See, 68 O.S. 1991, § 2105(j). Therefore, the vehicles were not exempt from the levy of excise taxes under 68 O.S. 1991, § 2103(A) or subject to the special registration fees under 47 O.S. 1991, § 1120.1(B). In addition, because excise taxes are due and payable upon each and every transfer of legal ownership or first registration of a vehicle and registration fees are due and payable annually, Protestant is liable for the excise tax and registration fees on the subject vehicles.

5. The essential elements of an equitable estoppel are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the knowledge, actual or constructive, of the real facts; (3) the intention, or at least the expectation, that such conduct will be acted upon by, or influence, the other party; (4) lack of knowledge and the means of knowledge of the truth as to the facts in question by the party to whom the conduct is made; (5) reliance, in good faith, upon the conduct; and (6) action or inaction based thereon of such a character as to change the position or status of the party to his injury, detriment, or prejudice. See, ***Board of County Commissioners of Marshall County v. Snellgrove***, 428 P.2d 272 (Okl. 1967). See, generally, 28 Am Jur 2d ***Estoppel and Waiver*** § 35.

6. As a general rule, estoppel does not apply against the state acting in its sovereign capacity, and the Tax Commission as an agency of the state is not bound by the unauthorized acts of its officers; ***State ex rel. Cartwright v. Dunbar***, 618 P.2d 900, 911 (Okl. 1980), or because of the mistakes or errors of its employees, ***State ex rel. Oklahoma Tax Commission v. Emery***, 645 P.2d 1048, 1051 (Okl. 1982). An exception is applicable, however, where the facts and circumstances show the interposition of estoppel will further some prevailing principle of public policy or interest; ***Burdick v. Independent School District***, 702 P.2d 48 (Okl. 1985), or where the officers and employees act within their authority, ***State ex rel. Commissioners of Land Office v. Lamascus***, 263 P.2d 426 (Okl. 1953).

7. Motor license agents are self-employed independent contractors. 68 O.S. 1991, § 1140(B). A motor license agent may not under any circumstance hold himself/herself out as an agent of the Tax Commission. Rule 710:60-9-114 of the *Oklahoma Administrative Code*.

8. Rules promulgated pursuant to the Administrative Procedures Act[1] are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. Id.

9. Based on the evidence submitted by the parties, Protestant's estoppel argument is without merit.

[1] 75 O.S. Supp. 1987, § 250 et seq., § 301 et seq.

10. "Any vehicle which has a combined laden weight of eight thousand (8,000) pounds or less and is used primarily for business or commercial purposes may be registered, pursuant to Section 1133 of Title 47 of the Oklahoma Statutes, as a commercial vehicle having a combined laden weight over eight thousand (8,000) pounds and less than fifteen thousand and one (15,001) pounds." 47 O.S. 1991, § 1133.1(A). Passenger vehicles may not be registered as a commercial truck. Rule 710:60-3-92(a) of the *Oklahoma Administrative Code.* Commercial trucks include pickups and other vehicles on a truck chassis. Id.

11. A proposed assessment is presumed correct and the taxpayer bears the burden of proving that it is incorrect, and in what respect. ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okl. 1988). Here, Protestant has not presented any evidence to show that the subject vehicles could have been registered as commercial vehicles. Accordingly, the evidence does not support an adjustment to the assessment of the motor vehicle excise taxes and registration fees against Protestant on the subject vehicles.

12. Protestant's protest to the assessment of motor vehicle excise tax and registration fees on the vehicles in question should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestant, PROTESTANT, be denied. It WAS further DETERMINED that the amount in controversy be fixed as the deficiency due and owing.

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.