JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-05-09-013 / NOT PRECEDENTIAL**
ID: **P9900224**
DATE: **05-09-00**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION / TITLE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, the undersigned finds:

(1) That on June 25, 1999, the Division caused to be issued a proposed assessment against Protestants as follows:

1999 Registration Fees	$ 792.00
1999 Registration Fee Penalty	25.00
2000 Registration Fees	715.00
2000 Registration Fee Penalty	25.00
Excise Tax	2,010.00
Excise Tax Penalty (a/o 06-25-99)	103.25
TOTAL	$3,670.25

(2) That the assessment was based on information that Protestants had titled and registered a 1998 King of the Road Recreational Vehicle (hereinafter R.V.), Vehicle Identification No. XXX, OUT OF STATE.

(3) That Protestants filed a timely protest, asserting that they had done nothing wrong since they have maintained a residence OUT OF STATE since April, 1992. The residence was a motor home stationed at an RV park in ANONYMOUS CITY ONE, OUT OF STATE.

(4) That a Prehearing Conference was held on September 24, 1999. Both parties appeared and MR. PROTESTANT, agreed to provide further documentation to support Protestants' position. The parties were directed to file a status report on or before November 1, 1999.

(5) That on October 12, 1999, the Office of the Administrative Law Judges received a note from MR. PROTESTANT, advising of Protestants' itinerary for October 15, 1999 through December 17, 1999. He further advised that Protestants would store the subject vehicle in ANONYMOUS CITY ONE or ANONYMOUS CITY TWO, OUT OF STATE, and drive a car back to Oklahoma for the holidays and to take care of end-of-year business.

MR. PROTESTANT advised their mailing address would remain in ANONYMOUS CITY TWO, OUT OF STATE.

(6) That on October 12, 1999, the Office of the Administrative Law Judges received a letter dated September 29, 1999, from MS. PROTESTANT explaining Protestants' situation. MS. PROTESTANT asked that the letter be read rather "than go to Court."

(7) That on November 2, 1999, the Office of the Administrative Law Judges received a memorandum from the Division, advising that it was the Division's position that MS. PROTESTANT'S letter did not establish facts or evidence that Protestants were residents OUT OF STATE. The Division advised that it agreed that the matter could be submitted for decision without a hearing.

(8) That by letter issued November 4, 1999, the undersigned advised the parties that the above cause would be taken under advisement for decision.

(9) That on January 6, 2000, the Office of the Administrative Law Judges received a letter dated January 5, 2000, from MR. PROTESTANT. MR. PROTESTANT stated Protestants' are record owner and residing on property in ANYCITY, Oklahoma, as their homestead; that the R.V. is their second home and residence "wherever our travels take us;" that they are in ANONYMOUS CITY TWO, OUT OF STATE, about fifty percent (50%) of the time; that through the situations explained in earlier correspondence, they were in Oklahoma from June, 1998 to July, 1999; that during that time, they exchanged the R.V. for a fifth-wheel in Oklahoma City, Oklahoma; that the R.V. was never registered in Oklahoma because of its usage; that the R.V. is now stored OUT OF STATE; that they do not plan to ever bring it back to Oklahoma; and that they would be in ANYCITY, Oklahoma, until the middle of March, 2000, taking care of taxes and visiting with their children.

(10) That Protestants have owned a residence in the State of Oklahoma since 1975.

(11) That Protestants filed an Oklahoma State Income Tax Return for the year 1998, claiming Oklahoma as their residence.

ISSUE AND CONTENTIONS

The issue presented for decision is whether Oklahoma statute requires that Protestants register the subject vehicle with the State of Oklahoma and pay applicable tax and fees.

Protestants contend that they should be able to register the subject vehicle OUT OF STATE because they maintain a residence OUT OF STATE.

The Division contends that Protestants are Oklahoma residents and, as such, are required to title and register the subject vehicle in the State of Oklahoma.

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) The intent of the legislature as expressed by the provisions of the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq., and the Oklahoma Vehicle Excise Tax Act, 68 O.S. 1991, § 2101, et seq., is that residents of the State of Oklahoma shall register their vehicles with the State of Oklahoma and pay the appropriate registration fees and excise taxes on said vehicles. See, 47 O.S. 1991, §§ 1103 and 1125 and 68 O.S. 1991, §§ 2103 and 2105.

(3) Registration fees and penalties for the year or years a vehicle has not been registered shall be assessed by the Tax Commission. 47 O.S. 1991, § 1115(E). The registration fees and penalties for a vehicle not registered for two or more years shall be due only for the current year and one (1) previous year. Id.

(4) 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).

(5) Here, Protestants have not shown that the vehicle in question should not be registered in the State of Oklahoma and be subject to the appropriate excise tax and registration fees.

(6) Protestants' protest to the assessment of motor vehicle excise tax and registration fees on the subject vehicle should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestants, be denied. It WAS further DETERMINED that the amount in controversy, plus any additional accrued and accruing excise tax penalty, 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.