JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-05-09-015 / PRECEDENTIAL**
ID: **P9900222**
DATE: **05-09-00**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION / EXCISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

Order of Events

1. The vehicle subject to this action is a 1990 GMC Van and has been registered as a "Commercial Vehicle" with the Motor Vehicle Division of the Oklahoma Tax Commission (Division) since June 1999. The vehicle was purchased in January 1999 to replace other commercial vehicle.

2. On July 28, 1999, the Division notified MR. AND MS. PROTESTANT that "Schedule C, Profit or Loss from Business" did not reflect the vehicle being used primarily in a commercial capacity. The Division requested additional documentation, such as Federal Form 4562, that would reflect the vehicle's primary use as a commercial vehicle. If not, the vehicle should be registered at the non-commercial rate for registration year 2000.

3. MS. PROTESTANT responded to the Division's request and stated that she had been self-employed for almost six (6) years and never had to turn in anything but her profit and loss statement to justify her work (for a commercial tag). She stated that she did not file Federal Form 4562 because deducting mileage was a better tax advantage than depreciation.

4. On August 10, 1999, the Division responded and stated that based on the information submitted, the Division was unable to determine if the vehicle qualified for Commercial Registration and requested a mileage breakdown for the vehicle.

5. On August 12, 1999, MS. PROTESTANT responded that she drove two thousand two hundred thirty-two (2,232) miles in her business in 1998. She further stated that the Division has deemed the word "Primarily" to be more than fifty percent (50%) use as a commercial vehicle to qualify for commercial registration. She stated that the statute says nothing about percentages and that her work comes first as based on the definition of "primary" which is stated in the statute. She disagreed with the Division's definition of "primary use" and requested an administrative hearing on the issue.

6. On August 18, 1999, the Division sent the request to the Office of the Administrative Law Judges for hearing. The Court set a Prehearing Conference at 9:30 a.m. on September 27, 1999, and MS. PROTESTANT appeared as did AN ANONYMOUS Assistant General Counsel. The Court entered a Prehearing Conference Order directing the Division to prepare an initial draft of stipulations and forward them to the Protestant on or before October 27, 1999.

Position of Protestant:

7. MS. PROTESTANT is self-employed in a home-based business and uses the vehicle to pick up her work and return it. She admits that she also uses the vehicle for non-business purposes, but the vehicle is primarily used for business, and is used first before other non-commercial reasons.

8. She drove the vehicle approximately two thousand two hundred thirty-two (2,232) miles in 1998 for her home-based business out of a total of approximately ten thousand (10,000) to twelve thousand (12,000) total miles. Further, that even though she does not use the vehicle more than fifty percent (50%) of the time for business purposes, the primary use is to pick up and return work from her home-based business.

Position of Division:

9. The Division needs some method, guide or system to determine which vehicles are "primarily used" in business or commercial enterprises. The Division uses a guide of at least fifty-one percent (51%) of the vehicle mileage or usage must be in the commercial enterprise before the vehicle is eligible for commercial registration. The Protestant estimated that the mileage driven for her home-based business was approximately twenty-two percent (22%) for last year (2,232 miles out of a total of 10,000). Therefore, the Division requests that the vehicle be registered as a non-commercial vehicle.

Legal Authority:

10. The Protestant will introduce the definition of "primarily" from Webster's New World Dictionary and Oxford American Dictionary.

11. Protestant will also identify that the Tax Commission rules and affidavit forms do not contain language that states a vehicle for commercial purposes must be driven fifty-one percent (51%).

12. Further, Protestant will state that there is no "Rule" at the OTC that identifies what "primary use" is and that no language pertaining to the fifty-one percent (51%) has been determined or adopted by the State Legislature. The Division is defining primary use as fifty-one percent (51%) and wants to use "the guide" (see conclusion statement) to

determine if "primary use" is fifty-one percent (51%).

13. Statutory Law: Title 47 O.S. § 1133.1.

14. Rules: OAC 710:60-3-91 & 92.

15. Forms: Affidavit of Commercial Use, OTC Form 745.

Conclusion

The question before the Court is the definition of "primary use" and if the Division may use the guide of requiring the vehicle to be used at least fifty-one percent (51%) of the time in the commercial enterprise before it can be registered as a commercial vehicle. The Division and Protestant agree that the question may be submitted to the Court on Stipulations and Briefs.

ADDITIONAL FINDINGS OF FACT

1. That Protestant provided the following definitions of "primarily:"
   Oxford American Dictionary: A thing that is first in order, time, importance.

   Webster's New World Dictionary: The first in time or order.

2. That the Division provided the following definition of "primary:"
   Black's Law Dictionary 1190 (6th Ed. 1990): First, principal, chief, leading. First in order of time, or development, or in intention.

ISSUE AND CONTENTIONS

The issues presented for decision are (1) whether the Division may use the guide of requiring that a vehicle must be used at least fifty-one percent (51%) of the time in a business or commercial enterprise in order to be eligible to be registered as a commercial vehicle, and (2) whether the vehicle in question was improperly registered as a commercial vehicle.

Protestant contends that neither the statute nor the Oklahoma Tax Commission rules define the term "primarily" and that tag agencies have no "rule" to abide by other than requiring the "Affidavit of Commercial Use and a copy of taxpayer's `Schedule C'" from the previous year's tax forms. Protestant further contends that based on the definition of "primarily" from the dictionaries and because she always picks up her "work" for her home-based business prior to going to the store, shopping, daily duties, etc., she should be allowed to have a commercial tag.

The Division contends that the guide of requiring that a vehicle must be used

at least fifty-one percent (51%) of the time in a business or commercial enterprise is a lenient and fair determination of commercial registration.

CONCLUSIONS OF LAW

1. That the Tax Commission is vested with jurisdiction over the parties and the subject matter of this action, 68 O.S. 1991, § 207.

2. That "[a]ny vehicle, including a station wagon . . ., 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, . . ., as a commercial vehicle". 47 O.S. Supp. 1996, § 1133.1(A).

3. That to register a vehicle as a commercial vehicle pursuant to Section 1133.1, the person shall sign an affidavit attesting to the fact that the person conducts a business or commercial enterprise or is employed by a person conducting a business or commercial enterprise that uses said vehicle primarily for the use of that business or commercial enterprise, shall present a sales tax permit, Federal Employers Identification Number or a copy of Schedule C to their federal income tax return and shall have the words "Commercial Vehicle" permanently and prominently displayed on the vehicle. 47 O.S. Supp. 1996, § 1133.1(B), (C) and (D).

4. That given the statutory requirement that the use of said vehicle shall be primarily for the use of a business or commercial enterprise, and the dictionary definitions of "primarily" as "first in order, time, importance, development, or intention," it is reasonable and fair to require that the stated intent of the use of said vehicle be proven by an objective standard or its actual use.

5. That in this case, the stated intent of the use of said vehicle is that the vehicle is primarily for use of a home-based business. However, the actual use of said vehicle shows the vehicle was used only twenty-two percent (22%) for use in the business whereas, the vehicle was used seventy-eight percent (78%) for use in non-commercial endeavors. When the vehicle's actual use for business is compared to its actual use for non-commercial purposes, it is clear that the commercial use of the vehicle is secondary to its non-commercial use.

6. That requiring commercial registration of a vehicle based on actual use of said vehicle is not improper, but is reasonable and fair under the language of the statute.

7. That Protestants' protest to the Division's disallowance of the commercial registration should be denied.

DISPOSITION

Based on the above and foregoing findings and conclusions, it WAS DETERMINED that actual use of a vehicle based on mileage be adopted as a requirement for commercial registration. It WAS further DETERMINED that the protest of Protestants, MR. PROTESTANT and/or MS. PROTESTANT, be denied and that Protestants be required to register the vehicle as a non-commercial vehicle, with any applicable registration fees due and owing.

OKLAHOMA TAX COMMISSION