JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2000-08-22-021 / NOT PRECEDENTIAL**
ID: **P9900338**
DATE: **08-22-00**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION / EXCISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That on July 27, 1999, Protestant made application for proportional registration of a 1999 MCI Bus.

2. That the application reflects that the bus was purchased on July 19, 1999.

3. That the application also reflects Protestant's address as CITYONE, Oklahoma.

4. That the application was accepted by the Division and proportional registration fees of $853.45 and excise taxes of $10.00 were assessed and collected.

5. That by letter dated October 27, 1999, the Division caused to be assessed against Protestant additional excise taxes in the amount of $12,043.00 on the vehicle in question. The letter indicated that the special reduced excise tax of $10.00 was assessed in error.

6. That Protestant's representative timely protested the Division's action by letter dated November 22, 1999, which set forth the following explanation:

> Our interpretation of Section 710:60-7-1 [sic], Subchapter 7, ***Oklahoma Administrative Code***, is that excise tax is assessed upon transfer of ownership which should involve application for an Oklahoma Title to transfer ownership. Apparently this was also the interpretation of the IRP Section. The IRP section did not charge the excise tax; ownership transfer did not occur and an Oklahoma Title was not issued. Given the fact that [Protestant] maintains offices in other states, had the excise tax been assessed we would not have completed the transaction.

7. That a Prehearing Conference was held on February 7, 2000. Both parties appeared and Protestant's representative agreed to furnish certain information to the Division which established that Protestant was a "tour bus operation" and not a regular passenger route carrier. The parties were directed to file a status report on or before

March 8, 2000.

8. That on March 8, 2000, Division's representative filed a status report, advising that Protestant had faxed evidence that it was a "tour bus operation" and not a bus line for scheduled passenger service. Division's representative further advised that Protestant is regulated by 47 O.S. § 1171 and should be issued a permit by the Department of Tourism and Recreation instead of the Tax Commission, and that he was recommending that the Division withdraw the excise tax and registration fee assessment based upon the jurisdictional and regulatory provision of 47 O.S. § 1171. Division's representative requested an additional thirty (30) days to finalize this case. Pursuant to the Division's request, the parties were directed to file an additional status report on or before April 7, 2000.

9. That on April 7, 2000, Division's representative filed a status report, advising that the Division had agreed to withdraw the excise tax assessment provided Protestant returned the Oklahoma license plate issued on the vehicle. He further advised that although he understood that Protestant's representative agreed to return the tag and have the proper permit issued by the Tourism Department, Protestant had neither returned the tag nor provided proof of the issuance of a permit by the Tourism Department.

10. That a Status Conference was held on April 25, 2000. Protestant neither appeared at the conference nor responded to the notice thereof. Thereafter, notice was mailed to the parties that the record in this cause would be closed and the case submitted for decision upon the filing of a verified response to protest by the Division. Protestant did not respond to this notice.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter 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 under the ***International Registration Plan*** ("IRP") motor vehicle registration and license taxes may be permitted on a proportional basis commensurate with the use of Oklahoma highways on any truck, bus, or truck-tractor or any vehicles engaged in interstate commerce or combined interstate and intrastate commerce. 47 O.S. 1991 § 1120(A).

3. That proportional registration does not apply to "tour bus operations" which are issued permits by the Marketing Services Division of the Department of Tourism and Recreation pursuant to 47 O.S. 1991 § 1171(C). See, 47 O.S. 1991, § 1120(L).

4. That tour bus operations are subject to the registration fees levied by the provisions of Sections 1134.1 or 1138 of Title 47 of the Oklahoma Statutes.

5. That 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).

6. That except for trucks or truck-tractors with a laden weight or combined laden weight of 54,001 pounds or more registered pursuant to Section 1133(A) of Title 47 of the Oklahoma Statutes and trailers or semitrailers primarily designed to transport cargo over the highways of this state and generally recognized as such registered pursuant to Section 1133(C) of Title 47 of the Oklahoma Statutes, which are subject to an excise tax of Ten Dollars ($10.00), the excise tax is levied at a rate of three and one-fourth percent (3 1/4%) of the value of each vehicle. 68 O.S. 1991, § 2103(A)(1).

7. That the provisions of Section 1133(A) and (C) of Title 47 of the Oklahoma Statutes are not applicable to Protestant's operations. Accordingly, the Division did not err in assessing additional motor vehicle excise taxes against Protestant based on the value of the vehicle.

8. That Protestant's protest should be denied.

DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it WAS DETERMINED that the protest of 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.