JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-02-20-003 / NOT PRECEDENTIAL**
ID: **P9700322**
DATE: **02-20-01**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **GASOLINE FUEL TAX / DIESEL FUEL TAX**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

A. PARTIES:

1. Audit Division of the Oklahoma Tax Commission, State of Oklahoma, hereinafter (Commission), and;

2. PROTESTANT dba RANCH, hereinafter (RANCH).

B. ORDER OF EVENTS:

1. The Commission performed a Diesel Fuel Tax audit on PROTESTANT for the period of September 1, 1994 through May 31, 1997. The audit resulted in an assessment of tax, penalty, and interest in the total sum of $1,147.91. Notice was given to PROTESTANT by letter dated October 3, 1997, of the above amount due.

2. The Commission performed a Gasoline Tax audit on PROTESTANT for the period of September 1, 1994 through May 31, 1997. The audit resulted in an assessment of tax, penalty, and interest in the total sum of $5,405.95. Notice was given to PROTESTANT by letter dated October 3, 1997, of the above amount due.

3. On October 15, 1997, PROTESTANT gave written notice of protest to the Diesel Fuel Tax assessment.

4. On October 15, 1997, PROTESTANT gave written notice of protest to the Gasoline Fuel Tax assessment.

5. On or about December 2, 1997, the parties met to discuss the merits of the protests. There was no resolution to the protest at this hearing.

6. On February 25, 1998, a prehearing conference was held and the Court entered an Order directing the Commission to draft stipulations of fact on or before April 17, 1998, and send to PROTESTANT for review. (Additional time was granted by the Court).

C. POSITION OF PROTESTANT

1. PROTESTANT reiterates his position to the Diesel Fuel tax assessment as stated in [the letter of protest]:

> The audit did not take into account the reimbursed expenses on in-state and out-of-state travel showing horses during this period. The fuel use for the diesel truck was an arbitrarily mileage assigned to truck mileage, assuming that all diesel fuel used by this truck came from the ranch storage tanks. No attempt was made to correlate out-of-state reimbursement for fuel to employees, nor were credit card statements checked to establish fuel purchased nor were local fuel purchases used because of lack of gallons stated on the tickets.

PROTESTANT further states that the vehicles were used for agricultural purposes and therefor should be exempt from Diesel Fuel Tax.

2. PROTESTANT reiterates his position to the Gasoline Fuel tax assessment as stated in [the letter of protest]:

> My position is that all vehicles used in the audit period were only for agricultural purposes. I do not purport that all mileage was not on state highways, however, it is my contention that the fact that a vehicle is tagged for highway use is not exempt for agricultural use. In the audit, credit card purchase and statements from local retail fuel providers were not allowed because they did not specify the number of gallons involved, just the total purchase price.

PROTESTANT states that all his vehicles were used for agricultural purposes and should be exempt from Gasoline Fuel Tax.

3. The main objection to each of the Diesel Fuel Tax and Gasoline Fuel Tax is that all the vehicles using diesel and gasoline should be exempt from taxation because they are used almost exclusively for agricultural purposes. PROTESTANT acknowledges some of the mileage driven by the vehicles was on state or county roads and highways in that his ranches are crossed over by state highways and county roads, and to get from one portion to the other requires vehicles being driven on state and county roads. PROTESTANT acknowledges that each of the vehicles that was the subject of the audits were tagged and registered by the Oklahoma Tax Commission.

D. POSITION OF COMMISSION:

1. PROTESTANT bought tax exempt diesel fuel with an agricultural exemption. The exempt fuel was not used for farm tractors or stationary engines or used exclusively for agricultural purposes as required and defined by Oklahoma law.

2. PROTESTANT bought tax exempt gasoline fuel with an agricultural exemption. The exempt fuel was not used for farm tractors or stationary engines or used exclusively for agricultural purposes as required and defined by Oklahoma law.

3. The Commission states that all vehicles that are the subject of the Diesel Fuel Assessment and the Gasoline Fuel Assessment are motor vehicles licensed for highway use. Vehicles that are registered and licensed by the State of Oklahoma may not use tax exempt fuel as they are not considered farm machinery, motorized farm implements, or tractors.

4. The Commission denies the statement made in [the letters of protest] and states that accepted auditing procedures and methods were used and performed by the Commission.

E. LAW AND RULES OF THIS CASE: (Commission's Contentions)

1. The main issue of this case is as follows:

   "May a vehicle that is registered and licensed by the State, use tax exempt diesel and gasoline fuel in said vehicles."

2. PROTESTANT claims that his pick-ups and other vehicles should be allowed to use tax exempt fuel as they are used mainly for "agricultural purposes."

3. The rules of the Oklahoma Tax Commission specifically defines "Farm Machinery". OAC 710:65-13-15(e)(2) unequivocally states that "Farm machinery does not include any motor vehicle licensed for highway use."

4. Further, Oklahoma statutes define "Implement of Husbandry", "Agricultural Purposes" and "Farm Tractor". Title 47 O.S. § 1-125 defines an implement of husbandry as every devise, whether it is self-propelled, not subject to registration if operated upon the highways.

Title 68 O.S. § 500.3(2) defines "Agricultural purposes" as limited to functions performed on the land and the movement of tractors from one field to another or to use farm tractors to move farm products from farm to market.

Section 500.3(25) defines "Farm Tractor" as meaning all tractor-type, motorized farm implements and equipment BUT SHALL NOT INCLUDE truck-type, pickup truck-type, and other motor vehicles required to be registered and licensed by the State.

Title 68 O.S. § 500.10 exempts certain functions from the tax imposed. Section 500.10(8) exempts motor fuel used as fuel for farm tractors or stationary engines owned or leased by any person and used exclusively for agricultural purposes.

F: LAWS AND RULES OF THIS CASE: (Taxpayer's Contentions)

1. The main issue of this case is as follows:

> "May a vehicle that is registered and licensed by the State, use tax exempt diesel and gasoline fuel in said vehicles."

2. Title 68 O.S. § 500.3(2) defines "agricultural purposes" as. . .raising and feeding livestock. . .

3. PROTESTANT claims that his pickups and other vehicles should be allowed to use tax exempt fuel as they are used for agricultural purposes pursuant to 68 O.S. § 500.3(2).

4. Title 68 O.S. § 500.4(C) states that "a tax is imposed on all gasoline used or consumed in this State for use as fuel for agricultural purposes. . .All gasoline sold and used pursuant to this sub-section shall not be subject to the excise tax levied in sub-section A of this section."

5. Title 68 O.S. § 500.10(8) defines "exemptions from motor fuel tax." It states that "motor fuel used as fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes. . ." Remember, as cited above, ranching is an "agricultural purpose."

6. Sub-chapter 13 Sales and Use Tax Exemptions, Part 3. Agricultural transactions of the Oklahoma Tax Commission; OAC 710:65-13-15, "Agricultural production" defined; taxable and exempt transactions, states: "for the purpose of this Section, "agricultural production" and "production of agricultural products" is limited to what would ordinarily be considered a farming operation undertaken for profit. The term refers to the raising of food crops or livestock for sale. Included within the meaning of "agricultural production" and "production of agricultural products, are ranches, orchards, and dairies. . ."farming" or "ranching" means production, harvesting, or processing of agricultural products.

7. OAC 710:65-13-15(d) states that "sale to a farmer or rancher of fuel, clothing, and all other tangible personal property for personal living or human consumption or use are taxable." Obviously, sales to a rancher of fuel not used for personal living would not be taxable under the Oklahoma Tax Commission rules and regulations.

8. OAC 710:65-13-15(f) states "the fact that an item is purchased for use on a farm or ranch, or that a piece of equipment is convenient, does not necessarily make the purpose exempt from sales tax. . . to be directly used by the purchaser on a farm or ranch in the production of food or agricultural products requires that the property in question must have a direct affect on the article being produced."

Surely, no one can question that fuel to run ranching pickups has a direct affect on the cattle being produced on that ranch.

G. ARGUMENTS AND CONCLUSIONS

There is a conflict between the Oklahoma Statutes and the Oklahoma Tax Commission's Rules and Regulations. Obviously, when this occurs, the statute is superior and should be given effect over a Commission rule. As pointed out above, "agricultural purpose" is the raising and feeding of livestock. Taxes imposed on gasoline and diesel for use as fuel for agricultural purposes is taxable in a certain amount, but is exempt on equipment used exclusively for agricultural purposes except as to $0.0008 per gallon.

The Oklahoma Tax Commission, pursuant to their own rules, now wants to change and interpret their rules to not modify the legislative enactment and intent of Title 68 O.S. § 500 *et al.* A plain reading of the Statute clearly indicates that the legislature never intended farmers or ranchers not to have the benefit of the exemption afforded to agricultural purposes.

WHEREFORE, PROTESTANT respectfully requests that the issue be decided in favor of Oklahoma farmers and ranchers and not the Oklahoma Tax Commission.

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 audit period in this cause covers periods prior to and subsequent to the 1996 amendment of the Motor Fuel Tax Code[1].

[1] 68 O.S. Supp. 1996, § 500.1 et seq.

The Code was amended as a result of the decision of the Supreme Court of the United States in ***Oklahoma Tax Commission v. Chickasaw Nation***.[2] 68 O.S. Supp. 1996, § 500.2(C). The recodification is stated to be a clarification of the motor fuel tax as it existed prior to the effective date of the amendment. Id. Therefore, all references shall be to the 1996 amendment to the Code unless specifically provided otherwise.

3. All gasoline and diesel fuel used or consumed in Oklahoma, unless otherwise specifically exempted, is subject to the levy of excise tax at the rate of sixteen cents ($0.16) per gallon for gasoline and thirteen cents ($0.13) per gallon for diesel fuel. 68 O.S. Supp. 1996, § 500.4(A). All gasoline used or consumed in Oklahoma for use as fuel for agricultural purposes shall not be subject to the tax imposed in Section 500.4(A), but shall be subject to an excise tax of two and eight one-hundredths cents ($0.0208) per gallon. 68 O.S.Supp. 1996, § 500.4(C). Exempt from the levy of the tax imposed by Section 500.4(A) is "[m]otor fuel used as fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes, except as to two and eight one-hundredths cents ($0.0208) per gallon of gasoline as provided in [Section 500.4(C)] of [the Code]". 68 O.S. Supp. 1996, § 500.10(8).

4. Prior to the 1996 amendment of the Motor Fuel Tax Code the exemption for motor fuel used for agricultural purposes was set forth in Section 509(b) wherein it provided in pertinent part:

> Every person actually engaged in farming in Oklahoma or in a state which borders the State of Oklahoma and buying motor fuel to be used as fuel for farm tractors or stationary engines owned or leased and operated by him and used exclusively for agricultural purposes, . . . may purchase such motor fuel without paying the tax levied by Section 502 . . . and one-half cent ($0.005) per gallon of the tax levied by Section 516.
>
> Provided, that motor fuel or diesel fuel shall be deemed to be used exclusively for agricultural purposes when used in farm tractors or stationary engines used for any of the hereinafter enumerated purposes or related purposes and the term `agricultural purposes', as herein used, is hereby defined to include: clearing, terracing or otherwise preparing ground on a farm; . . . raising and feeding livestock and poultry . . . movement of tractors, farm implements and equipment from one field to another and use of farm tractors to move farm products from farm to market. The term `farm tractor', as used herein, shall include all tractor-type, motorized farm implements and equipment but shall not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed each year under the provisions of the motor vehicle license and registration laws.

[2] 515 U.S. 450, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995).

5. The definitions of "Agricultural purposes" and "Farm tractor" were carried forward to the 1996 recodification of the Motor Fuel Tax Code. See, 68 O.S. Supp. 1996, §§ 500.3(2) and 500.3(25).

6. The governing principal of statutory construction is to ascertain and give effect to legislative intent. ***Petuskey v. Freeman***, 890 P.2d 948 (Okl. 1995). The legislature will not be presumed to have intended an absurd result; ***TXO Production Corp. v. Oklahoma Corporation Commission***, 829 P.2d 964 (Okl. 1992), or to have done a vain or useless act. ***TRW/Reda Pump v. Brewington***, 829 P.2d 15 (Okl. 1992). Where the language of a statute is plain and clearly expresses legislative will, such language will be followed without further inquiry. ***State ex rel. Dept. of Public Safety v. 1985 GMC Pickup, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852***, 898 P.2d 1280 (Okl. 1995).

7. Prior to the 1996 amendment of the Motor Fuel Tax Code, the partial exemption for fuel used for agricultural purposes was limited to "motor fuel . . . used as fuel for farm tractors or stationary engines . . . and used exclusively for agricultural purposes". 68 O.S. 1991, § 509(b). "Farm tractor" was defined to excluded "truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed under the provisions of the motor vehicle license and registration laws." Id.

Subsequent to the amendment, the exemption for diesel fuel did not change. See, 68 O.S. Supp. 1996, § 500.10(8). However, the partial exemption for gasoline was not so limited, but was extended to gasoline used as "fuel for agricultural purposes"; 68 O.S. Supp. 1996, § 500.4(C), which purposes include "raising and feeding livestock and poultry" among other specific activities. 68 O.S. Supp. 1996, § 500.3(2).

Here, the parties stipulate that the motor fuel taxes were assessed on motor fuel used in vehicles which were registered and licensed pursuant to the provisions of the motor vehicle license and registration laws of Oklahoma. Accordingly, the motor fuel purchased and used as fuel for such vehicles prior to the amendment of the Motor Fuel Tax Code, notwithstanding that the vehicles were used for agricultural purpose, was not exempt from the levy of the motor fuel taxes. The motor fuel purchased and used as fuel for such vehicles subsequent to the amendment is also not exempt, except to the extent that the gasoline used or consumed for use as fuel for such vehicles for agricultural purposes is subject to the tax imposed by Section 500.4(C) rather than Section 500.4(A).

8. Protestant's protest to the assessments should be sustained in part and denied in part. Protestant's protest to the diesel fuel tax assessment should be denied.

Protestant's protest to the gasoline tax assessment should be sustained to the extent the assessment is attributable to gasoline purchased and used subsequent to the amendment of the Motor Fuel Tax Code. In all other respect Protestant's protest to the gasoline tax assessment should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of PROTESTANT d/b/a RANCH be sustained in part and denied in part. It is further DETERMINED that the assessment of gasoline tax, penalty and interest be adjusted in accordance herewith, and that the resultant amount together with the assessment of diesel fuel tax, penalty and interest, plus any additional accrued and accruing interest, be fixed as the deficiencies due and owing.

OKLAHOMA TAX COMMISSION

ADDENDUM TO FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 6th day of October, 2000, the Findings, Conclusions and Recommendations issued on January 12, 2000, in the above styled and numbered cause come on for consideration of additional findings of fact and a recommendation as to the amount of the deficiency which should be confirmed by an order of the Tax Commission.

The Division, as directed by the Findings, Conclusions and Recommendations, adjusted the gasoline fuel tax assessment and provided notice to Protestant, along with notice of adjustments in interest and penalty for the diesel and gasoline fuel tax assessments. Protestant has not challenged the adjustments proposed by the Division.

Upon consideration of the Findings, Conclusions and Recommendations and the adjustments to the assessments, the undersigned finds that the following Findings of Fact should be added to and incorporated in the Findings, Conclusions and Recommendations:

1. That notice of the adjustments to the assessments was filed of record in this cause on September 1, 2000.

2. That the Division revised the diesel fuel tax assessment to an amount of $1,408.57, consisting of tax in the amount of $772.33, penalty in the amount of $77.23, and interest accrued through November 30, 2000, in the amount of $559.01.

3. That the Division revised the gasoline fuel tax assessment to an amount of $6,528.78, consisting of tax in the amount of $3,502.54, penalty in the amount of $350.25, and interest accrued through November 30, 2000, in the amount of $2,675.99.

4. That the aggregate amount in controversy is $7,937.35.

5. That the adjustments comply with the recommendations set forth in the Findings, Conclusions and Recommendations.

6. That Protestant was provided notice of the adjustments.

7. That Protestant responded to the adjustments by submitting a check in the amount of $7,937.35, with the notation "paid under protest as to tax, interest, and penalty."

The undersigned further finds that the following Recommendation should be added to and incorporated in the Findings, Conclusions and Recommendations:

> It is further recommended that the aggregate amount in controversy be fixed as the deficiency.

THEREFORE, the Findings, Conclusions and Recommendations issued on January 12, 2000, are amended to include and incorporate the above and foregoing findings of fact and recommendation.

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.