JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-03-08-008 / PRECEDENTIAL**
ID: **P0000102**
DATE: **03-08-01**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The vehicle in question is a XXXX Pontiac Firebird Trans-Am ST, two-door hatchback.

2. There is no dispute that the vehicle is used primarily for business or commercial purposes.

3. The vehicle was registered as a commercial vehicle and commercial registration fees were paid on the vehicle for the years 1998, 1999 and 2000 upon presentment of an Affidavit of Commercial Use for Vehicles with Combined Laden Weight of 15,000 Pounds or Less and physical inspection of the vehicle by a Motor License Agent located at BIG TOWN, Oklahoma.

4. Upon review of the commercial registration, the Division denied such registration and assessed additional registration fees in the aggregate amount of $405.00 for the years 1999 and 2000.

5. Protestants protested the denial of the commercial registration and assessment of additional registration fees.

ISSUE AND CONTENTIONS

The issues presented for decision are (1) whether the vehicle in question qualifies as a "commercial vehicle" under the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq., (2) whether the Division should be estopped from denying the commercial registration and (3) whether a determination in this cause is moot due to the amendment of the motor vehicle registration laws.

First, Protestants contend that the vehicle in question qualifies as a "station wagon" as that term is commonly used and understood in everyday parlance. In the alternative, Protestants contend that the administrative construction of the statute, Rule 710:60-3-92 of the *Oklahoma Administrative Code*, is impermissively restrictive in that it limits the language "[a]ny vehicle" to exclude "passenger vehicles" and include only "pickups and other vehicles on a truck chassis."

Second, Protestants contend that the Division should be estopped from denying the commercial registration of the vehicle since such registration was approved by a local tag agent. In support of this contention, Protestants contend that a fiduciary relationship exist between the Tax Commission and a tag agent who is hired to perform the tasks of the Commission.

Third, Protestants contend that the determination of whether the vehicle qualifies for commercial registration is moot since the determination can only be applied to the current year vehicle registration and the vehicle is currently registered as a private vehicle under the amended motor vehicle registration laws.

The Division contends that the vehicle in question cannot be construed to be a "station wagon" whether the definition of the term "station wagon" is by statute or within everyday parlance. The Division further contends that *OAC*, Rule 710:60-3-92 was properly promulgated pursuant to the provisions of the Administrative Procedures Act, 75 O.S. 1991, § 250 et seq., whereby the types of vehicles which could qualify as commercial vehicles was clarified and that the Rule by virtue of 75 O.S. 1991, § 308.2(C), has the force and effect of law and must be applied.

The Division also contends that it is not estopped from denying the commercial registration of the vehicle. In support of this position, the Division cites *OAC*, Rule 710:60-9-114 and asserts that a motor license agent is a self-employed independent contractor and is not an employee or agent of the Tax Commission.

The Division additionally contends that the new motor vehicle registration laws do not affect the 1999 and 2000 registration years and therefore the assessment of the 1999 and 2000 registration fees should be sustained.

CONCLUSIONS OF LAW

I. JURISDICTION

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

II. FIRST ISSUE

Whether the vehicle in question qualifies as a "commercial vehicle" under the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq.

1. Section 1133.1 was amended in 1992 to include a "station wagon" as a vehicle which could be registered as a commercial vehicle wherein the provisions of subsection (A) were amended to provide in pertinent part:

Any 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 having a combined laden weight over eight thousand (8,000) pounds and less than fifteen thousand and one (15,001) pounds. 47 O.S. Supp. 1992, § 1133.1(A). 47 O.S. Supp. 1992, § 1133.1(A)[1].

Prior to the 1992 amendment, Section 1133.1 simply referred to "[a]ny vehicle" as a vehicle which could qualify as a commercial vehicle wherein Section 1133.1(A) provided in pertinent part:

> 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, . . ., 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)[2].

2. The Tax Commission, by rule, has consistently construed "[a]ny vehicle" under the provisions of Section 1133.1 to include only "commercial trucks and truck tractors". *OAC*, Rule 710:60-3-91 and 92[3]. Rule 710:60-3-92 defines "commercial trucks" as including "pickups and other vehicles on a truck chassis" and excluding "passenger vehicles." *OAC*, Rule 710:60-3-92(a).

3. The interpretation of "any vehicle" under the provisions of Section 1133.1 as including only "commercial trucks and truck tractors" is consistent with the language of Section 1133.1 since "any vehicle" is modified by the language "combined laden weight." 47 O.S. 1991, § 1133.1(A). "Combined laden weight" is defined by the Oklahoma Vehicle License and Registration Act[4] ("Act") as meaning "the weight of a truck and its cargo or payload transported thereon, or the weight of a truck or truck-tractor plus the weight of any trailers or semitrailers together with the cargo or payload transported thereon." 47 O.S. 1991, § 1102(4).

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[1] Laws 1992, c. 104. § 2, eff. Sept. 1, 1992.

[2] Added by Laws 1986, c. 25, § 1, eff. Nov. 1, 1986.

[3] Added at 8 Ok Reg 3305, eff 7-8-91 (emergency).

[4] 47 O.S. 1991, § 1101 et seq.

4. Rules promulgated in accordance with the Administrative Procedure Act[5] are valid and binding on persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 1991, § 308.2(C). Further, the Legislature in general adopts an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. ***Branch Trucking Co. v. Oklahoma Tax Commission***, 801 P.2d 686 (Okl. 1990). Accordingly, the reference to "any vehicle" in Section 1133.1 is limited to "commercial trucks and truck tractors" including "pickups and other vehicles on a truck chassis."

5. Administrative construction of a statute cannot override the plain and unambiguous language of a statute. ***C. H. Leavell & Co. v. Oklahoma Tax Commission***, 450 P.2d 211 (Okl. 1968). However, where the invalid part of a statute is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected. ***Johnson v. State Election Bd.***, 197 Okl. 211, 167 P.2d 891 (1946).

6. Rule 710:60-3-92(a) excludes a "passenger vehicle" from being registered as a commercial truck. A "Station wagon" is statutorily defined as a "passenger vehicle." This Rule, however, should not be subject to rejection except to the extent that a "station wagon" is not excepted from a "passenger vehicle." First, the Commission has not amended the Rule in contemplation of the amendment to Section 1133.1 to include "station wagons." Second, the Rule comports with the intention of the Legislature. Third, the Rule is susceptible to reasonable enforcement and practicable application.

7. A statutory definition of a term used in an Act supersedes commonly accepted, dictionary, or judicial definitions and is binding unless a contrary intention plainly appears. ***Oliver v. City of Tulsa***, 654 P.2d 607 (Okl. 1982).

8. The Act defines "station wagon" as "any passenger vehicle which does not have a separate luggage compartment or trunk and which does not have open beds, and has one or more rear seats readily lifted out or folded, whether same is called a station wagon or ranch wagon."[6]

9. Protestants' vehicle might not have a separate luggage compartment or trunk, or open beds and might have one or more rear seats readily lifted out or folded, however, the reality of the situation is that Protestants' vehicle is not a station wagon. This Court will not so construe a statutory provision as to create a fiction.

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[5] 75 O.S. 1991, § 250 et seq.

[6] 47 O.S. Supp. 1998, § 1102(24).

Protestants' vehicle is a Pontiac Firebird Trans Am ST, two-door hatchback. Accordingly, since Protestants' vehicle is not a commercial truck or truck-tractor as those terms are defined and is not a station wagon, the vehicle does not qualify as a "commercial vehicle" under the Act.

III. SECOND ISSUE

Whether the Division should be estopped from denying the commercial registration.

1. A motor license agent is a self-employed independent contractor. *OAC*, Rule 710:60-9-114.

2. Rules promulgated in accordance with the Administrative Procedure Act are valid and binding on persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 1991, § 308.2(C).

3. Notwithstanding whether a motor license agent is an agent of the Tax Commission, 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).

4. Based on the above, the Division is not estopped from denying the commercial registration of Protestants' vehicle.

IV. THIRD ISSUE

Whether a determination in this cause is moot due to the amendment of the motor vehicle registration laws.

1. All vehicles are required to be registered on an annual basis and the appropriate fees paid. 47 O.S. 1991, §§ 1115(B) and 1132 and 1133.

2. "If any vehicle is used for a purpose other than that for which it has been registered, the owner of the vehicle shall be required to immediately reregister the vehicle at the appropriate rate." 47 O.S. 1991, § 1133(E).

3. "The Tax Commission shall assess the registration fees and penalties for the year or years a vehicle [is] not registered." 47 O.S. 1991, § 1115(E).

4. A case or controversy exists concerning the additional registration fees due on Protestants' vehicle for the 1999 and 2000 registration years.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is DETERMINED that the protest of Protestants be denied. It is 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.