JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-05-29-014 / NOT PRECEDENTIAL**
ID: **P0100103**
DATE: **05-29-02**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE EXCISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about April 25, 1999, PROTESTANT'S CORPORATION filed with the Tax Commission a Business Registration Form listing PROTESTANT as President of the corporation.

2. The Oklahoma Used Motor Vehicle and Parts Commission issued license number UD-999999-99 to PROTESTANT'S CORPORATION as a used motor vehicle dealer.

3. An Oklahoma Certificate of Title for a 19XX Mazda Millenia was issued to "PROTESTANT or PROTESTANT'S CORPORATION" on January 21, 2000.

4. At the time of registration, no excise tax was required to be paid by the agent registering the vehicle.

5. By letter dated April 12, 2001, the Division assessed PROTESTANT or PROTESTANT'S CORPORATION excise tax on the 19XX Mazda in the amount of $306.00, stating that the "listed vehicle is titled in your name as well as the name of your dealership. As your dealership is listed with the Used Motor Vehicle and Parts Commission as a Corporate license, the licensed dealer excise tax exemption granted when you obtained title . . . no longer applies."

6. The amount of tax assessed was based on the Oklahoma excise tax rate in effect on January 21, 2000, the date the vehicle was titled.

7. By letter dated May 2, 2001, Protestant timely filed a protest to the assessment.

8. At the hearing, PROTESTANT testified regarding the registration of the Mazda stating that the tag agent inquired as to how he wished to register the vehicle and was informed that the excise tax would be waived if he was the dealer. PROTESTANT stated that the tag agent excused herself, researched what Protestant believed to be Tax Commission records, and then he was granted that waiver by the tag agent. Additionally, PROTESTANT stated that in February 2001, PROTESTANT'S CORPORATION ceased doing business, and that in April 2001 he sought and was issued a metal plate for the vehicle.

ISSUE AND CONTENTIONS

Whether Protestant sustained his burden of proof showing in what respect the action or proposed action of the Tax Commission is incorrect.

Protestant contends that there was no change in vehicle ownership when he purchased a standard plate, and that as owner of the dealership, he should not be charged excise tax on the vehicle. Further, Protestant contends that based on the language of the assessment letter and the timing of the assessment, the Division changed its position regarding when the excise tax accrued. Protestant contends that the original position of the Division did not question the applicability of the excise tax exemption on the January 2000 transaction, when Protestant registered the 19XX Mazda, but the Division did question the transaction which occurred April 2001, when Protestant sought a permanent tag for the vehicle.

The Division contends that the excise tax was due at the time of transfer of the vehicle on January 21, 2000. In support, the Division states that Protestant was not licensed individually as a used vehicle dealer and that the applicable statute and corresponding administrative code section does not allow an excise tax exemption to anyone not licensed. Further, the Division contends that a Motor License Agent is a self-employed independent contractor. Any communication between the Motor License Agent and the Protestant is not binding upon the Commission. *Oklahoma Administrative Code 710:60-9-114*.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. 1991, Section 207.

2. Motor vehicle excise tax is levied and shall be collected upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state. 68 O.S. Supp. 1997, Section 2103(A)(1). The tax is due at the time of transfer of legal ownership or first registration and shall be collected at the time of the issuance of a certificate of title. 68 O.S. Supp. 1997, Section 2103(A)(2).

3. Exempted from the levy of motor vehicle excise tax is any used motor vehicle which is owned and being offered by a person licensed as a dealer to sell the vehicle. 68 O.S. Supp. 1993, Section 2105(5).

4. Pursuant to its authority to administer and enforce the tax laws of this State, contained in 68 O.S. 1991, Section 203, the Tax Commission adopted *Oklahoma Administrative Code 710:60-7-5*, which address the circumstances upon which a used dealer qualifies for the excise tax exemption afforded in 68 O.S. Supp. 1993, Section 2105(5). The part pertinent to this protest reads:

> (c) **Used dealers**. Any vehicle owned and being offered for sale by a person currently licensed as a dealer in used vehicles is exempt from excise tax except on the latest manufactured model. If the vehicle is being titled from an MSO or is the latest manufactured model and has not been

previously titled and excise tax paid in Oklahoma, excise tax is due and the first year rate will be charged. The assignment must be made to the dealership's name only. However, a title with an assignment showing an individuals name "DBA" a dealership name will be accepted if the dealership is a partnership or is individually owned and the name on the assignment is a partner or the owner.

5. Motor license agents are self-employed independent contractors. 47 O.S. 1991, Section 1140(B). A motor license agent may not under any circumstance hold himself/herself out as an agent of the Tax Commission. *Oklahoma Administrative Code 710:60-9-114*.

6. Rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, Section 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, Section 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. *Id*.

7. Pursuant to Section 2105(5) of Title 68 and *Oklahoma Administrative Code 710:60-7-5*, under the circumstances where the licensed used motor vehicle dealer is a corporate entity, in order to qualify for the excise tax exemption, the vehicle must be titled only in the name of the corporate entity, which is not the case herein. Therefore, the excise tax assessment should be upheld and Protestant's protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the motor vehicle excise tax protest be denied.

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.