

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-08-16-007 / NOT PRECEDENTIAL
ID: CR020001
DATE: 08-16-02
DISPOSITION: DENIED
TAX TYPE: MV EXCISE / REGISTRATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about October 2, 2001, CLAIMANT received a 1998 Dodge Grand Caravan in trade from CLAIMANT'S CUSTOMER.

2. At the time Claimant took possession of the vehicle, the title was not provided. Subsequent attempts by Claimant to gain possession of the title from CLAIMANT'S CUSTOMER were unsuccessful.

3. Upon discovering that an Oklahoma title had not been issued to the CUSTOMER for the subject vehicle, Claimant, pursuant to a Power of Attorney¹, filed an *Affidavit For Transfer When Assigned Title Is Lost*, and on November 6, 2001, a title for the vehicle was issued by the Oklahoma Tax Commission in the name of CLAIMANT'S CUSTOMER, which was then assigned to Claimant. Because CLAIMANT'S CUSTOMER had not obtained an Oklahoma title for the vehicle, Claimant was required to pay a title fee in the amount of \$11.00, excise tax in the amount of \$513.00, registration fees in the amount of \$309.50, penalties in the amount of \$354.00 and an insurance fee in the amount of \$1.50, for a total aggregate amount of \$1,189.00.

4. At the hearing, Claimant's representative testified that she subsequently sought reimbursement from THE CUSTOMER. However, in December 2001, CLAIMANT'S CUSTOMER provided Claimant with a letter from the Absentee Shawnee Tax Commission informing her that the vehicle was first registered with that Commission on February 23, 1999, and then was issued a duplicate title in 2001. The Absentee Shawnee Tribe of Oklahoma Vehicle Certification of Title for the vehicle, also provided, reflects a date of March 14, 2001. Claimant's representative stated she was advised that CLAIMANT'S CUSTOMER WAS issued the tribal tag because they lived in Indian Housing.

¹ On October 2, 2001, CLAIMANT'S CUSTOMER executed a power of attorney for CLAIMANT to act on his behalf to assign title to the 1998 Dodge and to execute all necessary documents in connection with the assignment.

5. A document entitled "Absentee Shawnee Tax Commission Motor Vehicle Information" set forth the requirements for title and registration as of February, 2001. According to this document, to qualify for an Absentee Shawnee tribal tag, an applicant must reside in one of the following categories:

Absentee Shawnee Tribal Trust Land
Absentee Shawnee Allotted Trust Land
Absentee Shawnee Housing Authority-In Trust

The applicant must provide, among other things, a Certificate of Degree of Absentee Shawnee Indian Blood.

6. Claimant requested a refund of the excise taxes, registration fees and penalties.

7. By letter dated December 28, 2001, the Division denied Claimant's refund request for taxes and fees paid on the vehicle, for the reason that the title was issued based on the sworn affidavit by Claimant that title had been lost and that the tribal title was not acceptable since it had been given without a Bureau of Indian Affairs membership.

8. Claimant protested the denial of the refund request by letter dated January 25, 2002.

ISSUE AND CONTENTIONS

Whether the Division properly denied Claimant's request for a refund of vehicle registration fees, excise taxes and delinquent penalties.

Claimant contends that the vehicle in question, although unknown to them at the time, had been registered with the Absentee Shawnee Tax Commission prior to the application for an Oklahoma title, and that Claimant is entitled to a refund "because there is no possible way to know when or if a vehicle has been registered with a Indian Tax Commission."

The Division contends that neither OF CLAIMANT'S CUSTOMERS are members of the Absentee Shawnee Tribe. Accordingly, the Indian title issued to them was improperly issued and delinquent taxes and penalties were required to be paid before an Oklahoma certificate of title could be issued. Therefore, the Division's denial of Claimant's request for refund was properly issued and is in accordance with the Division's long standing policy.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. § 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 in this state and upon the use of any vehicles registered for the first time in this state. 68 O.S. Supp. 1997, § 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, § 2103(A)(2)².
3. The excise tax levied by Section 2103 is delinquent thirty (30) days after the legal ownership or possession of any vehicle is obtained. 68 O.S. Supp. 1997, § 2103(A)(2). A penalty for failure to remit the excise tax in a timely manner accrues in the amount of \$.25 per day until the excise tax is paid or until the penalty equals the tax. *Id.*
4. The owner of every vehicle in this State shall possess a certificate of title as proof of ownership. 47 O.S. Supp. 1995, § 1105(B).
5. Application for a certificate of title may be made to the Oklahoma Tax Commission or any motor license agent. *Id.*
6. The charge for each certificate of title issued is \$11.00. 47 O.S. Supp. 1995, § 1105(H).
7. Every owner of a vehicle possessing a certificate of title shall, before using the same in the state, make an application for the registration of such vehicle. 47 O.S. 1991, § 1112.
8. For registration year 2000, in addition to the other vehicle registration fees required by Sections 1132(A)(1), 1132.1(A) and 1140(E) of Title 47, a fee of one and one-quarter percent (1¼%) of the factory delivered price of each vehicle shall be computed and assessed at initial registration, 47 O.S. 1991, § 1132(A)(2), and thereafter the registration fee shall be assessed at ninety percent (90%) of the previous year's fee through the twelfth year of registration. *Id.*
9. For registration year 2001, in addition to the registration fees required by Sections 1132.1(A) and 1140(E) of Title 47, a registration fee shall be assessed at the time of initial registration by the owner and annually thereafter. 47 O.S. Supp. 2000, § 1132(A). The fee is based on the year of registration of the vehicle. *Id.*

² Recodified as 68 O.S. Supp. 2000, § 2103(A)(3).

10. If a vehicle is not registered, titled and tagged within thirty (30) days from the date of transfer of ownership, a penalty shall accrue at the rate of \$.25 per day, not to exceed \$25.00. 47 O.S. 1991, § 1132(C)³.

11. All fees and taxes levied by the Oklahoma Vehicle License and Registration Act are, and remain, a first lien on the vehicle upon which the fees or taxes are due until paid. 47 O.S. Supp. 1998, § 1133(H). Title to a vehicle may not be transferred until the unpaid balance on that vehicle has been paid in full. *Id.*

12. In *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993), the Court held that absent explicit congressional direction to the contrary, the state cannot impose motor vehicle excise tax and registration fees on a tribal member living in Indian country.

13. In the instant case, neither OF CLAIMANT'S CUSTOMERS is a member of the Absentee Shawnee Tribe of Oklahoma. Therefore, the delinquent taxes, fees and penalties were properly required before an Oklahoma certificate of title could be issued for the vehicle.

14. The claim for refund was properly denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the motor vehicle registration fees and excise tax claim for refund 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.

³ Recodified as 47 O.S. Supp. 2000, § 1132(D).