JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-10-03-002 / NOT PRECEDENTIAL**
ID: **SJ020006**
DATE: **10-03-02**
DISPOSITION: **DISMISSED**
TAX TYPE: **AD VALOREM**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 12th day of July, 2002, the *Motion to Dismiss* filed by the Assessor of ANONYMOUS County ("Respondent") on July 2, 2002, in the above styled and numbered cause comes on for consideration. Applicant opposes the *Motion* by *Response* filed July 10, 2002. Respondent is represented by AN Assistant District Attorney in and for ANONYMOUS County. Applicant is represented by Attorneys at Law.

Neither party to this proceeding requests a hearing in regard to the *Motion* or *Response.* Further, the undersigned finds that the facts material to the disposition of the *Motion* and *Response* are not in dispute, thus a pure question of law is presented for decision.

Respondent moves for the dismissal of the Application, asserting the Tax Commission lacks subject matter jurisdiction. In support of the *Motion*, Respondent cites the amendment to Section 2902.2 of Title 68 of the Oklahoma Statutes, effective June 7, 2002, which excises the provision mandating review by the Tax Commission and substitutes therefor review by the county board of equalization and further review and appeal in accordance with 68 O.S.2001, ϑ 2895. Respondent further cites ***Barry v. Board of County Commissioners***, 49 P.2d 548 (Okla. 1935) for the proposition that a right created by statute may be prosecuted under a repealing statute where the repealing statute provides a remedy substantially similar to the remedy of the repealed statute.

Applicant opposes the *Motion* and requests the denial thereof. In support of its position, Applicant cites Art. 5, Sec. 54 of the Oklahoma Constitution and asserts that the amendment to Section 2902.2 has no affect on these proceedings since the right had accrued and the proceedings had begun prior to the repeal of the statute. Applicant further argues that Section 2902.2 should be applied prospectively only since such operation is presumed under Oklahoma law and legislative intent to the contrary is neither clearly expressed nor necessarily implied.

Upon review of the file and records, including the Application, *Motion* and *Response*, the undersigned finds:

1. On December 12, 2001, Respondent issued a Notice of Omitted Property assessments against Applicant for the tax years 1998 through 2001.

2. Applicant timely protested the assessments, asserting that it owned no tangible personal property with a taxable situs in ANONYMOUS County, Oklahoma on the assessment dates in question and, in the alternative, filed OTC Form 901 F Applications for Freeport Exemption for each of the tax years in question.

3. On May 10, 2002, Respondent denied Applicant's protest to the omitted property assessments.

4. On May 20, 2002, Applicant filed the Application in question with the Tax Commission in accordance with 68 O.S. Supp.2000, ∋ 2902.2.

6.(sic) Applicant also filed a protest to the denial with the ANONYMOUS County Board of Equalization on May 16, 2002.

7.(sic) The ANONYMOUS County Board of Equalization heard the protest on June 26, 2002, and denied the protest on June 28, 2002.

8.(sic) The 48th Oklahoma Legislature amended Section 2902.2, effective June 7, 2002, by excising the provision mandating review for eligibility of the freeport exemption by the Tax Commission and substituting therefor the following provision:

> Each application for such an exemption shall be examined by the county assessor in the same manner as applications for homestead exemptions are examined pursuant to Section 2893 of this title. Further, the applications shall be reviewed by the county board of equalization in the same manner as homestead exemption applications are reviewed pursuant to Section 2894 of this title and applicants shall have the same rights to review and appeal as provided in Section 2895 of this title.

WHEREFORE, premises considered, the undersigned concludes:

1. Statutes affecting procedure only, as distinguished from those affecting substantive rights, are generally, held to operate retrospectively, absent clearly expressed or implied intention to the contrary. ***Texas County Irrigation and Water Resources Ass'n. v. Oklahoma Water Resources Bd.***, 803 P.2d 1119 (Okla. 1990). A remedial or procedural change is one that affects the remedy only, and does not created, enlarge, diminish, or destroy the vested right. See, ***Forest Oil Corp. v. Corporation Commission of Oklahoma***, 807 P.2d 774 (Okla. 1990). A procedural change shall apply to all pending actions or proceedings. ***Phillips v. H. A. Marr Grocery Co.***, 295 P.2d 765 (Okla. 1956).

2. The right to a freeport exemption is granted by Art. 10, Sec. 6A of the Oklahoma Constitution, which is self executing. ***Independent School Dist. No. 9 of Tulsa Co. v. Glass***, 639 P.2d 1233 (Okla. 1982). Section 2902.2 creates the implement, method or procedure whereby the exemption may be claimed and prosecuted.

3. The 2002 amendment to Section 2902.2 only affects the method or procedure by which the freeport exemption may be prosecuted. The amendment does not diminish nor destroy the right to a freeport exemption, if applicable.

4. Retrospective operation of an amendment to a statute affecting procedure only is presumed under Oklahoma law where the contrary is not clearly expressed or implied. ***Trinity Broadcasting Corp. v. Leeco Oil Co.***, 692 P.2d 1364 (Okla. 1984). Here, the Legislature did not express or imply any intention regarding the prospective or retrospective operation of the amendment to Section 2902.2. Accordingly, the amendment to Section 2902.2 should receive retrospective application.

5. Where a new law of procedure goes into effect prior to the trial of a cause, it governs, unless the statute itself provides otherwise. ***Phillips***, supra. ***Independent Cotton Oil Co. v. Beacham***, 31 Okl. 384, 120 P. 969 (1911). Here, Section 2902.2 is silent regarding whether it is applicable to any pending actions. Accordingly, the amendment to Section 2902.2 is applicable to these proceedings.

6. Section 2902.2, as amended, mandates examination by the county assessor and review by the county board of equalization of each application for freeport exemption. The examination and review shall be conducted in the same manner as homestead exemption applications are examined and reviewed. Further, the amended Section 2902.2 grants the applicant the right to review and appeal as prescribed by Section 2895 of Title 68 of the Oklahoma Statutes.

7. Section 2902.2, as amended, does not authorized examination or review of an application for freeport exemption by the Tax Commission. Accordingly, the Tax Commission lacks subject matter jurisdiction of this cause.

8. The Applicant's application for review of eligibility for freeport exemption should be dismissed.

THEREFORE, it is recommended that the application for review of eligibility for freeport exemption of Applicant be dismissed.

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.