

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2003-01-21-003 / NOT PRECEDENTIAL  
**ID:** SJ020017  
**DATE:** 01-21-03  
**DISPOSITION:** APPLICATION GRANTED / PROTEST DENIED  
**TAX TYPE:** BOAT AND MOTOR  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant's new and used boat and motor dealership is located in southeast ANYCITY at 9999 ANY STREET.
2. The dealership was established in 1995 and complies with the zoning ordinances of the ANYCITY.
3. The Applicant's dealership is one of five dealerships owned by its principal within and without Oklahoma.
4. The Applicant's dealership is located on approximately two and one-half acres of land.
5. The physical facilities consist of approximately 11,000 square feet of showroom, approximately 3,000 square feet of service area, a parts department and a storage area.
6. The Applicant has an investment of approximately \$500,000.00 in the dealership.
7. The Applicant's facilities were specifically designed as a boat and motor dealership. No other business is operated out of the facility.
8. The Applicant is identified as a boat and motor dealership in and through advertisements, signage and yellow page listings.
9. The Applicant is an existing licensed dealer of the following boats: Triton, Chaparral, Xpress and Bennington; and is an existing licensed full-line dealer of Mercury brand outboard motors.
10. The Protestant's new and used boat and motor dealership is located in northwest ANYCITY at 8888 ANONYMOUS DRIVE.
11. The Protestant's dealership was established at its current location in 1985.

12. The Protestant is an existing licensed dealer of the following boat brands: Bayliner, Maxum, Crownline, Stratos/Javeline, Lowe, Moomba and Sea-doo; and is an existing licensed dealer of the following outboard motor brands: Mercury as a package only dealer since 1990 and Yamaha as a full-line dealer since April, 1999.

13. Prior to April, 1999, the Protestant was a licensed full-line dealer of Johnson/Evinrude brand outboard motors and a licensed package dealer of Mercury brand outboard motors.

14. The Protestant is a licensed package dealer of Mercury brand outboard motors only because the Bayliner brand of boats are only sold with a Mercury brand motors.

15. The straight line distance between Applicant's dealership and Protestant's dealership is 6.04 miles.

16. The Applicant seeks to amend its existing new and used boat and motors license to become a package only dealer of Yamaha brand outboard motors.

17. Under the package only dealer agreement, the Applicant can only offer for sale Yamaha outboard motors pre-packaged with the boats the Applicant is licensed to sell.

18. Under the package only dealer agreement, the Applicant can not purchase a Yamaha outboard motor from Yamaha, but must purchase the boat and motor as a unit.

19. Most boats are currently sold in a package type arrangement, whereby the boat, motor and trailer are sold as a unit.

20. The other dealership of which Applicant is a part are full-line Mercury outboard dealers and except for one dealership which is a full-line Yamaha dealer, are package only Yamaha dealers.

21. Applicant does not cost account for its sales of parts, service work and warranty service work.

22. Applicant's sales of parts and service work are profitable.

23. Applicant's sales of warranty service work is not profitable and results in a loss to the dealership.

24. Manufacturers of boat motors have historically failed to support marine dealers to the level necessary to make warranty service work profitable.

25. Marine product consumers shop primarily for the boat with the motor being a secondary consideration.

26. Marine product consumers are primarily concerned with service.

27. Applicant's service warranty work averages between two percent (2%) to seven percent (7%) of its outboard motor sales volume.

28. A packaged dealer and a full-line dealer are required to purchase a minimum amount of parts under their dealership agreements.

29. The minimum purchase requirement is the same for both types of dealers.

30. A full-line dealer is required to purchase a minimum amount of boxed motors each year, whereas a packaged dealer is not required to purchase any boxed motors.

31. There is no difference in the service requirements of a full-line motor dealer and a packaged motor dealer.

32. Yamaha manufactures ninety-five different motor models ranging from 2.5 horsepower to 250 horsepower.

33. Yamaha has packaging arrangements with approximately eighty (80) different boat manufacturers including the Triton, Xpress and Bennington brands of boats sold by Applicant and the Stratos/Javelin and Lowe brand of boats sold by Protestant.

34. The boat brands sold by Applicant are typically of a higher end and have a higher horsepower motor than those sold by the Protestant.

35. There are two (2) Yamaha outboard motor dealerships in the greater Oklahoma City metropolitan area.

36. There are eight (8) Mercury outboard motor dealerships in the greater Oklahoma City metropolitan area.

37. Yamaha is number two (2) after Mercury in smaller horsepower motor sales - 90 horsepower and less - in the United States, having stepped into the void created by the bankruptcy of Outboard Motor Corporation ("OMC") which manufactures the Johnson/Evinrude brand of outboard motors.

38. Yamaha is number one (1) in the one hundred plus horsepower category of outboard motor sales in the United States.

39. Yamaha's metro area market share in the ninety horsepower and less category of outboard motor sales is 19.6% whereas its national market share in that category is 29.5%.

40. Yamaha's metro area market share in the one hundred horsepower plus category of outboard motor sales is 21% whereas its national market share in that category is 42%.

41. The boat brands sold by Applicant typically have the higher end horsepower motors.

42. The boat brands sold by Protestant do not typically have the high horsepower motors.

43. Applicant will service a category of customers not currently being serviced by Protestant.

44. The boat brands sold by Applicant and Protestant do not compete directly with one another.

45. The introduction of an additional dealer in a market that is under-utilized or under-represented typically benefits all dealerships and allows each dealership to grow through the concept of cross-marketing, product visibility and exposure.

46. Currently in the metro area a marine products consumer is limited in the motor brand he can purchase with the boat brands sold by Applicant and is denied the opportunity to purchase such boat brand with a Yamaha motor.

47. Outboard motor manufacturers, as an industry, are replacing two-stroke technology with four-stroke technology.

48. Yamaha is a leader in four-stroke engine technology.

49. A package dealer does not have the same costs as a full-line dealer; i.e., the costs associated with purchasing loose motor and stocking the same.

50. The service equipment, parts and tools, expertise of the technicians and commitment associated with higher horsepower motors is greater than that associated with lower horsepower motors.

### ISSUES

The following issues are presented for decision:

1. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that good cause exists for permitting the Applicant to establish a packaged Yamaha outboard motor dealership within the relevant market area.
2. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that no good cause exists for denying the application to establish the packaged Yamaha outboard motor dealership within the relevant market area.

### CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 63 O.S. 1991, §§ 4042, 4033, 4037.1 and 4037.2.
2. Applicant is clearly recognizable as a bona fide new and used boat and motor dealer having satisfied the existing requirements of subsections (B), (C) and (D) of § 4033 of Title 63 of the Oklahoma Statutes.
3. Based on the evidence presented, Applicant sustained its burden of proving by a preponderance of the evidence that good cause exists for granting the application to amend its current license to establish a packaged Yamaha outboard dealership within the relevant market area. The evidence indicates that the addition of a packaged Yamaha outboard motor dealership will increase competition between motor brands, will benefit all dealerships through cross-marketing and exposure of product and will provide the consuming public with additional choices of boats which can be packaged with Yamaha outboard motors. In addition, the consuming public will be benefited by an additional source of service, parts and repairs for Yamaha outboard motors.
4. Based on the evidence presented, Applicant also sustained its burden of proving by a preponderance of the evidence that no good cause exist for denying the application to amend its current license to establish a packaged Yamaha outboard motor dealership within the relevant market area. Although the costs obligations of a full-line motor dealer are greater because of the requirement to purchase loose motors and stock the same, the full-line dealer has a competitive advantage since he can sell loose motors. In Addition, Protestant's argument that it is not in his best interest or the interest of the consuming public to establish Applicant as a packaged Yamaha outboard motor dealer because Applicant will abandon Yamaha and he will have to service those customers is not only without any basis in the record, but pure speculation.

5. Applicant's request to amend its current new and used boat and motor dealers license to establish a packaged Yamaha outboard motor dealership should be sustained.

6. Protestants' protest to Applicant's request should be denied.

**DISPOSITION**

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the application of the Applicant be sustained. It is further DETERMINED that the Protestant's 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.