

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2003-02-06-004 / NOT PRECEDENTIAL  
**ID:** SJ020020  
**DATE:** 02-06-03  
**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 on the southeastern end of the ANONYMOUS LAKE in CITY A, Oklahoma.
2. APPLICANTS have owned the dealership since approximately 1998.
3. The dealership complies with the zoning ordinances of the CITY A.
4. THE APPLICANTS also own ABC Marina and Yacht Club which is also located on ANONYMOUS LAKE.
5. They have operated ABC Marina and Yacht Club continuously for approximately thirty (30) years.
6. The Applicant's display facilities consist of an area on the highway where boats are displayed on weekends, an area in front of the marina where five to ten boats can be displayed, eight slips with hoist where boats can be displayed in and out of the water and numerous other slips where boats up to sixty feet long can be displayed.
7. The Applicant offers water based service facilities.
8. The Applicant's service facilities consist of 125 boat slips, a boat ramp and a boat house where four boats can be service inside.
9. The Applicant's parts and storage facilities consist of approximately 600 square feet.
10. The Applicant has an investment of approximately two to three million dollars in the dealership and marina.
11. The Applicant is identified as a boat and motor dealership in and through advertisements, signage and yellow page listings.
12. The Applicant employs two service technicians.

13. One of Applicant's service technicians is already trained to service Mercury outboard motors.

14. Except for the Thanksgiving and Christmas holidays, the Applicant is typically open seven days a week year around.

15. The Applicant has annual sales of approximately \$500,000.00, but hopes to increase sales to approximately two and one-half to three million dollars annually.

16. The Protestant's new and used boat and motor dealership is located on the southwestern end of ANONYMOUS LAKE in CITY B, Oklahoma.

17. The Protestant's dealership was established at its current location in 1998.

18. The dealership is a small family owned business.

19. The Protestant's dealership employs two service technicians during the summer and one service technician during the winter.

20. Both service technicians are factory trained Mercury technicians.

21. The Protestant is a licensed full-line dealer of Mercury brand motors.

22. The Protestant is licensed to sell only Mercury brand motors.

23. The Protestant is unaware of any existing problem with the servicing of their customers, although Protestant admits that their Mercury customers are serviced before other potential customers.

24. The Protestant has a 92% customer satisfaction rating with Mercury Marine.

25. The Protestant sells two lines of boats pre-packaged with Mercury outboard motors; Starcraft Pontoon Boats and Viper Bass Boats.

26. The Protestant admits that the Applicant can display more boats in one of its display areas than the Protestant has in stock.

27. The distance between Applicant's dealership and Protestant's dealership is less than 15 miles.

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

29. The Applicant is currently licensed to sell Mercruiser - a Mercury brand stern drive motor.

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

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

32. The Applicant seeks to amend its license to sell Mercury outboard motors prepackaged with a line of pontoon boats.

33. The Applicant is currently looking at two different lines of pontoon boats to determine which it will sell.

34. The line of pontoon boats Applicant proposes to sell prepackaged with Mercury outboard motors are a higher end line of pontoon boats that no other dealership in the area currently sells.

35. The Applicant admits that the lower end of the line of pontoon boats it proposes to sell prepackaged with Mercury outboard motors will compete with the Starcraft pontoon boats sold by the Protestant.

36. The Applicant will also rent or lease the pontoon boats prepackaged with Mercury outboard motors.

37. The Applicant seeks to amend its license to sell prepackaged Mercury outboard motors because its technicians are already trained in Mercury products, its computer system software is set up for Mercury and it already has in stock Mercury parts.

38. The Protestant is the only Mercury outboard motor service facility on the south end of ANONYMOUS LAKE.

39. ANONYMOUS LAKE has approximately 46,000 surface acres.

40. The number of boats using ANONYMOUS LAKE on a regular basis is four per acre.

41. The granting of Applicant's amendment to its current license will be beneficial to the boat and motor business and consuming public in the relevant market area.

42. The granting of Applicant's amendment to its current license will not be detrimental or injurious to the public welfare.

43. The consuming public is not being offered a choice of pontoon boats in the relevant market area and are not receiving adequate service.

44. The granting of Applicant's amendment to its current license will improve the ability of the public to get their boats and motors serviced in the relevant market area.

### **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 Mercury 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 Mercury 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 Mercury outboard dealership within the relevant market area. The evidence indicates that the addition of a packaged Mercury outboard motor dealership will increase competition and will provide the consuming public with additional choices of boats which can be packaged with Mercury outboard motors. In addition, the consuming public will be benefitted by an additional source of service, parts and repairs for Mercury 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 Mercury outboard motor dealership within the relevant market area. The Protestant admits that the consuming public will not be harmed or injured by the granting of the application.

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

**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.

**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.