JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-04-08-07 / NOT PRECEDENTIAL**
ID: **P0200088**
DATE: **04-08-03**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about July 17, 2000, Protestant purchased a new 2001 double wide manufactured home from a business known as ANONYMOUS HOMES.

2. Protestant had taken out a construction loan to pay for the manufactured home, land, improvements and the cost of putting the home on the property, and the excise tax and registration fees due on the manufactured home.

3. Protestant admits that she allowed THE OWNER of ANONYMOUS HOMES access to the funds in her construction loan and authorized him to pay from them, the various expenses, including the excise tax and registration fees.

4. On October 30, 2000, a check in the amount of $1,068.88 was presented by ANONYMOUS HOMES to Motor License Agent No. 5573 in partial payment of the excise tax and registration fees due on Protestant's manufactured home. A portion of the excise tax and registration fees was paid in cash.

5. Payment on the check was stopped by the issuer.

6. Thereafter, notice of the deficiency was forwarded to ANONYMOUS HOMES by the Motor License Agent and on June 28, 2001, by the Tax Commission.

7. Protestant did not receive notice of the delinquency until February 26, 2002, when the Division made a claim against Protestant's 2001 income tax refund.

8. Protestant timely contested the Division's action to apply her refund against the excise tax and registration fee delinquency.

9. By letter dated May 24, 2002, Protestant was notified that the Division waived its claim to her income tax refund and released the intercepted refund to her.

10. By letter dated May 28, 2002, Protestant was notified that the Division was seeking payment of the delinquent excise tax and registration fees from her.

11. By letter dated May 30, 2002, Protestant timely protested the Division's action, asserting that payment of the money owed should be collected from THE OWNER OF and/or ANONYMOUS HOMES.

12. The total amount in controversy is $1,121.88, inclusive of excise tax and registration fees in the amount of $1,068.88, penalty/interest in the amount of $28.00 and a service charge in the amount of $25.00.

ISSUE

The issue presented for decision is whether Protestant, as the purchaser and owner of the manufactured home, is liable for the excise tax and registration fees levied on the home.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. "Any person purchasing a new or used manufactured home or owning a manufactured home which has not been registered in this state * * * shall pay the excise tax levied by Section 2103 of Title 68 of the Oklahoma Statutes at the time such person is applying for a certificate of title for such manufactured home." 68 O.S. 2001, § 2104.3(A).

3. "The purchaser of a new or used manufactured home shall, within thirty (30) days of the date of purchase, register the home with the Tax Commission or a motor license agent pursuant to the provisions of Section 1117 of [the Oklahoma Vehicle License and Registration Act[1]]." 47 O.S. 2001, §1113(E). The application for registration and certificate of title for a manufactured home "shall be accompanied by the registration fees required by Section 1135 of [the Oklahoma Vehicle License and Registration Act] and any penalties thereon." 47 O.S. 2001, § 1117(B). "Upon the filing of an application for registration and certificate of title, the payment of fees as required by Section 1133 of [the Oklahoma Vehicle License and Registration Act], the excise tax as provided for in Section 2104.3 of Title 68 of the Oklahoma Statutes and the furnishing of proof satisfactory to the Tax Commission or motor license agent that all ad valorem taxes have been paid, the Tax Commission or motor license agent shall assign the manufactured home a distinctive number and shall issue to the owner of the manufactured home a certificate of title, a manufactured home registration receipt, Manufactured Home Registration Decal, and an excise tax receipt. Id.

[1] 47 O.S. 2001, § 1101 et seq.

4. Use of the word "shall" in a statutory provision means the described action is mandatory. ***Jordan v. State***, 763 P.2d 130 (Okl.Cr. 1988). Mandatory construction of the word "shall" is conditioned upon finding that there is no contrary legislative intent. ***Application of Proposed 1st City Bank of Healdton***, 735 P.2d 350 (Okl.App. 1987). The provisions of the Vehicle Excise Tax Code and the Oklahoma Vehicle License and Registration Act do not indicate a contrary intent to the mandatory construction of the word "shall".

5. Protestant, as the purchaser and owner of the manufactured home, is by statute liable for the delinquent excise tax and registration fees levied on the manufactured home. Whatever arrangement or agreement Protestant had with the seller of the manufactured home is personal to them. The Tax Commission cannot be bound by this arrangement or agreement.

6. Protestant's protest to the Division's action is denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy be fixed as the deficiency due and owing to the Tax Commission.

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.