

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-07-13-09
ID: CR-04-001-H
DATE: JULY 13, 2004
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE EXCISE/CLAIM FOR REFUND
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was held on April 29, 2004, at approximately 9:30 a.m. Notice of hearing was mailed to the Protestants, at their last-known address. The Protestants did not appear at the hearing. Upon conclusion of the hearing the record was closed and this case was submitted for decision April 29, 2004.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the position letters, and briefs of the parties, the undersigned finds:

1. On December 19, 2003, the Protestants, Oklahoma residents, purchased a 2004 Honda Pilot ("Vehicle") in Phoenix, Arizona. The purchase contract indicates Protestants' address as TULSA ADDRESS. Protestants paid Arizona sales tax on the Vehicle at the time of purchase in the amount of \$1,609.72.¹
2. On January 6, 2004, the Protestants applied for an Oklahoma title on the Vehicle and paid Oklahoma excise tax in the amount of \$934.00.
3. On or about February 2, 2004, the Protestants requested a refund of the \$934.00 in Oklahoma excise tax paid on January 6, 2004.
4. On February 23, 2004, the Division notified the Protestants that their request for refund had been denied because the vehicle had not been registered in another state for at least sixty (60) days and did not qualify for an exemption.²
5. On March 5, 2004, the Division received a timely protest to the denial of the Protestants' claim for refund.³ The Protestants do not dispute the amount of the excise tax levied.
6. The Protestants sole contention is that they are exempt from paying Oklahoma excise tax because they paid sales tax in Arizona at the time the Vehicle was purchased.
7. On March 26, 2004, a Notice of Hearing was mailed advising that the hearing in this matter was set for April 29, 2004, at 9:30 a.m.⁴

8. The Protestants did not appear at the scheduled hearing on April 29, 2004, at 9:30 a.m.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.⁵
2. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in Oklahoma.⁶
3. The tax levied shall be due at the time of transfer of legal ownership or upon the first registration of the vehicle in Oklahoma.⁷
4. An exemption from excise tax exists on any vehicle brought into Oklahoma by a person living in another state who has owned and registered the vehicle in their former state of residence for at least sixty (60) days prior to the time it is required to be registered in Oklahoma.⁸
5. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof⁹ to show the action of the Commission is incorrect, and in what respect.¹⁰
6. The Protestants have failed to meet their burden of proof. Protestants were residents of Oklahoma who purchased the Vehicle out of state, without registering it, and brought the Vehicle into the State of Oklahoma for registration.

The Protestants do not qualify for any of the exemptions contemplated by Section 2105 of Title 68. The Protestants have not presented any legal authority to support their contention that the State of Oklahoma should refund the excise tax paid on the Vehicle because the Protestants paid sales tax on the Vehicle at the time of purchase in Arizona. There is no statutory authority or case law in the State of Oklahoma, which supports the Protestants' position.

DISPOSITION

It is the ORDER OF THE OKLAHOMA TAX COMMISSION, based on the above and foregoing findings and conclusions, that the 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.

¹ Exhibit "B"

² Exhibit "A".

³ Exhibit "C".

⁴ Exhibit "D".

⁵ 68 O.S. § 227(d), which states:

If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

See also 68 O.S. § 227(e), which states:

Upon the taxpayer's timely filing a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

⁶ 68 O.S. § 2103(A) provides in pertinent part:

1. Except as otherwise provided in Sections 2101 through 2108 of this title, there shall be levied an excise tax 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 vehicle registered for the first time in this state. The excise tax for new vehicles shall be levied at three and one-fourth percent (3¼%) of the value of each new vehicle. . . .

⁷ 68 O.S. § 2103(A)(3):

The tax levied pursuant to this section shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Oklahoma Tax Commission, or an appointed motor license agent, at the time of the issuance of a certificate of title for any such vehicle. In the event an excise tax is collected on the transfer of legal ownership or use of the vehicle during any calendar year, then an additional excise tax must be collected upon all subsequent transfers of legal ownership. In computing the motor vehicle excise tax, the amount collected shall be rounded to the nearest dollar. The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

⁸ 68 O.S. § 2105 provides:

An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by Section 2101 et seq. of this title for:

* * *

2. Any vehicle brought into this state by a person formerly living in another state, who has owned and registered the vehicle in such other state of residence at least sixty (60) days prior to the time it is required to be registered in this state; provided, however, this paragraph shall not apply to businesses engaged in renting cars without a driver;

⁹ The standard of review in an administrative proceeding is preponderance of the evidence. *Oklahoma Tax Commission Order No. 1999-04-08-003* (citing *Oklahoma Tax Commission Order No. 1991-10-17-061*. *OAC 710:1-5-77(b)* provides in pertinent part that "preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

¹⁰ *OAC 710:1-5-47*. See *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.