JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2005-05-24-04 / PRECEDENTIAL
ID:	CR-04-011-K
DATE:	MAY 24, 2005
DISPOSITION:	DENIED
TAX TYPE:	SALES TAX/MANUFACTURERS EXEMPTION
APPEAL:	AFFIRMED
CITE:	2006 OK CIV APP 43, 134 P.3d 918

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 21, 2002, Claimant filed an Application for Credit or Refund of State and Local Sales or Use Tax, Form 13-9, with the Division for the period of "2001 and 2002" in the amount of $28,480.49. On November 12 and 14, 2002, Claimant filed two separate Application(s) for Credit or Refund of State and Local Sales or Use Tax, Form(s) 13-9, with the Division for the period of "November 1999 -October, 2002" in the aggregate amount of $16,008.38. On February 24, 2003, Claimant filed an Application for Credit or Refund of State and Local Sales or Use Tax, Form 13-9, with the Division for the period of "May 30, 2000 - August 12, 2002" in the amount of $10,300.72. The total amount claimed was $54,789.59.

The Division by letters dated September 30, 2004 and October 1, 2004, granted a portion of the refund claims filed on October 21, 2002, November 12, 2002 and November 14, 2002, in the aggregate amount of $10,639.54, and denied the remainder of the refund claims and the total amount of the refund claim filed on February 24, 2003. The total amount denied by the Division was $44,150.05. The Division denied the refund of any sales taxes paid on purchases made prior to the date of Claimant's application for a manufacturer sales tax/exemption permit ("MSEP").

On November 12, 2004, the Division forwarded its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission.[2] The case was docketed as Case No. CR-04-011-K and assigned to ALJ, Administrative Law Judge.[3]

By letter dated November 16, 2004, Claimant's protest was scheduled for hearing for January 6, 2005.[4] On December 22, 2004, the parties filed a joint *Request for Additional Time to Have Protest Decided on Briefs*. Pursuant to the *Request*, a letter was issued setting forth dates for the parties to file a stipulation of facts and briefs in support of their respective positions.[5] On

[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the Oklahoma Administrative Code ("*OAC*").

[3] *See*, *OAC*, 710:1-5-22 and 710:1-5-30.

[4] *See*, 68 O.S. 2001, § 227(e).

[5] *OAC*, 710:1-5-38.

January 21, 2005, Protestant filed an *Unopposed Request for Extension of Time*. Protestant's *Request* was granted and a letter was issued setting forth a new procedural schedule.

A *Joint Stipulations* with attached exhibits was filed by the parties on March 7, 2005. On March 14, 2005, the Division filed *Division's Brief*. *Brief of Protestant, CLAIMANT* was filed on March 17, 2005. *Division's Response Brief* was filed on March 23, 2005. And *CLAIMANT'S Reply to the Division's Brief* was filed on March 29, 2005. Whereupon the record in this cause was closed and the matter was submitted for decision.[6]

FINDINGS OF FACT

Upon review of the file and records, including the *Joint Stipulations*, the attached exhibits and the pleadings of the parties, the undersigned finds:

A. The parties stipulate to the following:

STATEMENT OF FACTS

1. CLAIMANT owns grocery stores in Oklahoma that include photo processing operations.

2. During the periods encompassing CLAIMANT'S claim for refund, covering November, 1999 through 2002, the OTC has considered photo processing equipment to be manufacturing equipment.

3. On or before October 9, 1986, CLAIMANT'S sales tax permit number 999999 under federal identification number 99-9999999 was renewed by the OTC.[7]

4. On June 14, 2002, CLAIMANT requested information from the OTC for obtaining a manufacturer's exemption permit. CLAIMANT also inquired if a manufacturer's limited exemption certificate could be retroactive to the date that manufacturing operations began. The Commission representative replied providing information on the appropriate forms to use for making application for an exemption permit. The Commission representative also advised CLAIMANT that "it is possible for the exemption to be made retroactive up to 3 years." Exhibit A to the Joint Stipulations.[8]

5. On June 17, 2002, CLAIMANT applied for a manufacturing exemption for 9 of its locations where it conducted photo processing operations. In its cover letter to the OTC transmitting the applications, CLAIMANT requested that the exemption be granted as retroactively

[6] *OAC*, 710:1-5-39(a).

[7] Footnote 1 original to the *Joint Stipulations*. The footnote provides: "The Division searched its records but could not find a copy of CLAIMANT'S original Business Registration Application."

[8] E-mail correspondence between VICE-PRESIDENT, Claimant's Vice-President of Finance and OTC EMPLOYEE, Problem Resolution, Taxpayer Assistance Division of the Tax Commission.

as allowable. In addition, on the application form for each location in which photo processing operations were conducted and in accordance with the instructions included on the form, CLAIMANT indicated the date on which manufacturing had begun at each location, which, in all cases, was prior to the date of application. On October 7, 2002, CLAIMANT applied for a manufacturing exemption for a tenth location. Exhibits B-1 and B-2 to the Joint Stipulations.[9]

6. It is not known who made the handwritten date notations on CLAIMANT'S permit applications, or when they were made. It was not the practice of the Taxpayer Assistance Division to make such notations.

7. Prior to CLAIMANT'S application for a manufacturing exemption, CLAIMANT had never applied for nor did CLAIMANT possess a manufacturing exemption permit.

8. On November 21, 2002, the OTC advised CLAIMANT that it had determined that CLAIMANT qualified as a manufacturer and exemption permits had been issued for the initial 9 locations. On March 26, 2003, the OTC advised CLAIMANT that it had determined that CLAIMANT qualified as a manufacturer and a permit had been updated for the 10th location. Exhibits C-1 and C-2 to the Joint Stipulations.[10]

9. CLAIMANT received Manufacturer Sales Tax/Exemption Permits (MSEPs) for the 10 locations. The effective date shown on the MSEPs issued to CLAIMANT reflected the effective date of CLAIMANT'S most recent sales tax permit, October 9, 1986. Exhibit D to the Joint Stipulations.[11]

10. Claiming the manufacturer's exemption, CLAIMANT timely filed applications for a sales tax refund on October 21, 2002, November 12, 2002, November 14, 2002 and February 24, 2003. The aggregate amount of the refunds requested was $54,789.59. Exhibits E-1 through E-4 to the Joint Stipulations.[12]

11. The Division granted CLAIMANT a refund of all sales taxes paid after the date of CLAIMANT'S exemption applications, in the amount of $10,639.54. The Division denied CLAIMANT'S request for a refund of sales taxes paid prior to the date of CLAIMANT'S exemption applications in the amount of $44,150.05. Exhibits F-1 through F-4 to the Joint Stipulations.[13]

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[9] Business Registration Forms.

[10] Letters of November 21, 2002 and March 26, 2003, with the auditor's work papers corresponding to each of the ten (10) locations.

[11] Copies of the Manufacturer Sales Tax/Exemption Permit issued to each of the ten (10) locations.

[12] Copies of the Application(s) for Credit or Refund of State and Local Sales or Use Tax, Form(s) 13-9.

[13] Copies of the letters partially granting and partially denying the sales tax claim for refunds of Claimant dated September 30, 2004 and October 1, 2004.

12. Since 1998, the OTC has granted millions of dollars of sales tax refunds based on manufacturer's exemption claims.

13. On October 12, 2004, CLAIMANT timely filed a protest of the refund denied by the Division. Exhibit G to the Joint Stipulations.[14]

14. The exemption permit granted to the taxpayers in *Apache Corp. v. Oklahoma Tax Commission*, 2004 OK 48, 98 P.3d 1061, did not reflect an effective date prior to the date of application.

ISSUE PRESENTED

WHETHER THE COMMISSION IMPROPERLY DENIED THAT PORTION OF CLAIMANT'S REQUEST FOR REFUND OF SALES TAXES PAID PRIOR TO THE DATE OF CLAIMANT'S EXEMPTION APPLICATION.

CLAIMANT'S CONTENTIONS

1. CLAIMANT is entitled to the balance of the refund at issue because those sales taxes were paid after the effective date on CLAIMANT'S MSEPs.

2. The amendment to CLAIMANT'S sales tax permit, which added the manufacturer's exemption relates back to the date of the permit.

3. By placing an effective date on the MSEPs issued to CLAIMANT which predates CLAIMANT'S application for an exemption permit, the Commission waives any defense to a claim for refund of sales taxes paid prior to the date of the application.

DIVISION'S CONTENTIONS

1. That CLAIMANT is not entitled to their claims for refund prior to their applications for exemption as a manufacturer.

2. That CLAIMANT did not apply for an MSEP for 9 of its locations until June 17, 2002, and for its 10th location until October 7, 2002.

3. That under § 1395.2 of Title 68 of the Oklahoma Statutes, CLAIMANT was not eligible for a manufacturer's exemption prior to its application dates.

4. That the OTC was authorized by the legislature (§ 1359.2B), to design the MSEP, and that in doing so, the OTC did not amend, but rather created a combination sales tax permit and manufacturer exemption permit reflecting the information contained on CLAIMANT'S current sales tax permit, including its sales tax "permit effective" date and "expiration" date.

[14] Letter protesting the partial denials of Claimant's sales tax claims for refund dated October 12, 2004.

5. That a manufacturer's exemption permit is only valid from the date of issuance and constitutes proof of the exempt status of the taxpayer.

6. That "as a general rule, statutes and statutory amendments will be construed as operating prospectively unless by express declaration or necessary implication from the language used, the Legislature clearly demonstrates a contrary intent." *Dolese Bros. v. State ex rel. Oklahoma Tax Commission*, 2003 OK 4, 64 P.3d 1093, as cited by *Apache Corporation v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, 98 P.3d 1061.

7. That tax statutes are penal in nature and, as such, are to be strictly construed. *Globe Life and Accident Insurance Co. v. Oklahoma Tax Commission*, 1996 OK 39, 913 P.2d 1322 (1996); *Mid- Continent Pipeline Co. v. Crauthers*, 267 P.2d 668 (Okla. 1954).

8. That the Division correctly denied that portion of CLAIMANT'S refund claim for the periods preceding its applications.

9. That the burden of proof in all tax cases is on the Taxpayer to show in what respect the OTC's actions are incorrect.

10. That CLAIMANT will not be able to meet its burden of proof.

B. Additional Findings:

1. The Business Registrations, Exhibits B-1 and B-2, report that Claimant began its manufacturing operations at its location in Tahlequah, Oklahoma on March 29, 1995, at its location in Sapulpa, Oklahoma on March 21, 1992, at its location in Owasso, Oklahoma on January 9, 1989, at its location in Jenks, Oklahoma on June 1, 1996, at its locations in Tulsa, Oklahoma on February 7, 1997 and March 1, 2000, and at its locations in Broken Arrow, Oklahoma on November 15, 1997 and August 1, 2002.

2. The amount in controversy in this cause is $44,150.05, however it can not be determined from the record whether the Division audited those items claimed to be exempt from taxation prior to the date of Claimant's application for a manufacturer exemption permit to determine whether the items were used in Claimant's manufacturing operations.

ISSUE AND CONTENTIONS

There is no dispute in this cause that Claimant is involved in manufacturing operations in the photo processing departments of its grocery stores. Further, for purposes of this proceeding, there is no dispute that Claimant's claim for refunds involve sales taxes paid on the purchase of tangible personal property used in its manufacturing operations. The issue submitted for decision presents a question of law. The issue is whether the Division's denial of Claimant's refund claim for sales taxes paid on this property prior to the date of its application for a manufacturer exemption permit, but within three (3) years of the filing of the claim is erroneous.

Claimant initially contends that it is entitled to the relief requested, the balance of the claimed refunds, because it has satisfied all requirements necessary for the refunds. In support of this contention, Claimant argues that it satisfied the statutory condition precedent for entitlement to the exemption by applying for and receiving a manufacturer exemption permit prior to filing its claim for exemption by filing the refund claims. Claimant further argues that the statute does not limit the permit to prospective application. In support of this argument, Claimant asserts that the statute is clear and unambiguous and as such, does not permit any interpretative devices which would deny the exemption for purchases made prior to the date of the application for a manufacturer exemption permit. Claimant further asserts that the Division's interpretation of the statute to deny the exemption to any taxpayer who does not present proof of exemption at the time of sale denies manufacturers the right to file claims for refund of taxes erroneously remitted to the state and is opposite to the Commission's longstanding practice of accepting refund claims of taxes erroneously remitted by manufacturers.

Claimant further contends that it is entitled to the balance of the claimed refunds because its exemption permit was effective throughout the period covered by the claims. In support of this contention, Claimant argues that the Division amended Claimant's sales tax permit when it modified the permit to include the manufacturer exemption, that the effect of the amendment relates back to the effective date of Claimant's sales tax permit, October 9, 1986 and therefore, Claimant's manufacturing exemption became operative on the effective date of its sales tax permit. Claimant further argues that the decision in ***Apache Corp. v. Oklahoma Tax Commission***, 2004 OK 48, 98 P.3d 1061, does not apply in this proceeding. In support of this argument, Claimant asserts that the exemption permit it received had a retroactive effective date, whereas the exemption permit of the taxpayer in ***Apache*** did not reflect an effective date prior to the date the taxpayer applied for the permit.[15]

Claimant further contends that it is entitled to the balance of the claimed refunds because the Division by placing a retroactive date on the exemption permits waived any objection or defense to the claims. In support of this contention, Claimant argues that the failure to have an exemption permit at the time of purchase is cured by the grant of a permit with a date prior to the date of the purchase. Claimant further argues that the Division not only has the discretion to issue retroactive permits, but its policy and practice allow retroactive permits.

Claimant further contends that the principle of "burden of proof" is not applicable in this case. In support of this contention, Claimant argues that what is at dispute in this case is the law applicable to the facts which have been stipulated to by the parties. Claimant further argues that since the "issue" date of a permit can be defined as the "effective" date of the permit, the exemption statute must be interpreted to allow the refunds.

The Division contends that it correctly denied Claimant's claim for a refund of the sales tax it paid before it qualified for a manufacturer's exemption. In support of this contention, the Division argues that the statute requires a taxpayer to provide the vendor proof of eligibility for the

[15] The parties stipulate that "the exemption permit granted to taxpayers in ***Apache Corp v. Oklahoma Tax Commission***, did not reflect an effective date prior to the date of application." At the time of the decision in Apache, taxpayer had not been granted a manufacturer exemption permit. (Citation omitted). ***Apache***, *id*. at ¶ 6.

exemption at the time of sale in order to qualify for the manufacturer's exemption, that proof of eligibility is a manufacturer exemption permit and that Claimant had no proof to furnish a vendor and was therefore not eligible to claim an exemption until it sought or applied for a manufacturer exemption permit.

The Division further contends that the permit effective date on the manufacturer sales tax/exemption permits issued to Claimant is irrelevant. In support of this contention, the Division argues that the only date required to be affixed to a manufacturer sales tax/exemption permit is the expiration date which corresponds with the expiration date of the sales tax permit. The Division further argues that when it created Claimant's manufacturer sales tax/exemption permit it utilized the information in Claimant's sales tax permit and that the permit effective date on Claimant's manufacturer sales tax/exemption permit is merely the date Claimant's sales tax permit became effective, nothing more and nothing less. The Division further argues that the effective date of Claimant's manufacturer sales tax/exemption permit can not relate back to the date Claimant's sales tax permit became effective since the statute authorizing a manufacturer exemption permit did not become effective until November 1, 1998. The Division further argues that the statute clearly and unambiguously provides that an exemption permit does not become valid until the day it is issued and that in fairness to Claimant, the Division allowed the refunds claimed by Claimant from the date of its application for a manufacturer exemption permit once the Division was able to determine Claimant qualified as a manufacturer since the Division is often hamstrung in its ability to keep up with the demand of manufacturer exemption permit applications. The Division further argues that Claimant could have received a retroactive manufacturer exemption permit if it had been the holder of a manufacturer limited exemption certificate[16], however Claimant had neither applied for nor received a manufacturer limited exemption certificate prior to applying for the manufacturer exemption permit. The Division further argues that the portions of Claimant's refund claims denied by the Division are barred by Claimant's failure to follow the mandatory procedure of Section 1359.2, which provisions operate prospectively, citing ***Apache Corp. v. Oklahoma Tax Commission***, 2004 OK 48, 98 P.3d 1061.

The Division further contends that Claimant bears the burden of proving the Division's actions are wrong and in what respect. In support of this contention, the Division cites *OAC*, 710:1-5-47 and ***Continental Oil Company v. Oklahoma State Board of Equalization***, 1976 OK 23, 570 P.2d 315. The Division also cites ***Globe Life and Accident Insurance Company v. Oklahoma Tax Commission***, 1996 OK 39, 913 P.2d 1322 and ***State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County***, 1952 OK 241, 206 Okl. 699, 246 P.2d 368, for the propositions that tax statutes are penal in nature, and as such, are to be strictly construed and that strict construction refuses to extend the law by implication or equitable consideration and confines its operations to cases clearly with the letter of the statutes, as well as within its spirit or reason.

[16] A document created by regulation and, upon certification by the Tax Commission, issued to manufacturers as proof of eligibility for an exemption from taxation on purchases of tangible personal property directly used in a manufacturing process. See, *OAC*, 710:65-7-6(d)(2) and 710:65-13-151. The manufacturer limited exemption certificate was replaced by the manufacturer exemption permit. See, 68 O.S. Supp. 1998, § 1359.2(D).

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 2001, § 227(e).

2. All sales of tangible personal property are subject to sales tax unless otherwise specifically exempted by the Oklahoma Sales Tax Code[17]. 68 O.S. Supp. 1998, § 1354(A)(1). The phrase "tangible personal property" is all inclusive, and not limited except by specific exemption. ***Magnolia Petroleum Co. v. Oklahoma Tax Commission***, 1958 OK 124, 326 P.2d 821.

3. Claimant's claim for refund is based on the manufacturer's exemption. At all times relevant herein, the manufacturer's exemption provided:

> There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:
>
> 1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation.

68 O.S. Supp. 1998, § 1359(1).[18]

4. In 1998, the Legislature enacted Section 1359.2 with respect to the manufacturer's exemption. Section 1359.2 provides:

> A. In order to qualify for the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes, at the time of sale, the person to whom the sale is made, provided the purchaser is a resident of this state, shall be required to furnish the vendor proof of eligibility for the exemption as required by this section. All vendors shall honor the proof of eligibility for sales tax exemption as authorized under this section, and sales to a person providing such proof shall be exempt from the tax levied by Section 1350 et seq. of Title 68 of the Oklahoma Statutes.
>
> B. Each resident manufacturer wishing to claim the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes shall be required to secure from the Oklahoma Tax Commission a manufacturer exemption permit, the size and design of which shall be prescribed by the Tax Commission. This permit shall constitute proof of eligibility for the exemption provided in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes.

[17] 68 O.S. 1991, § 1350 et seq.

[18] Laws 1998, c. 301, § 7, eff. Nov. 1, 1998.

> Each such manufacturer shall file with the Tax Commission an application for an exemption permit, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof.
>
> C. Each manufacturer exemption permit issued shall be valid for a period of three (3) years from the date of issuance. If a manufacturer applying for a manufacturer exemption permit is already the holder of a manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes at the time of initial application, the manufacturer exemption permit shall be issued with an expiration date which corresponds with the expiration date of the manufacturer's sales tax permit. Thereafter, the Tax Commission shall issued the exemption permits at the same time of issuance or renewal of the manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes.
>
> D. The Tax Commission shall honor all manufacturer's limited exemption certificates issued prior to the effective date of this act. However, holders of such certificates shall apply for a manufacturer exemption permit pursuant to the provisions of this section at the same time they apply for issuance or renewal of a manufacturer's sales tax permit.

(Citation omitted).

5. The fundamental rule and governing principle of statutory construction is to ascertain and, if possible, give effect to the intention and purpose of the legislature as expressed in a statute. ***Samson Hydrocarbons Co. v. Oklahoma Tax Commission***, 1998 OK 82, 976 P.2d 532; ***State ex rel. Dept. of Public Safety v. 1985 GMC Pickup, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852***, 1995 OK 75, 898 P.2d 1280. The Legislature will not be presumed to have intended an absurd result, ***In re Holt***, 1997 OK 12, 932 P.2d 1130; nor to have done a vain or useless act in the promulgation of a statute, ***Comer v. Preferred Risk Mut. Ins. Co.***, 1999 OK 86, 991 P.2d 1006; or when creating law, ***Purcell v. Santa Fe Minerals, Inc.***, 1988 OK 45, 961 P.2d 188. If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and no further construction is required or permitted. ***Sullins v. American Medical Response of Oklahoma, Inc.***, 2001 OK 20, 23 P.3d 259.

6. Tax statutes are penal in nature. ***Globe Life and Accident Insurance Company v. Oklahoma Tax Commission***, 1996 OK 39, 913 P.2d 1322. Penal statutes are to be strictly construed. ***Mid-Continent Pipeline Co. v. Crauthers***, 1954 OK 61, 267 P.2d 568. Strict construction with respect to a penal statute is that which refuses to extend the law by implication or equitable consideration and confines its operations to cases clearly within the letter of the statute, as well as within its spirit or reason. ***State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County***, 1952 OK 241, 206 Okla. 699, 246 P.2d 368. Courts cannot

enlarge the taxing act's ambit to make its provisions applicable to cases not clearly within the legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language. ***Globe***, supra at 1327.

7. The Supreme Court of Oklahoma has recognized that Section 1359.2 is a "mandatory procedural tax statute", ***Apache Corp. v. Oklahoma Tax Commission***, 2004 OK 48 at ¶ 11, 98 P.3d 1061, 1064; which must be followed to obtain the statutory tax exemption, *Id.* at ¶ 10. The Court also found that "when a statute creates both a right and a remedy for its enforcement the statutory remedy is [generally] exclusive." *Id.*, citing ***R.R. Tway, Inc. v. Oklahoma Tax Commission***, 1995 OK 129, 910 P.2d 972, 978. In ***Apache*** at ¶ 11, the Court held "Apache's claim for a refund for taxes paid [after November 1, 1998], is barred by Apache's failure to follow [obtain or at least attempt to obtain the required manufacturer exemption permit] 68 O.S. Supp. 1998, § 1359.2."

8. Claimant contends that it is entitled to the refunds it claimed because it satisfied the statutory condition precedent for entitlement to the exemption by applying for and receiving a manufacturer exemption permit prior to filing its claim to the exemption. Section 1359.2(A) provides that "[i]n order to qualify for the exemption authorized in [Section 1359(1)], <u>at the time of sale</u>, the person to whom the sale is made, * * * <u>shall</u> be required to furnish the vendor proof of eligibility for the exemption". (Emphasis added). A manufacturer exemption permit "shall constitute <u>proof of eligibility</u> for the exemption" which the manufacturer "<u>shall be required</u> to secure from the Oklahoma Tax Commission". 68 O.S. Supp. 1998, § 1359.2(B), (emphasis added). "The term `shall' is often used in a statute as part of a command or a mandatory duty." ***Apache***, *Id.* at ¶ 11, citing ***Tulsa County Budget Bd. v. Tulsa County Excise Bd.***, 2003 OK 103, n. 25, 81 P.3d 662, 671; ***State ex rel. Independent School Dist. No. 1 of Oklahoma County v. Barnes***, 1988 OK 70, 762 P.2d 921, 924. Here, Claimant did not comply with all procedural aspects of the statute as a condition precedent to qualifying for the manufacturer's exemption. Claimant failed to furnish the vendor proof of eligibility for the exemption at the time of sale.[19]

Claimant also argues that Section 1359.2 does not limit the permit to prospective application and that the Division's interpretation of the statute denies manufacturers the right to file claims for refund of taxes erroneously remitted and is opposite to the Commission's longstanding practice of accepting refund claims of manufacturers. The undersigned, however, finds that Section 1359.2 does limit the permit to prospective application.

Although the Tax Commission had created a manufacturer's limited exemption certificate for purposes of making exempt purchases by manufacturers prior to the enactment of Section 1359.2, there was no statutory requirement that the certificate be furnished to the vendor at the time of sale as a prerequisite to qualifying for the manufacturer exemption. *See, OAC*, 710:65-13-151(a). Section 1359.2, enacted in 1998, then and now requires a manufacturer to furnish proof of eligibility for the exemption to the vendor at the time of the sale. Proof of eligibility for the exemption is a manufacturer exemption permit, § 1359.2(B); or a manufacturer's limited exemption certificate, § 1359.2(D). Proof of eligibility is required to be furnished at the time of sale, not at some later time.

[19] Claimant admits that it had neither received nor applied for a manufacturer's limited exemption permit. *See, OAC*, 710:65-7-6(d)(2) and 710:65-13-151; 68 O.S. Supp. 1998, § 1359.2(D).

Further, "as a general rule, statutes and statutory amendments will be construed as operating prospectively unless by express declaration or necessary implication from the language used the Legislature clearly demonstrates a contrary intent." ***Dolese Bros. v. State ex rel. Oklahoma Tax Commission***, 2003 OK 4 at ¶ 8, 64 P.3d 1093, 1097. In ***Apache*** at ¶ 3 and ¶ 11, the Court found that "[n]othing before us suggests that the 1998 [enactment] applies to all of Apache's sales taxes paid between 1997 and 2000" and applied the 1998 enactment only to Apache's sales taxes paid November 1, 1998 and thereafter.

Tax exemptions and deductions are matters of legislative grace. ***R.R. Tway, Inc.***, *supra* at 978. Consequently, the Legislature can eliminate, place conditions upon or restrict an exemption. *See*, ***Bruner v. U.S.***, 340 F.Supp. 2d 1204, 94 A.F.T.R.2d 2004-5977 (N.D. Okla. 2004). Further, the Legislature's enactment of Section 1359.2 changed the existing law with respect to the requirements for qualifying for the manufacturer's exemption. Therefore, the Tax Commission's previous practices with respect to claims for refund by manufacturers is irrelevant.

9. Claimant contends that it is entitled to the refunds it claimed because its manufacturer exemption permit was effective throughout the period covered by the refund claims. As stated by Claimant in its *Brief* filed March 17, 2005, the rub or heart of the debate in this case is whether any significance should be attached to the "effective date" placed on the manufacturer sales tax/exemption permit issued to Claimant. The undersigned finds that the date is not significant.

The only date required to be placed on the manufacturer exemption permit is "an expiration date which corresponds with the expiration date of the manufacturer's sales tax permit." 68 O.S. Supp. 1998, § 1359.2(C). Section 1359.2(C) also provides that "[e]ach manufacturer exemption permit issued shall be valid for a period of three (3) years from the date of issuance." Claimant argues that "the date of issuance" can be the "effective date" shown on the permit. Certainly, Claimant does not argue that a person can qualify for a manufacturer exemption permit prior to engaging in manufacturing, however, if Claimant's argument is taken literally, as applied in this case it would lead to that absurd result.

The more logical definition for "date of issuance" when considered within the context of the statute is the date of publication, the date the permit is officially given out or the date the permit is made available. *See*, Webster's Ninth New Collegiate Dictionary 642 (1983).[20] Such dates correspond with the requirement that the purchaser furnish the vendor proof of eligibility for the exemption at the time of sale. *See*, 68 O.S. Supp. 1998, § 1359.2(A).

10. Claimant argues that the Division amended Claimant's sales tax permit when it modified the permit to include the manufacturer exemption, that the effect of the amendment relates back to the effective date of the sales tax permit and therefore, Claimant's manufacturing exemption became operative on the effective date of the its sales tax permit, October 9, 1986. The undersigned disagrees not only for the reasons set forth in Conclusions of Law No. 9, but because the "relation back doctrine" is not applicable in this case.

[20] "Issuance" is defined as "issue". "Issue" as used in the context of the statute is defined as "the act of publishing or officially giving out or making available". *Id*.

The doctrine of relation back is "that principle by which an act done at one time is considered by a fiction of law to have been done at some antecedent period." Black's Law Dictionary 1158 (5th ed. 1979). The doctrine is only applicable when the two separate acts arise out of, are based on or relate to the same subject matter, conduct, transaction or occurrence. *Id. See,* ***Matter of Request of Hamm Production Co.***, 1983 OK 92, 671 P.2d 50.

Here, the two acts in question are the granting of a sales tax permit and the granting of a manufacturer exemption permit. The two acts do not arise out of, are not based on and do not relate to the same subject matter, conduct, transaction or occurrence. Further, as the Court stated in ***Apache***, *supra* at ¶ 11, "[t]his Court has previously declined to interpose equity to block the requirements of mandatory procedural tax statutes", citing ***R.R. Tway, Inc.***, *supra* and ***Whig Syndicate, Inc. v. Keyes***, 1992 OK 95, 836 P.2d 1283, 1288.

11. Claimant contends that the Division by placing a retroactive date on the manufacturer sales tax/exemption permit waived any objection or defense to its refund claims and that the failure to have an exemption permit at the time of purchase is cured by the grant of a permit with a date prior to the date of the purchase. The undersigned disagrees with both propositions.

The record in this cause shows the Division did waive the statutory requirement of furnishing the permit to the vendor at the time of purchase for those purchases made by Claimant after it had applied for a manufacturer exemption permit. The record also shows the Division denied the exemption on the bulk of Claimant's purchases, those occurring prior to its application for a manufacturer exemption permit. Suffice it to say in this matter that had all of Claimant's purchases occurred prior to the date of its application, the Division would have denied the exemption on all of Claimant's purchases.

The Division states that it allowed the refunds claimed by Claimant from the date of its application for a manufacturer exemption permit out of fairness to Claimant because it is hamstrung by the ability to keep up with the demand of manufacturer exemption permit applications. The record in this cause reflects that the Division took six (6) and five (5) months to review and approve Claimant's applications.

Although Section 1359.2(C) clearly and unambiguously provides that the manufacturer exemption permit is valid from the date of issuance, the Division's application of the provision is fair, reasonable and proper. Section 1359.2 does not allow for the issuance of a "probationary permit" upon receipt of an application, unlike 68 O.S. Supp. 1997, § 1364(B). The Division application of the statute treats all taxpayers alike, notwithstanding time necessary to review and approve each individual application for the manufacturer exemption permit.

12. Claimant's protest to the partial denial of its sales tax refund claim should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the claim for refund of Claimant, CLAIMANT, be denied.

OKLAHOMA TAX COMMISSION