

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-08-01-01
ID: P-05-167-K
DATE: AUGUST 1, 2006
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE EXCISE – VETERANS EXEMPTION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On June 27, 2005, Protestant purchased a 2003 Ford pickup, VIN 1FTWW32F93EA16717, from CAR DEALERSHIP of ANY TOWN, Oklahoma. Protestant registered the vehicle on July 12, 2005, and upon payment of the statutory fees and excise taxes received Certificate of Title No. 123B.

On or about July 12, 2005, Protestant requested a refund of the excise taxes paid on the vehicle, stating that he was a one hundred percent (100%) disabled veteran. Protestant attached a copy of his sales tax exemption permit for 100% disabled veteran, permit no. 123456, effective July 1, 2005 to the title receipt. The Division denied the request by letter dated September 21, 2005, stating that the excise taxes on the subject vehicle were properly assessed since the vehicle was purchased prior to the effective date of Senate Bill 435. Protestant timely protested the denial.

On October 28, 2005, the Division referred the file to the Office of the Administrative Law Judges (“ALJ’s Office”) for further proceedings consistent with the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure before the Oklahoma Tax Commission². The case was docketed as Case No. P-05-167-K and assigned to ALJ, Administrative Law Judge.³

A pre-hearing conference was scheduled in this cause for December 15, 2005, by *Notice of Prehearing Conference* issued November 22, 2005.⁴ Pursuant to the pre-hearing, a *Prehearing Conference Order* was issued setting forth the parties’ agreement to have the protest submitted for decision by written presentation.⁵

A *Stipulation of Facts* was filed by the parties on February 1, 2006. Included with the *Stipulation of Facts* was a Statement of the Issues. Attached to the *Stipulation of Facts* were Exhibits A-1 through E. The *Brief of Motor Vehicle Division* was filed April 10, 2006. Although Protestant was permitted the opportunity to file a brief in chief and a response brief pursuant to the *Prehearing Conference Order*, Protestant did not file any further pleadings.⁶ The record in this cause was closed and the matter was submitted for decision on April 21, 2006.

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 OAC, 710:1-5-22(b).

⁴ OAC, 710:1-5-28.

⁵ OAC, 710:1-5-28(b) and 710:1-5-38.

⁶ A courtesy call was made to Protestant on March 24, 2006 inquiring whether he intended to file a brief which was due on March 22, 2006. Protestant stated that he had no further statement to make. On April 10, 2006,

FINDINGS OF FACT

Upon review of the file and records, including the Stipulation of Facts, Exhibits A-1 through E attached thereto and the pleadings of the parties, the undersigned finds:

A. *The parties stipulate to the following:*

1. PROTESTANT is the Protestant in this matter and is without Counsel. The Motor Vehicle Division of the Oklahoma Tax Commission ("OTC") is represented by AUDITOR, and OTC ATTORNEY, Assistant General Counsel.

2. PROTESTANT purchased a 2003 Ford, F3D Pickup, VIN ABC123 on June 27, 2005, from CAR DEALERSHIP., 123 FAKE STREET, ANY TOWN, OK 12345. The title data was entered on the records of the Motor Vehicle Division, OTC, reflecting the purchase and assigned date of June 27, 2005, and excise tax of Seven Hundred Eighty One Dollars (\$781.00) being assessed and paid by PROTESTANT. Exhibits A-1 and A-2.

3. A Lien Entry Form was signed on June 27, 2005, showing PROTESTANT as the Debtor and CREDIT COMPANY as the assignee of secured party. On June 28, 2005, the lien data was entered into the records of the OTC. Exhibits B-1 and B-2.

4. PROTESTANT requested a refund of the excise tax paid stating that he was a 100% disabled veteran. The OTC denied the request by letter of September 21, 2005. Exhibits C-1 and C-2.

5. PROTESTANT requested that the excise tax be waived and the OTC, on October 27, 2005, asked the Office of Administrative Law Judges to set the matter for hearing. Exhibits D-1 and D-2.

6. The parties stipulate that the statutory law granting an excise tax exemption to a 100% disabled veteran is Title 68 Okl.St. Ann. § 2105(16). Exhibit E.

B. *Additional factual findings:*

1. Protestant obtained Certificate of Title No. 123B, a transfer title, to the vehicle upon presentment of the assigned Oklahoma Certificate of Title No. 123A, a transfer title. Exhibit A-1.

2. The vehicle was previously registered in Oklahoma by PREVIOUS OWNERS of SMALL TOWN, Oklahoma. Exhibit A-1.

3. PREVIOUS OWNER assigned the title to the vehicle CAR DEALERSHIP on June 27th, 2005. Exhibit A-1.

Protestant called the ALJ's Office and was informed that the Division's brief was due the next day. Protestant stated he would wait for the brief and see what it says.

4. The sales tax exemption permit issued to Protestant, permit number 123456, for 100% disabled veteran and presented by Protestant to exempt the purchase of the vehicle in question from motor vehicle excise tax has an effective date of July 1, 2005. Exhibit C-1.

5. The amount in controversy is \$781.00. Exhibit C-1.

ISSUES AND CONTENTIONS

The *Statement of the Issues* as stipulated by the parties is as follows:

PROTESTANT contends that had he been aware that the law was effective July 1, 2005, he would have waited to purchase the vehicle and would not have purchased it on June 27, 2005. He requests this Administrative Law Judge to refund the excise tax paid by Carver as above stated. OTC contends that the law which exempts a veteran is effective on July 1, 2005, and the OTC is without any standing to change legislative intent. It is imperative that dates set by the legislature are fixed on a day certain and in this case, July 1, 2005. If PROTESTANT'S position is accepted, what about the 100% disabled veteran who purchased a vehicle one week before, or, one month before, or three months before? OTC must have a day certain to determine an exempt status for excise tax purposes.

The issue presented for decision is whether the Division's denial of Protestant' refund request of the motor vehicle excise taxes paid on the purchase of the vehicle in question is erroneous.

CONCLUSIONS OF LAW

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

2. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in this state, the use of any vehicle registered in this state and the use of any vehicle registered for the first time in this state. 68 O.S. 2001, §2103(A)(1). The excise tax is due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected at the time of the issuance of a certificate of title for such vehicle. 68 O.S. Supp. 2005, § 2103(A)(3).⁷ The excise tax is delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. *Id.*

3. The owner of every vehicle in this state shall possess a certificate of title as proof of ownership of such vehicle. 47 O.S. Supp. 2004, § 1105(B). In the event of the sale or transfer of the ownership of a vehicle for which a certificate of title has been issued under the Oklahoma Vehicle License and Registration Act⁸, the holder of such certificate shall endorse on the back of

⁷ Amended by Laws 2005, c. 1, § 111, emerg. eff. March 15, 2005.

⁸ 47 O.S., § 1101 et seq.

same a complete assignment thereof and deliver the same to the purchaser or transferee at the time of delivery of the vehicle. 47 O.S. 2001, § 1107(A). The purchaser or transferee shall, within thirty (30) days from the time of delivery of the vehicle, present the assigned certificate of title to the Tax Commission accompanied by a fee of Eleven Dollars (\$11.00), together with any motor vehicle excise tax or license fee that may be due, whereupon a new certificate of title, shall be issued to the assignee. *Id.*

4. All vehicles shall be registered annually upon the filing of a registration application and the payment of the fees provided for in the Oklahoma Vehicle License and Registration Act. 47 O.S. 2001, §§ 1115(B)(1) and 1113(A)(1).

5. An original or a transfer certificate of title shall be issued without the payment of excise tax levied by § 2103 of the Oklahoma Vehicle Excise Tax Code⁹ for:

Any vehicle which is purchased by an individual who has been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who has been certified by the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States to be a disabled veteran in receipt of compensation at the one-hundred-percent rate for a permanent disability sustained through military action or accident resulting from disease contracted while in such active service. Provided, this exemption may not be claimed by an individual for more than one vehicle in a consecutive three-year period.

68 O.S. Supp. 2005, § 2105(16).¹⁰ The provisions of subsection 16 of Section 2105 became effective July 1, 2005.¹¹

6. A provision in a statute placing it in full force and effect on a specified future date is controlling, notwithstanding an emergency clause attached thereto. *George v. Randels*, 1949 OK 58, 201 Okl. 542, 207 P.2d 248. The Legislature may, by adding an emergency clause to a statute, cause it to become a law on approval but, by express provision, hold its effectiveness in abeyance until a specified time. *Cities Service Oil Co. v. Oklahoma Tax Commission*, 1942 OK 307, 191 Okl. 303, 129 P.2d 597. A statute containing an emergency clause making it effective immediately after its passage and approval and a provision making it effective at a fixed future date discloses a legislative intent that the statute is to become effective at the date designated regardless of the date of adjournment of the Legislature and the provision designating a fixed date prevails. *Id.*, at 599.

7. As a general rule, statutes and statutory amendments are to be construed as operating prospectively only unless by express declaration or necessary implication from the language used, the Legislature clearly demonstrates a contrary intent. *Doleses Brothers v. State ex rel. Oklahoma*

⁹ 68 O.S., § 2101 et seq.

¹⁰ Added by Laws 2005, c. 413, § 3, eff. July 1, 2005.

¹¹ Laws 2005, c. 413, § 11.

Tax Commission, 2003 OK 4, 64 P.3d 1093. In every case of doubt, the doubt must be resolved against retroactivity. *Id.*, at ¶ 8.

8. Statutes exempting property from taxation are to be strictly construed against the allowance of the exemption. *Bert Smith Road Machinery Company v. Oklahoma Tax Commission*, 1977 OK 75, 563 P.2d 641, 643. No claim of tax exemption can be sustained unless it clearly comes within the statutory provision under which the exemption is claimed. *Home-Stake Production Company v. Board of Equalization of Seminole County*, 1966 OK 115, 416 P.2d 917.

9. Here, the evidence proves legal ownership of the pickup was transferred to Protestant on June 27, 2005. Because the vehicle had been previously registered in Oklahoma, the excise tax due and payable on the transaction – the transfer of legal ownership – was owed by Protestant on June 27, 2005. 68 O.S. Supp. 2005, § 2103(A)(3). Although Senate Bill 435 which added the exemption from motor vehicle excise taxes for any vehicle purchased by an honorably discharged 100% permanently disabled veteran contained an emergency clause and became law on June 6, 2005, it became effective by express provision and thus permitting the exemption on and after July 1, 2005. The Act does not contain any indicia of legislative intent either expressed or clearly and plainly implied that the exemption should be applied retrospectively. Accordingly, no exemption from motor vehicle excise taxes for vehicles purchased by honorably discharged 100% permanently disabled veterans existed prior to July 1, 2005.

10. Ignorance of the law, standing alone, is no defense. The rule, long-standing and well-known, is found in *Campbell v. Newman*, 1915 OK 538, ¶3, 151 P. 602, 603 which cites *Utermehle v. Norment*, 197 U.S. 40, 25 S.Ct. 291, 49 L.Ed. 655 (1905), “We know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto.”

11. Protestant's request for refund of the motor vehicle excise tax paid on the 2003 Ford pick-up 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 Protestant, PROTESTANT, be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.