JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2007-05-24-03 (NON-PRECEDENTIAL)
ID:	CR-07-001-H
DATE:	MAY 24, 2007
DISPOSITION:	DENIED
TAX TYPE:	MOTOR VEHICLE EXCISE/CLAIM FOR REFUND
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPANY ("Claimant") appears by and through attorney, ATTORNEY. The Motor Vehicle Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On February 5, 2007, the protest file was received by this 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] On February 8, 2007, a letter was mailed to the parties stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number CR-07-001-H. The letter also advised the parties that the captioned matter had been set for hearing on March 5, 2007, at 1:30 p.m., with position letters or briefs due on or before February 26, 2007. On February 26, 2007, the Division filed the Position Letter of the Oklahoma Tax Commission and the Claimant filed its Request for Hearing and Appeal.

On March 5, 2007, the parties filed a request for a continuance. On March 6, 2007, the parties were notified by letter that by agreement of the parties the hearing set for March 5, 2007, at 1:30 p.m. had been stricken from the docket and reset for hearing on March 27, 2007, at 9:30 a.m.

An open hearing[3] was held as scheduled on March 27, 2007, at 9:30 a.m. The Claimant called two (2) witnesses, OWNER, the managing member of Claimant, who testified regarding the claim for refund, and ASSISTANT, EA, who testified regarding the filing of Claimant's Business Registration. The Claimant's Exhibits 1 through 8 were identified, offered, and admitted into evidence. The Division called one (1) witness, AUDITOR, Auditor, Motor Vehicle Division, Oklahoma Tax Commission, who testified regarding the records of the Division. The Division's Exhibits A-1 through H-1 were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on March 27, 2007.

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[1] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[3] The Claimant, through OWNER, waived its right to a confidential hearing as provided by the provisions of OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2007).

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, the undersigned finds:

1. The Claimant was formed on September 23, 2002, as a "Domestic Limited Liability Company," with OWNER as the Registered Agent, HOME ADDRESS.[4] OWNER and his wife are the members of Claimant. The physical address of the Claimant is PHYSICAL ADDRESS. Six (6) businesses of the Claimant operate from the address on PHYSICAL ADDRESS STREET, with OWNER'S home address used as the mailing address for each of the businesses.[5]

2. On August 1, 2006, the Claimant purchased from RV DEALERSHIP, a 2005 Winnebago Vectra ("Winnebago"), Vehicle Identification Number ("VIN") XXX, with a selling price of $147,371.00.[6] The Odometer Disclosure Statement reflects that the purchaser is Claimant, but RV DEALERSHIP assigned the Winnebago's title to "COMPANY,"[7] which is the name on the title issued by the Division.[8]

3. On August 10, 2006, the Claimant paid Motor Vehicle Excise Tax on the Winnebago of $4,761.00.[9]

4. On September 25, 2006, ASSISTANT filed the Claimant's Business Registration Application for "RV Rentals and/or Sales."[10] The application reflects that OWNER is the "Managing Member" of Claimant[11] and the date of first sales as November 1, 2006.[12]

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[4] The parties were informed during the hearing that the Administrative Law Judge is taking judicial notice of the Oklahoma Secretary of State's website for completing the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (2004). *See* http://www.sos.state.ok.us/ (Last visited April 2, 2007). *See also* testimony of OWNER.

[5] Testimony of OWNER. OWNER uses his home address of HOME ADDRESS, to centralize the mailings for his businesses.

[6] Division's Exhibit A-4. OWNER testified that until the hearing, he did not know that RV DEALERSHIP had made a mistake on the title.

[7] Division's Exhibit A-1.

[8] Division's Exhibit A-5.

[9] Division's Exhibit B.

[10] Division's Exhibits C-1 through C-7.

[11] Division's Exhibit C-2.

[12] Division's Exhibit C-4.

5. OWNER was advised by ASSISTANT that the Claimant's first sales tax return was due December 20, 2006, and provided on-line filing instructions for the sales tax, vehicle rental tax, and tourism tax reports.[13]

6. On October 3, 2006, the Claimant, through OWNER, executed the "Affidavit for Title/Registration of Rental Vehicles" for the Winnebago under Rental Tax Permit Number ("STLP Number") ###.[14]

7. On October 3, 2006, the Claimant filed a request for refund of the excise tax previously paid on the Winnebago for $4,761.00, on the basis that OWNER had attended an RV dealer's convention in Las Vegas and learned that a rental tax permit should have been obtained prior to the purchase of the Winnebago.[15] On January 10, 2007, the Division received a follow-up letter from OWNER advising that the Winnebago had been repaired in December and was available for rental and that he may have purchased the wrong vehicle for the Oklahoma market and may want to sell it.[16]

8. At the time of the hearing, the Claimant still owned the Winnebago.[17]

9. On January 24, 2007, the Division mailed a denial of the Claimant's request for refund of the excise tax for $4,761.00.[18]

10. The Division received a letter dated January 29, 2007, protesting the denial of the claim for refund and requesting a hearing.[19]

11. On August 10, 2006, the Claimant was not a business engaged in renting motor vehicles without a driver.

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[13] Claimant's Exhibits 5 through 8.

[14] Division's Exhibit D.

[15] Division's Exhibit E-1. OWNER also testified that he contacted the Tax Commission by phone prior to his purchase of the Winnebago and the employee did not tell him about the excise tax exemption for rental vehicles. No evidence was produced at hearing as to whom OWNER spoke to at the Tax Commission.

[16] Division's Exhibit E-2. Testimony of OWNER. OWNER testified that he had used the Winnebago for a weekend hunting trip with his son, during which the Winnebago was damaged and required repairs. No rental was charged. During the end of September, the Winnebago was used for about a week by PERSON, a potential business partner. No rental fees were charged and the Winnebago was returned with severe damage, so OWNER was in no hurry to set up the rental company.

[17] Testimony of OWNER.

[18] Division's Exhibit F-1.

[19] Division's Exhibit F-2.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[20]

2. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in Oklahoma.[21]

3. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle.[22]

4. Exempted from the levy of motor vehicle excise tax is "[a]ny vehicle which is purchased by a person to be used by a business engaged in renting motor vehicles without a driver."[23]

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[20] OKLA. STAT. ANN. tit. 68, § 227(d) (West 2001).

[21] OKLA. STAT. ANN. tit. 68, § 2103(A)(3) (West Supp. 2007).

[22] OKLA. STAT. ANN. tit. 47, § 1112 (West Supp. 2007).

[23] OKLA. STAT. ANN. tit. 68, § 2105(10) (West Supp. 2007):

> 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:
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> ...
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> 10. Any vehicle which is purchased by a person to be used by a business engaged in renting motor vehicles without a driver, provided:
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> a. the vehicle shall not be rented to the same person for a period exceeding ninety (90) days,
> b. any such vehicle exempted from the excise tax by these provisions shall not be placed under any type of lease agreement,
> c. on any such vehicle exempted from the excise tax by this subsection that is reregistered in this state, without a prior sale or transfer to the persons specified in divisions (1) and (2) of this subparagraph, at any time prior to the expiration of twelve (12) months from the date of issuance of the original title, the seller shall pay immediately the amount of excise tax which would have been due had this exemption not been granted plus a penalty of twenty percent (20%). No such excise tax or penalty shall become due and payable if the vehicle is sold or transferred in a condition either physical or mechanical which would render it eligible for a salvage title pursuant to law or if the vehicle is sold and transferred in this state at any time prior to the expiration of twelve (12) months:
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> (1) to the manufacturer of the vehicle or its controlled financing arm, or
> (2) to a factory authorized franchised new motor vehicle dealer which holds a franchise of the same line-make of the vehicle being purchased, or
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> d. when this exemption is claimed, the Tax Commission shall issue a special title which shall restrict the transfer of the title only within this state prior to the expiration of twelve (12) months unless:
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> (1) payment of the excise tax plus penalty as provided in this section is made,

5. Legislative intent controls statutory interpretation.[24] Intent is ascertained from the whole act in light of its general purpose and objective[25] considering relevant provisions together to give full force and effect to each.[26] The Court presumes that the Legislature expressed its intent and that it intended what it expressed.[27]

6. Statutes are interpreted to attain that purpose and end[28] championing the broad public policy purposes underlying them.[29] Only where the legislative intent cannot be ascertained from the statutory language, i.e. in cases of ambiguity or conflict, are rules of statutory construction

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(2) the sale is made to a person specified in division (1) or (2) of subparagraph c of this paragraph, or
(3) the vehicle is eligible for a salvage title.

For all other tax purposes vehicles herein exempted shall be treated as though the excise tax has been paid;

See OKLA. ADMIN. CODE § 710:60-5-58 (June 12, 1992):

Vehicles acquired by rental companies not to be rented for more than 90 days at a time, may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax plus a 20% penalty on such excise tax before transferring the vehicle, unless the vehicle is being transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

See also OKLA. ADMIN. CODE § 710:60-7-3(b)(11) (June 13, 2002):

Following is information on some of the more frequently encountered exempt situations:

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

[24] *World Publishing v. Miller*, 2001 OK 49, ¶7, 32 P.3d 829.

[25] *Id.* at ¶7.

[26] *Id.* at ¶7.

[27] *Id.* at ¶7.

[28] *Id.* at ¶7.

[29] *Id.* at ¶7.

employed.[30] However, where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities.[31]

7. Exemption statutes are to be strictly construed against exemption.[32] Tax exemptions must be construed sensibly in order to give effect to governing legislative scheme.[33]

8. Estoppel generally does not apply against the state acting in its sovereign capacity because of unauthorized acts of its officers or because of mistakes or error of its employees.[34] Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the facts or circumstances implicate the imposition of estoppel would further some prevailing principal of public policy or interest.[35] Where there is no power to act, a public official cannot bind a government entity even if he or she mistakenly or falsely asserts such authority.[36]

9. Those who act through an agent are customarily bound by their agent's mistakes.[37]

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[38]

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[30] *Id.* at ¶7.

[31] *Id.* at ¶7.

[32] OTC Precedential Order No. 89-12-19-24 (December 19, 1989), 1989 WL 251461. *See Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 1977 OK 75. ¶1, 563 P.2d 641. *See also Blitz U.S.A., Inc. v. Oklahoma Tax Commission*, 2003 OK 50, ¶14, 75 P.3d 883.

[33] *See Blitz* at ¶16.

[34] *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900.

[35] *Tice v. Pennington*, 2001 OK CIV APP 95, 30 P.3d 1164.

[36] *Hiland Dairy Foods Co., LLC. v. Oklahoma Tax Com'n*, 2006 OK CIV APP 68, 136 P.3d 1072.

[37] *Gripe v. City of Enid, Okl.*, No. 01-6430, 312 F.3d 1184, ¶6. (10th Cir. December 4, 2002).

[38] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

> . . . "**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.

11. The Division's action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[39]

12. In this case, the Protestant has failed to sustain its burden of proving that it was engaged in the business of renting motor vehicles without a driver at the time the Claimant paid excise tax on the Winnebago of $4,761.00.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Claimant's protest to the Division's denial of refund should 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.

[39] *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.