JURISDICTION:	OKLAHOMA TAX COMMISSION DECISION
CITE:	2008-09-09-02 / NON-PRECEDENTIAL
ID:	CR-08-002-K
DATE:	SEPTEMBER 9, 2008
DISPOSITION:	DENIED
TAX TYPE:	MOTOR VEHICLE EXCISE / CLAIM FOR REFUND
APPEAL:	NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimants, HUSBAND AND WIFE appear pro se. The Motor Vehicle Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

By facsimile transmission dated December 19, 2007, Claimants requested a refund of the excise taxes remitted to the State of Oklahoma on the purchase of a 2004 Dodge pick-up, VIN XYZ123, from DEALERSHIP 1 of ANY TOWN, Oklahoma. The Division denied the request by letter dated February 27, 2008. By letter dated March 6, 2008, Claimants requested a hearing on the denial and requested that their claim include the excise taxes remitted on the purchases of a 2007 Honda Civic, VIN ABC999 from DEALERSHIP 2 of ANY TOWN, Oklahoma and a 2006 Yamaha FJR 1300 Motorcycle, VIN XXX777 from DEALERSHIP 3 of ANY TOWN, Oklahoma.

On March 19, 2008, the Division referred the claim for refund 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-08-002-K and assigned to ALJ, Administrative Law Judge.[3]

A hearing was scheduled for May 1, 2008, by *Notice of Hearing* issued March 24, 2008.[4] Upon Claimants' request, the hearing was rescheduled for May 5, 2008, by *Notice of Hearing* issued April 7, 2008.[5]

On April 21, 2008 and April 24, 2008, Claimants and the Division respectively filed position statements. An open hearing[6] was held as rescheduled. After being duly sworn, Claimant, HUSBAND gave his statement. Claimants' Exhibits A and B were admitted into evidence without

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[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*, 710:1-5-24.

[5] *OAC*, 710:1-5-30.

[6] Claimants waived their right to a confidential hearing afforded by 68 O.S. 2001, § 205.

objection. The North Atlantic Treaty Organization Status of Forces Agreement ("NATO-SOFA") was admitted by official notice.[7] The Division called one witness: SUPERVISOR, Supervisor-Accounting Section of the Division who testified regarding the records of the Division. Division's Exhibits A through F were identified, offered and admitted into evidence without objection. Closing statements were made, the record was closed and the claim for refund was submitted for decision.[8]

FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the hearing, the exhibits received into evidence and the pleadings of the parties, the undersigned finds:

1. Claimants are Canadian Nationals under temporary duty assignment within the State of Oklahoma in accordance with the provisions of the NATO-SOFA. Claimants' Exhibits A and B.

2. On October 29, 2007, Claimants purchased a 2004 Dodge pick-up, VIN XYZ123, from DEALERSHIP 1 of ANY TOWN, Oklahoma. The vehicle was registered in Oklahoma on November 19, 2007 and an Oklahoma Certificate of Title and tag were issued to Claimants upon payment of the registration fees and an excise tax of $865.00. Division's Exhibit A.

3. On March 21, 2007, Claimants purchased a 2007 Honda Civic, VIN ABC999 from DEALERSHIP 2 of ANY TOWN, Oklahoma. The vehicle was registered in Oklahoma on April 11, 2007 and an Oklahoma Certificate of Title and tag were issued to Claimants upon payment of the registration fees and an excise tax of $569.00. Division's Exhibit A.

4. On May 10, 2006, Claimants purchased a 2006 Yamaha FJR 1300 Motorcycle, VIN XXX777 from DEALERSHIP 3 of ANY TOWN, Oklahoma. The vehicle was registered in Oklahoma on June 6, 2006 and an Oklahoma Certificate of Title and tag were issued to Claimant, HUSBAND upon payment of the registration fees and an excise tax of $418.00. Division's Exhibit A.

5. By facsimile transmission dated December 19, 2007, Claimants requested a refund of the excise taxes remitted to the State of Oklahoma on the purchase of a 2004 Dodge pick-up. Division's Exhibit B.

6. The Division denied the request by letter dated February 27, 2008. Division's Exhibit C.

7. By letter dated March 6, 2008, Claimants requested a hearing on the denial and requested that their claim include the excise taxes remitted on the purchases of the 2007 Honda Civic and the 2006 Yamaha FJR 1300 Motorcycle. Division's Exhibit D.

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[7] *OAC*, 710:1-5-36.

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

8. The amount in controversy is $1,852.00.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the provisions of the NATO-SOFA exempt the transfer and use of Claimants' motor vehicles from the levy of Oklahoma motor vehicle excise taxes.

Claimant contends that the motor vehicles are exempt from the levy of motor vehicle excise tax by the State of Oklahoma. In support of this contention, Claimants cite the language of NATO-SOFA, Article X, Section 1. Claimants further argue that as a member of the Canadian Forces stationed in the United States, they are nonresident aliens for tax purposes and, as such, the vehicles will be subject to the Canadian form of excise tax (provincial or territorial sales tax) upon their return to Canada.

The Division contends that the purchase or transfer of a motor vehicle in Oklahoma by a foreign soldier is subject to excise tax in the same manner and amount as are our own U.S. soldiers and citizens of the State of Oklahoma. In support of this contention, the Division argues that NATO-SOFA, Article X, Section 1 exempts a foreign soldier's salary or wages and certain tangible personal property brought into the state from taxation. The Division also argues that the levy of Oklahoma motor vehicle excise tax is not precluded by NATO-SOFA, citing Article IX, Sections 1 and 8.

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. Motor vehicle excise tax is levied upon the transfer of legal ownership of any vehicle registered in this state, 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. 68 O.S. Supp. 2006, § 2103(A)(1). The tax levied 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 Tax Commission at the time of the issuance of a certificate of title for any such vehicle. 68 O.S. Supp. 2006, § 2103(A)(3); *OAC*, 710:60-7-3(a).[9]

3. The purpose of the levy of motor vehicle excise tax is "to provide funds for general governmental functions of state government." 68 O.S. 2001, § 2102(A). All revenue derived by the levy of motor vehicle excise taxes is apportioned and distributed in accordance with 47 O.S. 2001, § 1104. 68 O.S. Supp. 2005, § 2102(B).

[9] This rule provides that "[E]xcise Tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies."

4. "Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply)" referring to 68 O.S. 2001, § 2105(2). *OAC*, 710:60-7-3(b)(2).

5. NATO-SOFA, Article X, Section 1 provides:

> Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purpose of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.

6. NATO-SOFA, Article IX, Sections 1 and 8 provide:

> Members of a force or of a civilian component and their dependents may purchase locally goods necessary for their own consumption, and such services as they need, under the same conditions as the nationals of the receiving State.
>
> Neither a force, nor a civilian component, nor the members thereof, nor their dependents, shall by reason of this Article enjoy any exemption from taxes or duties relating to purchases and services chargeable under the fiscal regulations of the receiving State.

7. In Oklahoma, the fundamental rule of construing an enactment is to ascertain and give effect to the intent of the enacting body, and such intent is first sought in the language of the enactment. See, ***In re J.L.M.***, 2005 OK 15, 109 P.3d 336. Words or phrases employed in an enactment are given their plain, ordinary meaning according to the import of the language used. See, ***Carter Oil Co. v. Scott***, 12 F.2d 780 (N.D.Okla. 1926). Where the language of an enactment is clear and unambiguous, the language is given its plain and ordinary meaning. ***Humphries v. Lewis***, 2003 OK 12, 67 P.3d 333.

The word "goods" in the context of NATO-SOFA, Article IX, Section 1, is ordinarily understood to mean "personal property having intrinsic value but usu. excluding money, securities, and negotiable instruments." Webster's Ninth New Collegiate Dictionary, 527 (1983). The word "consumption" is ordinarily understood to mean "the utilization of economic goods in the satisfaction of wants". Webster's Ninth New Collegiate Dictionary, 282 (1983).

8. In administrative proceedings, the burden of proof is on taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC*, 710:1-5-47. See, ***Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

9. Oklahoma motor vehicle excise tax is dependent on residence or domicile. See, 68 O.S. 2001, § 2105(1). However, all motor vehicles are required to be titled and registered. Here, Claimants admit they could not title and register their vehicles in Canada because they do not have a physical address in Canada. Further, motor vehicles are "goods" within the meaning of NATO-SOFA, Article IX, the purchase of which are not specifically exempted from taxes chargeable by the receiving State. Accordingly, the provisions of NATO-SOFA do not exempt the transfer and use Claimants' motor vehicles from the levy of Oklahoma motor vehicle excise taxes.

10. Claimants' request for refund of the motor vehicle excise taxes remitted to the State of Oklahoma on the aforementioned vehicles in the amount of $1,852.00 should be and the same is hereby 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 Claimants, HUSBAND AND WIFE, 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.