JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-03-02-02 / NON-PRECEDENTIAL**
ID: **P-09-193-H**
DATE: **MARCH 2, 2010**
DISPOSITION: **SUMMARY DISPOSITION GRANTED**
TAX TYPE: **MANUFACTURING EXEMPTION PERMIT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMPANY ("Protestant") appears by and through attorneys, ATTORNEY 1 and ATTORNEY 2, LAW FIRM. The Ad Valorem Division ("Division"), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 30, 2009, the clerk of the court ("Court Clerk")[1] received a letter, with Exhibit 1 attached thereto, by facsimile from ATTORNEY 1 and ATTORNEY 2, requesting an *en banc* hearing before the Tax Commission pursuant to Tax Commission Rule 710:65-13-153(g)(4).

On November 4, 2009, by letter, ALJ1, Administrative Law Judge, acknowledged receipt of the request and advised the request for an *en banc* hearing was being forwarded to the Commissioners for consideration. On November 17, 2009, by letter, OTC COUNSEL, Counsel to the Commissioners, advised Counsel in pertinent part that the letter was being forwarded to the Office of General Counsel and treated as a protest. On November 18, 2009, a copy of OTC COUNSEL'S letter was filed with the Court Clerk, along with the protest letter.

On November 20, 2009, a protest file was opened with the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] On November 23, 2009, a letter was mailed to Counsel stating this matter had been assigned to ALJ2, Administrative Law Judge, and docketed as Case Number P-09-193-H. The letter also advised Counsel for Protestant that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[4]

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[1] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

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

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

[4] *Id.*

On December 3, 2009, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division. On December 9, 2009, the Division filed its *Motion to Dismiss Proceedings* ("*Motion*") with the Court Clerk. On December 14, 2009, the Notice to Appear or Respond in Writing ("*Notice*") was mailed to Counsel setting a hearing on the Division's *Motion* for January 6, 2010, at 2:00 p.m. On December 29, 2009, the Protestant filed its *Response to Motion to Dismiss* ("*Response*") with the Court Clerk. On December 30, 2009, the *Reply Of Ad Valorem Division, OTC To Response of COMPANY To The Division's Motion To Dismiss* ("*Reply*") was filed with the Court Clerk.

On January 6, 2010, at 2:00 p.m. the hearing was held as scheduled. The parties did not call any witnesses to testify; instead Counsel stood on the pleadings. Protestant's Exhibits 1 and 2, were identified, offered, and admitted into evidence without objection. Division's Exhibits A through D were identified, offered, and admitted into evidence without objection. Upon conclusion of the hearing, the record in this matter was closed and this case was submitted for decision on January 6, 2010.

STIPULATION

At hearing Counsel for Protestant stipulated that Application One and Application Two were not filed on or before March 15, 2008. Counsel for the parties agreed that there is no dispute as to any material facts in this matter, as reflected by the pleadings.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the *Motion*, *Response*, and *Reply*, the undersigned finds:

1. The Protestant's warehousing and distribution facility ("Facility") is located in COUNTY at FACILITY ADDRESS. The Facility became operational in 2003.[5]

2. On March 16, 2009, the Protestant filed an Application for Five-Year Ad Valorem Tax Exemption ("Application One") covering assets acquired in 2005 for the third year (2008) of the five year exemption ("XM-3").[6]

3. On March 16, 2009, the Protestant filed an Application for Five-Year Ad Valorem Tax Exemption ("Application Two") covering assets acquired in 2003 for the fifth year (2008) of the five year exemption ("XM-5").[7]

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[5] Protestant's Exhibit 1.

[6] *Id.*

[7] Protestant's Exhibit 2. Both Applications were filed by facsimile with the COUNTY Assessor on March 16, 2009, but were not stamped as received until March 17, 2009.

4. Application One and Application Two[8] contain the following paragraphs, to-wit:

> Application is hereby made for ad valorem tax exemption on an exempt manufacturing facility or research and development facility located in the above county on January 1, 2008, in accordance with the provisions of 68 O.S., Section 2902, as amended.

5. Application One and Application Two include the following notices,[9] to-wit:

> **IN ORDER TO COMPLY WITH THE LAW**
>
> **INCOMPLETE APPLICATIONS WILL BE DENIED**
>
> **Completed applications MUST be filed each year with the county assessor before March 15.**
> See 68 O.S. supp 2004 § 2902(E), (as amended by S.B. 1146, emerg. Eff. June 4, 2004).
>
> **County assessor MUST file all applications to the Tax Commission by June 15.**
> See 68 O.S. supp § 2902(F), (as amended by S.B. 1146, emerg. Eff. June 4, 2004).
>
> **INCOMPLETE applications will be declared null and void.**
> See 68 O.S. supp 2004 § 2902(F), (as amended by S.B. 1146, emerg. Eff. June 4, 2004).
>
> **Applications filed after June 15 will be declared null and void.**
> See 68 O.S. supp 2004 § 2902(F), (as amended by S.B. 1146, emerg. Eff. June 4, 2004)

6. On March 25, 2009, the COUNTY Assessor and the COUNTY Board of Equalization approved Application One and Application Two.[10]

7. On March 26, 2009, the Division received Application One and Application Two from the COUNTY Assessor.[11]

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[8] *See* Notes 5 and 7.

[9] *Id.*

[10] *Id.* Each Notice of Approval states, "All applications approved by the County Assessor, in whole or in part, are subject to review and approval by the County Board of Equalization and the Oklahoma Tax Commission."

[11] *Id.*

8. On September 1, 2009, a letter[12] was mailed to Counsel for Protestant on behalf of the Division, through OTC ATTORNEY, regarding Application One and Application Two. The letter states in pertinent parts, as follows, to-wit:

> …
>
> That "saving provision", which existed in the referenced version of 68 O.S. § 2902 and certain predecessor versions,[13] was eliminated by the revision of 68 O.S. § 2902.D., effective June 7, 2006, Laws 2006, SB 1577, c. 281 § 30.[14] That "saving provision" has not appeared in any subsequent version of the statute.
>
> …
>
> You are correct that OAC 710:10-7-5(d), on March 15, 2008, contained procedure for implementation of the referenced "saving provision". However, the statutory basis for that Rule was eliminated, as referenced, in June 2006. The OTC does not have the authority to broaden an exemption beyond its scope as granted by statute.…

9. On October 30, 2009, the Clerk received a protest,[15] by facsimile, from the Protestant through Counsel, to the Division's letter of September 1, 2009. The basis of the protest is stated in pertinent parts as follows, to-wit:

> …
>
> On September 1, 2009, [Protestant] received a letter from the Ad Valorem Division that its XM3 and XM5 applications had been denied on the grounds that they were not timely submitted as required by 68 O.S. § 2902. A copy of the letter is enclosed for your reference as Exhibit 1.
>
> [Protestant] disagrees with this denial, and hereby provides this letter to the OTC as a written protest of the denial. The original tax bill was $407,350.00. However, without prejudice to [Protestant's] rights in the present appeal, the COUNTY Assessor subsequently reduced the valuation of the subject property, which resulted in a tax payment by [Protestant] of $373,147.00.
>
> …
>
> A. <u>[Protestant] Has The Right To Submit Its Applications Within Two Years Of The End of The Original Five Year Period</u>.
>
> …

[12] Division's Exhibit A.

[13] Division's Exhibits B-C.

[14] Division's Exhibit D.

[15] *See* Procedural History herein.

> [Protestant] prays that its XM-3 and XM-5 applications be granted pursuant to 710:10-7-5(d), which was in effect at the time [Protestant's] 2008 applications were due.…

10. On December 9, 2009, the Division's *Motion* was filed with the Clerk.

11. On December 29, 2009, the Protestant's *Response* was filed with the Clerk.

12. On December 30, 2009, the Division's *Reply* was filed with the Clerk.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[16]

2. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the Tax Commission, and shall[17] be filed on or before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.[18]

3. All persons claiming or administering the manufacturing exemption provided for by the Constitution and the laws of this State shall strictly comply with the law and this Subchapter, under penalty of law, to the end that the objectives of the law be accomplished.[19]

4. Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law.[20]

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[16] OKLA. STAT. ANN. tit. 68, § 207(c) (West 2001), OKLA. STAT. ANN. tit. 68, § 2902 (West Supp. 2010), OKLA. ADMIN. CODE § 710:10-7-5 (July 1, 2008), and OKLA. ADMIN. CODE § 710:1-5-46 (June 11, 2005).

[17] Generally, when the legislature uses the term "shall," it signifies a mandatory directive or command. *See Keating v. Edmondson*, 2001 OK 110, 37 P.3d 882.

[18] OKLA. STAT. ANN. tit. 68, § 2902 (West Supp. 2010).

[19] OKLA. ADMIN. CODE § 710:10-7-3.

5. The county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law.[21]

6. The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, and shall immediately forward a copy of each application, whether approved or rejected, to the Oklahoma Tax Commission Ad Valorem Division.[22]

7. If the Tax Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, it shall notify the appropriate county assessor, who shall, after notice as required by law has been given, immediately value and assess the property and place the property on the tax rolls for ad valorem taxation.[23]

8. The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.[24]

9. Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the *Uniform Tax Procedure Code*.[25] A copy of the protest shall be mailed or delivered by the applicant to the county assessor.[26]

10. Statutes are interpreted to attain that purpose and end[27] championing the broad public policy purposes underlying them.[28] 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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[20] OKLA. ADMIN. CODE § 710:10-7-5(c) (July 1, 2008).

[21] OKLA. ADMIN. CODE § 710:10-7-11(a) (June 25, 2006).

[22] OKLA. ADMIN. CODE § 710:10-7-11(b) (June 25, 2006).

[23] OKLA. ADMIN. CODE § 710:10-7-15(a) (June 25, 2006).

[24] OKLA. ADMIN. CODE § 710:10-7-15(b) (June 25, 2006).

[25] *See* Note 2, *supra.*

[26] OKLA. ADMIN. CODE § 710:10-7-15(c) (June 25, 2006).

[27] *Oral Roberts University v. Oklahoma Tax Com'n*, 1985 OK 97, 714 P.2d 1013.

[28] *Id.* at ¶7.

employed.[29] However, where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities.[30] Statutory construction presents a question of law.[31]

11. Statutes exempting payment of taxes are strictly construed against the existence of the exemption.[32]

12. Generally, boards [or commissions] created by statute, may only exercise the powers granted by the statutes, and their authority to make rules for their various procedures do not include the authority to make rules which in effect extend their powers beyond those granted by the statute.[33]

13. The rules promulgated pursuant to the *Administrative Procedures Act* are presumed to be valid and binding on the persons they affect and have the force of law, and are presumed to be reasonable and valid.[34]

14. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable.[35]

15. The same rules of construction apply to administrative rules and regulations as to statutes.[36]

16. It is essential to validity of administrative rule and regulations that agency making same be fully authorized to do so either by statutory provision or implication.[37]

17. The Tax Commission is under a duty to follow and not disregard an opinion of the Oklahoma Attorney General if there is any doubt as to the construction of a statute.[38]

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[29] *Id.* at ¶7.

[30] *Id.* at ¶7.

[31] *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

[32] *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 1977 OK 75, 563 P.2d 641.

[33] *Boydston v. State*, 1954 OK 327, 277 P.2d 138.

[34] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[35] *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65.

[36] *Dolese Bros. v. State ex rel. Oklahoma Tax Com'n*, 2003 OK 4, 64 P.3d 1093.

[37] *W.S. Dickey Clay Mfg. Co. v. Ferguson Investment Company, Inc.*, 1963 OK 298, 388 P.2d 300.

[38] OTC Order No. 2004-08-31-09 (August 31, 2004), citing *Rasure v. Spark*, 1919 OK 231, 183 P. 495 and *State ex rel. York v. Turpen*, 1984 OK 26, 681 P.2d 763. *See also* OTC (Precedential) Order No. 1990-02-09-09 (February 9, 1990).

18. An administrative agency is not free to disregard or subvert statutory requirements.[39]

19. It is duty of court to give effect to legislative acts and not amend, repeal or circumvent them by ignoring plain words of statute or expanding plain words by construction where legislature has expressed its intention in the statute as enacted.[40]

20. 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.[41] 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.[42] 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.[43]

21. A County Assessor cannot consider "good cause" or "best interests of the public" for applications exempting ad valorem taxes pursuant to Section 2902(E) of Title 68.[44]

DIVISION'S MOTION

The Division cites *Apache*[45] for the proposition that "[t]he rule of Apache … applies, and requires dismissal of these proceedings."

In *Apache*, the Taxpayer sought review of the Tax Commission's decision denying the refund of sales taxes paid on purchased items used in the production of hydrocarbons. Section 1359.2 of Title 68 required the Taxpayer to obtain a manufacturer exemption permit in order to qualify for a sales tax refund. The Taxpayer did not follow the statutory procedure, but claimed the exemption. The Supreme Court of Oklahoma held that the tax exemption statute required the Taxpayer to obtain the manufacturer exemption permit in order to qualify for the sales tax exemption and affirmed the Tax Commission Order denying the claim for refund of sales tax. The Division's proposition *Apache* requires dismissal of this matter is misplaced. The OTC Order in *Apache* determined the Taxpayer's claim for refund should be denied because the Taxpayer did not follow a "mandatory" statutory procedure. The OTC Order did not dismiss the protest as suggested by the Division.

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[39] *Reasor's, LLC v. Oklahoma Tax Com'n*, 2006 OK CIV APP 43, 134 P.3d 918.

[40] *See* Note 34, *supra*.

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

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

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

[44] OK AG Opinion 03-23. The AG Opinion addresses OKLA. STAT. tit. 68, § 2902(E) (West Supp. 2002).

[45] *Apache Corp. v. State, ex rel. Oklahoma Tax Com'n*, 2004 OK 48, 98 P.3d 1061.

The Division did not file its *Motion* pursuant to Tax Commission Rule 710:1-5-46 (June 11, 2005), which outlines the grounds upon which a Motion to Dismiss may be filed and the Division's *Motion* as filed does not appear to fall within the provisions of the rule.

However, the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*[46] contains Tax Commission Rule 710:1-5-38(b) (June 25, 2009), which permits the filing of a *Motion for Summary Disposition* on any or all issues on the grounds that there is no substantial controversy as to any material facts, and that one of the parties is entitled to a decision in its favor as a matter of law.

Treating the Division's *Motion* as a *Motion for Summary Disposition* ("*MSD*") will not result in any prejudice to the rights of the Protestant. The parties agree that there are no disputes as to any material facts, the Protestant does not dispute that Section 2902(D) (the "saving provision") was deleted by the Legislature effective June 7, 2006, and stipulated Application One and Application Two were not filed on or before March 15, 2008. As stated by the Protestant, the only question presented in this case is whether, "… [Protestant] [is] entitled to avail itself of the two (2) year savings provision contained in OAC 710:10-7-5(d) as of March 15, 2008?" which is purely a question of law.

In the interest of judicial economy, unnecessary delay and needless expense to the Protestant, the Division's *Motion* will be treated as an *MSD* filed pursuant to Tax Commission Rule 710:1-5-38(b) (June 25, 1999).

CONTENTIONS OF THE DIVISION

The Division contentions are as follows, to-wit:

1. Statutes which exempt payment of taxes are strictly construed against the existence of the exemption.

2. Applications for exemption filed after March 15 of the year for which the exemption is sought are null and void.

3. The "two-year saving provision" of 68 O.S. § 2902.D was eliminated, effective June 7, 2006.

4. The un-revoked administrative rule cannot excuse a failure to comply with mandatory statutory requirements for qualification for the claimed exemption.

[46] *See* Note 3, *supra.*

CONTENTIONS OF THE PROTESTANT

In its *Response*, the Protestant asserts:

1. [Protestant's] 2008 Manufacturing Exemption Applications are valid.

2. [Protestant] has the right to submit its applications within two years of the end of the original five year period.

DISCUSSION

There is no dispute between the parties as to any material facts in this matter. The Protestant stipulated Application One and Application Two were not filed with the COUNTY Assessor on or before March 15, 2008, in accordance with the provisions of Section 2902(E) of Title 68,[47] which was in effect for the 2008 tax year.

The Protestant does not dispute that on March 15, 2008, Section 2902 no longer contained a "saving provision." The Legislature eliminated the "saving provision" effective June 7, 2006. The Protestant's position is Application One and Application Two are valid because on March 15, 2008, Tax Commission Rule 710:10-7-5(d) ("*Rule*")[48] still contained the following "saving provision," as follows, to-wit:

> (d) If a taxpayer fails to file or timely file an initial application or any subsequent application for any year that the facility was otherwise qualified, the taxpayer may file an application for one (1) additional year within two (2) years past the end of the original five-year period. Qualified manufacturing concerns filing for the additional one (1) year must document the request and detail the specific circumstances by an attached addendum to the application at time of filing the application.

The Protestant argues that the procedures for filing Application One and Application Two are "…governed by the procedures detailed within 68 O.S. § 2902 and OAC 710:10-7-5. OAC 710:10-7-5(d) included a savings provision at the time [Protestant's] 2008 applications were due," and that the Protestant met all mandatory procedural requirements for filing Application One and Application Two. The Protestant distinguishes the applicability of *Apache*[49] and *Reasor's*[50] to this matter because those cases concerned applications for manufacturing sales tax exemptions, governed by Section 1359.2 of Title 68, which does not include a "saving provision." The Protestant further states, "This case, however, involves an ad valorem

[47] OKLA. STAT. ANN. tit. 68, § 2902(E) (West Supp. 2010).

[48] OKLA. ADMIN. CODE § 710:10-5-7(d) (June 25, 2006). This rule was subsequently amended deleting paragraph (d), effective July 1, 2008.

[49] *See* Note 45, *supra*.

[50] *See* Note 39, *supra*.

manufacturing exemption, which is governed by the procedures detailed within 68 O.S. § 2902 and OAC 710:10-7-05. OAC 710:10-7-5(d) included a savings provision at the time [Protestant's] applications were due. Thus, the procedural requirements between [Protestant's] case and the cases cited within OTC's Motion are distinguishable."

The Protestant's arguments that the holdings in *Apache* and *Reasor's* are distinguishable from this matter are unpersuasive. The principles of law enunciated in both cases are well established rules of statutory construction utilized by the courts to determine legislative intent and are equally applicable to this matter.

The language contained in Section 2902 of Title 68[51] in effect for the 2008 tax year is clear and unambiguous, "The application shall be on a form or forms prescribed by the Tax Commission, and *shall*[52] *be filed on or before March 15*…." The filing of Application One and Application Two on or before March 15, 2008, is a "mandatory statutory procedure" required by the Legislature before the Protestant could obtain the exemptions from ad valorem taxes for the 2008 tax year.

The Protestant cites to *Kifer*[53] for the proposition "The law assumes that administrative rules are valid, and a taxpayer should be afforded this protection as well." The Protestant's argument intertwines the principle that the rules promulgated pursuant to the *Administrative Procedures Act*[54] are presumed to be valid and binding on the persons they affect and have the force of law,[55] with a mixture of arguments containing elements of estoppel, detrimental reliance, and financial hardship, stating "[Protestant] filed its 2008 applications on March 10, 2009 [sic], in reliance upon OAC 710:10-7-5(d)'s validity. [Protestant] will suffer a financial hardship if its exemption applications are not granted."[56]

Basically, the Protestant is arguing that paragraph (d) of the *Rule* was still valid and had the force and effect of law for the 2008 tax year despite the fact that the Legislature had deleted the "saving provision" from Section 2902, effective June 7, 2006, which the Protestant acknowledges governs the exemption. Further the *Rule* is not mentioned in the Application Form or the Notice contained therein, only the "2004" version of Section 2902 is referenced.[57]

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[51] *See* Note 14, *supra*.

[52] Generally, when the legislature uses the term "shall," it signifies a mandatory directive or command. *See Keating v. Edmondson*, 2001 OK 110, 37 P.3d 882.

[53] *Kifer v. Oklahoma Tax Com'n*, 1998 OK CIV APP 34, 956 P.2d 162.

[54] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

[55] *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[56] *Response* at 4-5.

[57] The Protestant also cites *Liddell v. Heavner*, 2008 OK 6, 180 P.3d 1191 for the proposition that if the *Rule* is invalid that the decision should be applied prospectively. The facts in *Liddell* are clearly distinguishable from the facts in this matter.

Statutes exempting payment of taxes are strictly construed against the existence of the exemption.[58] The rules promulgated pursuant to the *Administrative Procedures Act*[59] are presumed to be valid and binding on the persons they affect and have the force of law, and are presumed to be reasonable and valid, but once the Legislature amended Section 2902 deleting the "saving provision," contained in paragraph (D), paragraph (d) of the *Rule* was no longer consistent with the provisions of Section 2902, which were effective June 7, 2006. The Protestant's argument fails in light of the case law cited by the Division.

As to the remainder of the Protestant's argument, 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.[60] 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.[61] 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.[62]

There is no prevailing principal of public policy or interest which justifies the imposition of estoppel against the Division because the *Rule* was not amended until July 1, 2008, nor does the imposition of estoppel apply because the COUNTY Assessor and the COUNTY Board of Equalization approved Application One and Application Two, which was clearly against the Legislative mandate contained in Section 2902 in effect for the 2008 tax year. A County Assessor cannot consider "good cause" or "best interests of the public" for applications exempting ad valorem taxes pursuant to Section 2902(E) of Title 68, which ties in with the financial hardship argument of the Protestant and is clearly equitable in nature.[63]

CONCLUSION

As a matter of law, the Protestant is not entitled to avail itself of the two (2) year savings provision contained in OAC 710:10-7-5(d) as of March 15, 2008.

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[58] *See* Note 32, *supra*.

[59] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

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

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

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

[63] *See* Note 44, *supra*.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Division's *MSD* should be granted.

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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."