JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-04-19-04 / NON-PRECEDENTIAL**
ID: **CR-11-006-K**
DATE: **APRIL 19, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **EXCISE AND REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 6th day of February, 2012, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

STATEMENT OF THE CASE

Refund requests for portions of the vessel and motor excise taxes, and registration fees remitted on the registration of a 2007 Cruisers Yachts 420 Express, HIN ###### were filed by Claimant. The Motor Vehicle Division denied the requests. Claimant timely protested the denials and requested a hearing.

The Division referred the refund requests to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. The case was docketed as Case No. CR-11-006-K.

A hearing was scheduled for October 20, 2011, by *Notice of Hearing* issued September 19, 2011.[3] *Division's Motion for Summary Disposition* ("*Motion*") was filed September 28, 2011. Exhibits A through I were attached thereto. By letter dated October 4, 2011, Claimant was notified that a response to the *Motion* could be filed on or before October 13, 2011. *Taxpayer's Response to Division's Motion for Summary Disposition* ("*Response*") was filed October 6, 2011.

On October 19, 2011, a *Joint Request to Submit the Matter upon Previously Filed Submissions* was filed. By *Order Granting Request to Submit the Matter upon Previously Filed Submissions*, the hearing scheduled was stricken, the record was closed and the protest submitted for decision.

An *Order Reopening Record* was issued November 23, 2011, to receive additional evidence with respect to the amount of registration fees charged and collected on the subject vessel. *Division's Addendum to Its Motion for Summary Disposition* ("*Addendum*") was filed December 8,

[1] 68 O.S. 2001, § 201 et seq., as amended.
[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").
[3] 68 O.S. 2001, § 227; *OAC*, 710:1-5-24.

2011. Claimant did not file any supplemental pleadings or evidence. On January 12, 2012, the record was closed and the protest was submitted for decision.[4]

FINDINGS OF FACT

Upon review of the file and records, including the *Motion* and attached Exhibits, the *Response* and the *Addendum*, the undersigned finds:

1. On May 16, 2011, Claimant purchased a new, albeit approximately four (4) years old, 2007 Cruisers Yachts 420 Express, HIN ###### ("subject vessel") for the sum of $250,000.00, inclusive of delivery to Claimant on or before May 26, 2011 at LAKE in Oklahoma. Exhibits A and B.

2. On or about June 9, 2011, Claimant made application for a certificate of title to the subject vessel and subsequently paid vessel and motor excise taxes of $14,232.00 based on a factory delivered price of $437,920.00. Exhibits C through E. See, Boat Title Receipt.[5]

3. Claimant also elected to register the subject vessel for a three (3) year period and by said election, remitted registration fees of $408.00. *Addendum*. See, 3 Yr Boat Original Registration Receipt.[6]

4. The manufacturer's suggested retail price of the subject vessel is $437,920.00 as listed in the ABOS Marine Blue Book. Exhibit D.[7]

5. Claimant paid the excise taxes and registration fees under protest. Exhibits E and F.

6. Claimant requests a refund of approximately $6,107.00 of the excise taxes paid on the subject vessel which represents the difference between the tax computed on the factory delivered price and the purchase price of the subject vessel. Exhibit E.

7. Claimant also requests a refund of a portion of the first year registration fee in the approximate amount of $102.00, asserting he was charged for a full year registration rather than a quarter year registration. Exhibit E. See, ¶ 11, p. 2 and ¶ 5, p. 3 of *Response*.

8. The Division denied the refund requests by letter dated September 1, 2011, asserting "[e]xcise tax and registration fees were properly assessed under Oklahoma law." Exhibit G.

9. Claimant timely protested the denial and requested a hearing. Exhibit H.

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[4] *OAC*, 710:1-5-39(a).
[5] Admitted as evidence by official notice. *OAC*, 710:1-5-36.
[6] See note 6.
[7] See, Exhibit I which lists the manufacturer's suggest retail price as issued by the manufacturer.

ISSUE AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the use of the manufacturer's factory delivered price to determine the vessel and motor excise taxes due on the subject vessel is proper. The second issue is whether the proper amount of first-year registration fees were computed and assessed on the subject vessel.

Claimant contends that the vessel and motor excise tax levying statute and the Oklahoma Tax Commission rule implementing the statute are unconstitutional. In support of this contention, Claimant first argues that the valuation method is repugnant to OK. CONST. art. 10, § 8(A)(1) which requires tangible personal property to be taxed solely upon its fair cash value. Claimant further argues that the valuation method violates the uniformity clause of the Oklahoma Constitution, OK. CONST. art. 10, § 5. In support of this argument, Claimant first asserts that different and non-uniform valuation methods are used to value boats and motors, as opposed to motor vehicles. Claimant further asserts that among boat buyers different valuation methods are used depending on whether the buyer is the first purchaser or a subsequent purchaser.

Claimant further contends that equity demands he receive a refund of a portion of the excise taxes. In support of this contention, Claimant argues that adding $187,920.00 to the purchase price of the subject vessel and thereby increasing the excise taxes by an additional $6,000.00 is punitive and not contemplated by the levying statute.

With respect to the registration fee claim for refund, Claimant contends that he was charged a full year registration for the first registration year despite the fact he registered the subject vessel on June 9, 2011. In support of this contention, Claimant points out that he paid the maximum fee of $150.00 for the first-year registration.

The Division contends the subject vessel was properly and correctly valued and the correct excise tax was assessed. In support of this contention, the Division argues that the facts clearly demonstrate the sale of the subject vessel to Claimant was its first sale and the levy of excise taxes became an academic process; i.e., applying the statutorily authorized rate of excise tax to the manufacturer's factory delivered price of the vessel. The Division asserts that the factory delivered price was derived from a well-known and recognized source; the ABOS Marine Blue Book, and is susceptible to official notice. The Division further argues that there is no authority to adjust the retail price value of the subject vessel based on the age of the vessel or its condition or marketability and that the Commission is granted the authority in cases of disputes to determine the factory delivered price or price of any vessel or motor.

The Division argues that § 4019 of title 63 provides a formula for calculating the annual registration fee but that only one-fourth of the annual registration fee shall be collected if the vessel is registered between April 1 and June 30 inclusive, provided such fee shall not exceed One Hundred Fifty Dollars ($150.00), thereby deriving a charge of One Hundred and Fifty-one Dollars.

CONCLUSIONS OF LAW

WHEREFORE, premises considered the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this protest is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 227.

2. The Oklahoma Vessel and Motor Excise Tax Act ("Excise Tax Act")[8] levies an excise tax of three and one-fourth percent (3¼ %) of the value of each vessel[9] and motor[10] upon: (1) the transfer of legal ownership of any such vessel or motor registered in Oklahoma; (2) the use of any such vessel or motor registered in Oklahoma; and (3) the use of any such vessel or motor registered for the first time in Oklahoma as required by the Oklahoma Vessel and Motor Registration Act ("Registration Act")[11]. 63 O.S. 2001, § 4103(A). The tax is due at the time of the transfer of legal ownership or first registration in Oklahoma of such vessel or motor and shall be collected at the time of the issuance of a certificate of title for any such vessel or motor. Id.

3. The value of any vessel or motor shall be determined as of the time the person applying for a certificate of title obtained either legal ownership or possession of the vessel or motor which shall be the actual date of the sale or other transfer of legal ownership, which date in the case of a new vessel or motor shall be shown on the manufacturer's certificate or statement of origin. 63 O.S. 2001, § 4105(A). The value of a new vessel or new motor shall be the manufacturer's price of such vessel or motor delivered at the factory which represents the recommended retail selling price, not the wholesale price to a dealer. Id. See *OAC*, 710:22-9-1.[12] In cases of dispute, the Commission is authorized to determine the factory delivered price or price of any vessel or motor. 63 O.S. 2001, § 4105(B).

4. The excise tax levied by the Excise Tax Act is in lieu of all other taxes on the transfer or the first registration in this state of vessels and motors, including the optional equipment and

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[8] 63 O.S. 2001, § 4101 et seq., as amended.

[9] Defined at 63 O.S. 2001, § 4002(32). See 63 O.S. 2001, § 4101(B).

[10] Defined at 63 O.S. 2001, § 4002(21). See 63 O.S. 2001, § 4101(B).

[11] 63 O.S. 2001, § 4001 et seq., as amended.

[12] This rule as amended at 24 Ok Reg 2353, eff 6-25-2007, provides in part:

> (a) **Date due; penalty**. Excise tax, as levied by Section 4103 of Title 63, is due at the time of transfer of legal ownership or possession of a boat or an outboard motor and must be paid within thirty (30) days of such date.
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> (b) **Determination of taxable value**. The taxable value, for excise tax purposes, of a new boat or outboard motor is the manufacturer's original retail delivered price of the boat or outboard motor. The taxable value for used boats or outboard motors is depreciated, based on the age of the boat or outboard motor, as provided by statute.
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> (c) **Rate on sale of new boat or outboard motor by dealer**. A new boat or outboard motor sold for the first time will always be assessed the first year rate, regardless of the model year. If resold during the same year, the second year rate is assessed.
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> (d) **Rates generally; determination of model year**. In all other cases, the excise tax rate is based on the model year and the year in which the title is assigned. In determining the number of years, include the model year, year of assignment, and each year in between.

accessories attached thereto at the time of the sale and sold as a part thereof, except: (1) vessel and motor registration fees levied by the Registration Act; and (2) any fees for the issuance of either an original, renewal, transfer or duplicate certificate of title. 63 O.S. 2001, § 4107(A)(1) and (2).

5. Every vessel and every outboard motor in excess of ten (10) horsepower in this state, except as otherwise specifically provided and irrespective of whether used on waters of this state, is required to be titled within thirty (30) calendar days from the purchase date or from the date the owner becomes a resident of this state and annually registered under the provisions of the Registration Act. 63 O.S. 2001, § 4003(A)(1) and (B)(1); *OAC*, 710:22-1-3 and 710:22-1-10. The application for a certificate of title and registration of a vessel or an outboard motor shall be upon a form furnished by the Tax Commission and shall contain the information listed in § 4009(A) of the Registration Act. Laws 2005, c. 190, § 17, eff. Sept. 1, 2005. To obtain an original certificate of title for a vessel or outboard motor registered for the first time in this state or for a vessel or outboard motor not previously registered in any other state, the applicant must deliver, as evidence of ownership, a manufacturer's certificate of origin or at the discretion of the Commission a copy of the manufacturer's certificate of origin properly assigned by the manufacturer, distributor, or dealer licensed in this or any other state shown thereon to be the last transferee to the applicant. 63 O.S. Supp. 2005, § 4009(B).

6. The registration fees on vessels and motors are due on the first day of July each year and become delinquent on the first day of August thereafter. 63 O.S. Supp. 2004, § 4019(A)(1). Original registrations are issued according to the date of purchase on new equipment and date of entry for equipment entering the State, and the fees are prorated as follows:

(1)	July 1, through September 30	Full year registration
(2)	October 1 through December 30	¾ year registration
(3)	January 1, through March 31	½ year registration
(4)	April 1, through June 30	¼ year registration

63 O.S. Supp. 2004, § 4019(B); *OAC*, 710:22-1-5.

7. Any person registering a vessel or motor may elect to have the vessel or motor registered for a three-year period. 63 O.S. Supp. 2004, § 4019(C); *OAC*, 710:22-5-8(b). If the three-year registration period is elected, ninety percent (90%) of the registration fees that would have otherwise been paid if the vessel or motor had been registered on an annual basis over the three-year period shall be paid. Id. If the three-year registration period is elected, the partial year registration as provided in § 4019(B) shall count as one of the three (3) years of registration. Id.

8. The registration fees due on the initial and subsequent registration of a vessel or motor are set forth in § 4021(A) of the Registration Act, which provides in pertinent part:

> 1. Where the manufacturer's factory delivered price, or in the absence of such price being published in a recognized publication for the use of marine dealers and/or for purposes of insurance and financing firms, where the provable original or new cost of all materials, is One Hundred Fifty Dollars ($150.00) or less, the registration and license fee for the first and for each succeeding year's registration shall be One Dollar ($1.00);

> 2. Where the manufacturer's factory delivered price, or in the absence of such price being published as provided in paragraph 1 of this section, where the value of such vessel or motor is determined and fixed as above required and, is in excess of One Hundred Fifty Dollars ($150.00), there shall be added to the fee of One Dollar ($1.00), the sum of One Dollar ($1.00) for each One Hundred Dollars ($100.00) or any fraction thereof, in excess of One Hundred Fifty Dollars ($150.00) provided such fee shall not exceed One Hundred Fifty Dollars ($150.00);
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> 3. After the first year's registration in this state under the [Registration Act] of any new vessel or new motor under paragraph 2 of this subsection, the registration for the second year shall be ninety percent (90%) of the fee computed and assessed hereunder for the first year, and thereafter, such fee shall be computed and assessed at ninety percent (90%) of the previous year's fee and shall be so computed and assessed for the next nine (9) successive years provided such fee shall not exceed One Hundred Fifty Dollars ($150.00).
> See, *OAC*, 710:22-5-8(a).[13]

9. The registration fees when paid in full are in lieu of all ad valorem taxes, general or local, to which the vessels and/or motors may be subject as personal property. 63 O.S. 2001, § 4023.

10. 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.

11. 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

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[13] This rule as amended at 24 Ok Reg 2353, eff 6-25-2007 provides:

> Boat and outboard motor registration fees are based on the number of years registered and the factory delivered price (not selling price). A selling Oklahoma dealer is to list the manufacturer's original retail factory delivered price of the boat or outboard motor on the application documentation.

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.

12. Rules promulgated pursuant to the Administrative Procedures Act[14] are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2001, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2001, § 308.2(C). The legislature is deemed to have adopted an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. ***Branch Trucking Co. v. Oklahoma Tax Commission***, 1990 OK 41, 801 P.2d 686.

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. See, ***Arkansas Louisiana Gas Co. v. Travis***, 1984 OK 33, 682 P.2d 225; ***Boydston v. State***, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. ***Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission***, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party has the burden of proving the contrary by competent and convincing evidence. ***State ex rel. Hart v. Parham***, 1966 OK 9, 412 P.2d 142.

13. In administrative proceedings, the burden of proof is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC*, 710:1-5-47. ***In re Adway Properties, Inc.***, 2006 OK CIV APP 14, 130 P.3d 302; ***Geoffrey, Inc. v. Oklahoma Tax Commission***, 2006 OK CIV APP 27, 132 P.3d 632.

14. Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise. ***State ex rel York v. Turpen***, 1984 OK 26, 681 P.2d 763, 767. The Tax Commission is not empowered to decide the constitutional validity of a taxing statute. ***Dow Jones & Company, Inc. v. Oklahoma Tax Commission***, 1990 OK 6, 787 P.2d 843, 845.

15. OK. CONST. art. 10, § 8(A)(1) provides:

> A. Except as otherwise provided in Article X of this Constitution, beginning January 1, 1997, all property which may be taxed ad valorem shall be assessed for taxation as follows:
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> 1. Tangible personal property shall not be assessed for taxation at less than ten percent (10%) nor more than fifteen percent (15%) of its fair cash value, estimated at the price it would bring at a fair voluntary sale.

The excise taxes, and registration fees on vessels and motors are in lieu of ad valorem taxes. 63 O.S. 2001, §§ 4023 and 4107(A). The legislature has the inherent power to classify its subjects of taxation for the purpose of levying a

[14] 75 O.S. 2011, § 250 et seq., § 301 et seq.

> property tax or an excise tax. ***Daube v. Oklahoma Tax Commission***, 1944 OK 218, 194 Okla. 487, 152 P.2d 687. Excise taxes are indirect taxes imposed on activities, occupations, privileges, and consumption. ***Twin Hills Golf & Country Club, Inc. v. Town of Forest Park***, 2005 OK 71, 123 P.3d 5; ***Norman Homeowners Association, Inc. v. City of Norman***, 2004 OK CIV APP 14, 85 P.3d 853, cert. denied. Occupation taxes and property taxes are clearly distinct from each other in both species and function, distinctly different in object, purpose, and mission. ***In re Skelton Lead & Zinc Co.'s Gross Production Tax for 1919***, 1921 OK 121, 81 Okla. 134, 197 P. 495.

16. "Taxes shall be uniform upon the same class of subjects." OK. CONST. art. 10, § 5. The uniformity clause is applicable to property taxes only and not to privilege taxes. ***Matter of Gross Production and Petroleum Excise Tax Protest of Arkla, Inc.***, 1996 OK CIV APP 5, 919 P.2d 1151; ***Johnston v. Oklahoma Tax Commission***, 1972 OK 88, 497 P.2d 1295. The uniformity clause does not apply to valuation of property, but rather to rate of taxation. ***Adair v. Clay***, 1988 OK 77, 780 P.2d 650; ***Continental Oil Co. v. Oklahoma State Board of Equalization***, 1976 OK 23, 570 P.2d 315.

17. Great weight is to be accorded the expertise of an administrative agency, and a presumption of validity attaches to the exercise of expertise when an order of the agency is reviewed by a court. A court should not substitute its own judgment for that of an agency, particularly in the area of expertise which the agency supervises.[15]

DISCUSSION AND ORDER

Claimant asserts that the Motor Vehicle Division improperly valued his vessel for the purpose of computing excise tax because it utilized a value substantially higher than the amount that he actually paid for the vessel. Both the relevant Oklahoma Tax Commission rule, OAC 710:22-9-1, and the Oklahoma statute which levies the excise tax, 68 O.S. § 4105, provide that it is the manufacturer's factory delivered price which shall be used for excise tax purposes. Neither makes any provision for the use of the price paid by the purchaser of the boat to calculate excise tax. While the claimant argues that this is an unconstitutional provision, the Oklahoma Tax Commission has no authority to declare a statute unconstitutional. The Claimant failed to meet his burden of proof that the excise tax was calculated incorrectly.

Claimant also protests the manner in which the first year registration fees were calculated. It is undisputed that he registered his vessel on June 9 and pursuant to Section 4019 of title 63 should only be charged one-fourth (1/4) of the annual registration and license fee for the first year. The dispute centers on how one-fourth (1/4) of the annual registration and license fee is calculated. The Division calculated the fee by applying the formula set out in Section 4021(A)(2) of title 63, then taking one fourth of that amount and then applying the cap set out in that statute. The Claimant believes that the fee should be calculated by applying the formula set out in Section 4021(A)(2) of title 63, then applying the cap set out in that statute and then taking one-fourth of the amount arrived at after the cap is applied. Neither Section 4021 of title 63, which establishes the formula for

[15] *Kifer v. Oklahoma Tax Commission*, 1998 OK CIV APP 34, 956 P.2d 162 *citing Toxic Waste Impact Group* v. *Leavitt*, 1988 OK 20, 755 P.2d 626.

calculating the annual registration fee for a vessel, nor Section 4019 of title 63 which provides for part year registration fees, provide any guidance as to which of these approaches is correct.

Oklahoma courts have determined that where the language of a statute is ambiguous, a presumption of validity attaches to the interpretation of a statute by an administrative agency charged with implementing such statute. The Claimant has not presented evidence sufficient to overcome the presumption of correctness of the agency's interpretation of the statute.

The protest to the denial of the claim for refund of excise tax and registration fees is 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.

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."