

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-03-31-08 / NON-PRECEDENTIAL
ID: P-86-371
DATE: MARCH 31, 1987
DISPOSITION: DENIED
TAX TYPE: VEHICLE EXCISE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission, and hearing had, at which hearing Protestant, PROTESTANT, failed to appear, and the Motor Vehicle Division of the Oklahoma Tax Commission appeared by and through their legal representative, OTC ATTORNEY, of the General Counsel's Office of the Oklahoma Tax Commission.

An opening statement was made by OTC ATTORNEY for the Motor Vehicle Division of the Oklahoma Tax Commission and exhibits, not itemized herein, were received into evidence. The record will reflect that the Protestant was issued notice of said hearing by the Administrative Law Judge's Office and that said notice was received by the Protestant on September 17, 1986, but that Protestant failed to appear at said hearing and present evidence to support his protest to the excise tax as assessed by the Motor Vehicle Division Prorate and Reciprocity Section of the Oklahoma Tax Commission. The Protestant has, since the initial filing of his protest on August 5, 1986 and subsequent thereto the receipt of the notice of said hearing, failed to notify the Motor Vehicle Division of the Oklahoma Tax Commission, the General Counsel's Office or the Administrative Law Judge's Office concerning the protest filed and/or a request for a continuance of said hearing as set by the Administrative Law Judge's Office.

STATEMENT OF FACTS

The facts of this case were taken from the exhibits submitted at the hearing which reflect that on or about December 6, 1985 and subsequent thereto on May 6, 1986, prior to filing an Application for Proration Registration in Oklahoma, the Protestant, by and through his agent, AGENT, made application for Oklahoma Certificates of Title for the following vehicles with the motor license agency in ANYTOWN, Oklahoma, •to-wit: two (2) 1986 Timppte Trailers, two (2) 1985 Freightliner Tractors, and one (1) 1985 Timppte Trailer. Neither the tractors nor trailers, as above mentioned, had previously been registered in the State of Oklahoma through the Motor Vehicle Division of the Oklahoma Tax Commission. Accompanying the application for Oklahoma Certificates of Title, there was presented to the motor license agent what purported to be specific titles and registration certificates issued on specific dates for the above referenced vehicles by the State of Arkansas.

This information received by the motor license agent was transmitted to the Motor Vehicle Division of the Oklahoma Tax Commission and, upon receipt of the application and information contained therewith by the Motor Vehicle Division of the Oklahoma Tax

Commission, an Oklahoma Certificate of Title was assigned to the Protestant for the vehicles following the surrender of the Arkansas titles to the above referenced tractors and trailers.

The Motor Vehicle Division of the Oklahoma Tax Commission did, upon receipt of the applications and accompanying information, assign Oklahoma Certificates of Title to be issued as soon as the Protestant surrendered the Arkansas titles for the above referenced trailers and tractors. The Motor Vehicle Division of the Oklahoma Tax Commission did, upon investigation, discover that the documentation provided at the time the applications for Oklahoma Certificates of Title for the respective vehicles were processed, that the claimed for exemption from the motor vehicle excise tax did not in fact exist.

Thereafter, on or about July 8, 1986, the Motor Vehicle Division of the Oklahoma Tax Commission did in fact issue an assessment for excise tax and penalty in the amount of Six Thousand Twenty-Nine Dollars and Twenty-Five Cents (\$6,029.25) plus interest and penalties against the Protestant and subsequent to the issuance of said assessment, the Motor Vehicle Division of the Oklahoma Tax Commission did in fact receive a written protest to said assessment from the Protestant dated July 31, 1986.

ISSUES AND CONTENTIONS

It is the Protestant's contention that the assessment is incorrect and inappropriate pursuant to Section 2105 of Title 68 of the Oklahoma Statutes, which exempts the following vehicles from the tax as assessed, being (a) any vehicle owned by a non-resident person who operates principally in some other state but who is in Oklahoma only occasionally, (b) any vehicle brought into the state by a person formerly living in another state who has owned and registered said vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in this state, and, (g) any vehicle which is taxed on an ad valorem basis. The Protestant further contends that the provisions of Section 2103 of Title 68 of the Oklahoma Statutes provide that the excise tax as assessed is to be collected at the time of the issuance of Certificate of Title for the respective vehicles and that in view of the fact Protestant did not request issuance of title, nor was he issued a Certificate of Title to the respective vehicles, the assessment should be set aside in view of the fact the Protestant was issued a title only for the purposes of purchasing Oklahoma licenses.

It is the contention of the Motor Vehicle Division of the Oklahoma Tax Commission that the documentation provided by the Protestant through AGENT, which was processed by the Motor Vehicle Division of the Oklahoma Tax Commission, was in fact an application for Oklahoma titles and pursuant to the Oklahoma Statutes, that the Protestant's claim for exemption from the payment of the vehicle excise tax is without merit.

APPLICABLE LAW

The Oklahoma Vehicle License and Registration Act provides that the owner of every vehicle in the State of Oklahoma must possess a Certificate of Title as proof of ownership of said vehicle and that an application for a Certificate of Title may be made to the Oklahoma Tax

Commission or any motor license agent. After this application is made with the motor license agent, as in this case, the application and the information contained therewith shall be transmitted to the Oklahoma Tax Commission by the motor license agent and, upon receipt of this application and the information from the motor license agent, the Oklahoma Tax Commission shall issue an Oklahoma Certificate of Title which shall be mailed to the applicant and confirmation of such issuance provided to the motor license agent pursuant to the provisions of Section 1105 of Title 47 of the Oklahoma Statutes.

The Oklahoma Vehicle License and Registration Act also provides that every owner of a vehicle who does possess a Certificate of Title shall, prior to using the vehicle in the State of Oklahoma, make an application for the registration of such vehicle with a motor license agent and the application shall contain such information as shall be required by the Oklahoma Tax Commission pursuant to Section 1102 of Title 47 of the Oklahoma Statutes.

Contemporaneous with the provisions of the Oklahoma Vehicle License and Registration Act is the Vehicle Excise Tax Act found within the provisions of Section 2101 et seq. of Title 68 of the Oklahoma Statutes. The purpose of the Vehicle Excise Tax Act is to provide funds for the general governmental functions of the Oklahoma State government and the revenues derived under this article are to be apportioned and distributed by the Oklahoma Tax Commission as directed under the provisions of the Oklahoma Vehicle License and Registration Act.

Additionally, Section 1120(a) of Title 47 of the Oklahoma Statutes provides that proportional registration may be permitted for vehicles engaged in interstate commerce or combined interstate and intrastate commerce.

In the case at bar, the Protestant did in fact, prior to filing an application for proportional registration in the State of Oklahoma, make an application for Oklahoma Certificates of Title for the vehicles in question. When the applications for Certificates of Title were presented through the motor license agent, there was also information presented which purported to be titles and registration certificates issued by the State of Arkansas. Upon review by the Motor Vehicle Division of the Oklahoma Tax Commission and upon information received from the Office of Motor Vehicles of the State of Arkansas, it was found that the vehicles upon which Oklahoma application was made had never been titled and/or registered in the name of PROTESTANT by the Office of Motor Vehicles of the State of Arkansas. (See Exhibit No. 3)

Section 2103(a) of Title 68 of the Oklahoma Statutes provides for an excise tax on the transfer of legal ownership, use and first registration of vehicles in the State of Oklahoma as follows:

- (a) There is hereby levied an excise tax of three and one-fourth percent (3 $\frac{1}{4}$ %) of the value of each vehicle, upon the transfer of legal ownership of any such vehicle registered in this state and upon the use of any such vehicle registered in this state and upon the use of any such, vehicle registered for the first time in this state, except as otherwise provided in Sections 2101 through 2108 of this title. The tax hereby 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 . . .

Section 2105 of Title 68 of the Oklahoma Statutes provides for specific exemptions to the above cited levy of excise tax, the specific provisions dealing with the case at hand being Section 2105(a), (b) and (g) which state, to-wit:

An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by the Oklahoma Tax Code for:

(a) Any vehicle owned by a nonresident person who operated principally in some other state but who is in Oklahoma only occasionally;

(b) Any vehicle brought into this state by a person formerly living in another state, who has owned and registered said vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in this state;

(g) Any vehicle which is taxed on an ad valorem basis . . .

Protestant has failed to provide any documentation to support his protest to the assessment issued by the Motor Vehicle Division by and through the Prorate and Reciprocity Section dated July 8, 1986 in the amount of Six Thousand Twenty-Nine Dollars and Twenty-Five Cents (\$6,029.25).

The evidence reflects that there was an application made for the tractors and trailers at issue for Oklahoma Certificates of Title and there was presented what purported to be titles and registration certificates issued by the State of Arkansas but which in fact had never been issued to the Protestant by the Office of Motor Vehicles of the State of Arkansas.

The Protestant's claimed exemption is unfounded and there exists not a scintilla of evidence that the exemption as claimed would be applicable in light of the well established rule issued by the Oklahoma Supreme Court in a plethora of cases which require that tax exemption statutes are to be strictly construed against the person or entity asserting the exemption. See Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (Okl. 1951) and Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1303 (Okl. 1975). The claimed exemption by the Protestant, pursuant to the specific provisions within the confines of Section 2105 of Title 68 of the Oklahoma Statutes, is unsubstantiated and therefore not applicable to the facts presented through the evidence reviewed at the hearing.

The Protestant has totally failed to provide any information and/or documentation and/or case law or statutes which would support the contentions that he averred in his protest to the

assessment issued by the Motor Vehicle Division of the Oklahoma Tax Commission on July 8, 1986.

CONCLUSIONS

In view of the above and foregoing factual situation and applicable law thereto, the undersigned Administrative Law Judge concludes as follows:

(1) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) That the exemption statutes as claimed by the Protestant are required to be strictly construed against the exemption and in light of the statutory directives set forth in Section 2105 of Title 68 of the Oklahoma Statutes, the Protestant fails to qualify for the exemption therein provided as per his protest to the assessment.

(3) That the protest of PROTESTANT is denied and that the assessment by the Motor Vehicle Division of the Oklahoma Tax Commission for excise tax in the amount of Six Thousand Twenty-Nine Dollars and Twenty-Five Cents (\$6,029.25) and any additional interest and/or penalty that may accrue from the date of the assessment until paid in full is correct and proper.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT, Protestant herein, be denied and that the assessment of excise tax in the amount of Six Thousand Twenty-Nine Dollars and Twenty-Five Cents (\$6,029.25) be deemed correct and proper and that any additional penalty and/or interest should continue to accrue thereon from the date of said assessment until the entire assessment and additional interest and/or penalty which may accrue thereon is paid in full.

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.