

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-04-09-08 / NON-PRECEDENTIAL
ID: P-85-107
DATE: APRIL 9, 1987
DISPOSITION: SUSTAINED
TAX TYPE: AIRCRAFT 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 REPRESENTATIVE appeared in person representing himself and the Protestant COMPANY, and the Sales and Use Tax Division Aircraft Excise Tax Section represented by OTC ATTORNEY, Attorney for the General Counsel's Office of the Oklahoma Tax Commission.

Opening statements were made by the respective parties and exhibits, not itemized herein, were received into evidence. ADMINISTRATOR, Administrator of the Aircraft Excise Tax Section of the Sales and Use Tax Division, testified on behalf of the Division and closing arguments were then made by the respective parties and the case was submitted for a decision.

STATEMENT OF FACTS

The Aircraft Excise Tax Section of the Sales and Use Tax Division of the Oklahoma Tax Commission did on February 20, 1985 notify COMPANY that registration excise tax was due based upon Federal Aviation Administration records which indicated that a bill of sale had been prepared and filed September 19, 1984 which showed that a SELLER sold an aircraft, registration number XXX, to COMPANY and reciting on said Bill of Sale that REPRESENTATIVE and the XXX CORPORATION were co-owners. On or about March 6, 1985, REPRESENTATIVE, Protestant herein, advised the Sales and Use Tax Division of the Oklahoma Tax Commission that SELLER had, at one time prior to the sale of said aircraft, been a co-owner with REPRESENTATIVE and the XXX CORPORATION and that he had withdrawn as a member of the joint venture therein selling his one-third interest to the remaining joint owners, being REPRESENTATIVE and the XXX CORPORATION, and requesting an exemption pursuant to the provisions of Section 6003 of Title 68 of the Oklahoma Statutes. On or about April 9, 1985, the Aircraft Excise Tax Section of the Sales and Use Tax Division issued an assessment against COMPANY pursuant to the provisions of Section 6001 of Title 68 of the Oklahoma Statutes covering the sale of the entire aircraft, said amount being Nine Hundred Eighty-seven Dollars and Seventy Cents (\$987.70), and by letter dated April 10, 1985 the Sales and Use Tax Division did deny Protestant's requested exemption pursuant to provisions of Section 6003(J) and (I) of the Oklahoma Statutes. On April 16, 1985 the Protestant did in fact protest the assessment. Thereafter, on June 27, 1985 the Sales and Use Tax Division did, based upon additional information obtained by the Division, amend its original assessment of April 9, 1985 to reflect the sale of one-third interest of the aircraft creating a total liability of Three

Hundred Twenty-nine Dollars and Twenty-four Cents (\$329.24) representing aircraft excise tax of Two Hundred Seventy-six Dollars and Sixty-seven Cents (\$276.67), interest of Twenty-four Dollars and Ninety Cents (\$24.90) and penalty of Twenty-seven Dollars and Sixty-seven Cents (\$27.67).

ISSUES AND CONTENTIONS

It is the contention of the Protestant that the sale by SELLER of his one-third interest to the other remaining joint interest owners, REPRESENTATIVE and the XXX CORPORATION, would be an exempt sale pursuant to the provisions of Section 6003(J) and (I) of Title 68 of the Oklahoma Statutes.

It is the contentions of the Aircraft Excise Tax Section of the Sales and Use Tax Division that this exemption is not applicable based upon the facts and circumstances surrounding the assessment.

The issue presented is whether or not the sale by a joint interest owner of his or her interest in an aircraft to the remaining joint interest owners is exempt under the provisions of the exemption statute contained within Section 6003(J) of Title 68 of the Oklahoma Statutes.

APPLICABLE LAW

Section 6001 et seq. of Title 68 of the Oklahoma Statutes provide for the aircraft excise tax, the levying provision being Section 6002 of Title 68 of the Oklahoma Statutes, which became effective July 1, 1984. The exemption provisions contained within the aircraft excise tax statutes is found at Section 6003 of Title 68 of the Oklahoma Statutes, the specific exemption being claimed by the Protestant in this matter being subsection (J) which provides in pertinent part:

§6003. Exemptions

The following aircraft shall be exempt from provisions of this article:

...

(J) aircraft transferred or conveyed to a partner or other person who after such sale owns a joint interest in the aircraft and on which the sales or use tax levied pursuant to the provisions of this title or the excise tax levied pursuant to the provisions of Section 6002 of this title have previously been paid on the aircraft;

The facts in the case at bar reflect that the Protestant's claimed exemption is valid in that SELLER, being one of the joint interest owners in the subject aircraft, did sell his one-third joint interest ownership to the remaining joint interest owners, being REPRESENTATIVE and the XXX CORPORATION.

CONCLUSION

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That based upon the facts and circumstances as presented at the hearing, the Protestant presented sufficient evidence to show that the exemption claimed pursuant to the provisions of Section 6003(J) of Title 68 of the Oklahoma Statutes is applicable in this limited business transaction.
- (3) That the protest of COMPANY by and through REPRESENTATIVE should be sustained.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of COMPANY by and through REPRESENTATIVE be sustained and that the assessment by the Aircraft Excise Tax Section of the Sales and Use Tax Division be withdrawn.

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.