

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-09-08-02 / NON-PRECEDENTIAL
ID: P-86-302
DATE: SEPTEMBER 8, 1987
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE EXCISE
APPEAL: NO APPEAL TAKEN

ORDER

Pursuant to Oklahoma Tax Commission Order No. 87-05-06-02, this matter came on for hearing before the Oklahoma Tax Commission en banc on the 19th day of August, 1987, upon the Application for Oral Argument of COMPANY in response to the proposed Findings, Conclusions and Recommendations submitted by ALJ, Administrative Law Judge of the Oklahoma Tax Commission on March 5, 1987. COMPANY appeared by attorney, ATTORNEY and the Motor Vehicle Division appear by attorney, OTC ATTORNEY.

Oral arguments in support of the respective positions of the parties were made and the case was submitted for decision. After reviewing the facts and authority presented and hearing oral argument, the Commission adopts the Findings, Conclusions and Recommendations of the Administrative Law Judge amended as follows:

STATEMENT OF FACTS

The facts of this case are taken from the testimony and evidence admitted at the hearing which reflect that on December 6, 1985, January 9, 1986, February 10, 1986, and April 21, 1986, prior to filing an application for proportional registration in Oklahoma, the Protestant, through AGENT, made application for Oklahoma Certificates of Title for twenty-two (22) tractors and/or trailers owned by the Protestant, said application being filed with the motor license agency in TOWN, Oklahoma. The twenty-two (22) tractors and/or trailers had not previously been registered in the State of Oklahoma and, upon making application for the Oklahoma Certificates of Title, the Protestant, through AGENT, presented to the motor license agency in TOWN, Oklahoma what purported to be titles and registration certificates issued by the State of Arkansas for the twenty-two (22) trailers and/or tractors. The applications and information that was submitted to the motor license agent was thereafter transmitted to the Motor Vehicle Division of the Oklahoma Tax Commission and upon receipt of the applications and information by the Motor Vehicle Division of the Oklahoma Tax Commission, Oklahoma Certificates of Title were assigned to the Protestant to be issued as soon as the Protestant surrendered the Arkansas titles for the vehicles in question.

Prior to the issuance of the Certificates of Title by the Motor Vehicle Division of the Oklahoma Tax Commission, it was discovered that the documentation that was provided at the time the applications for Oklahoma Certificates of Title were processed did not in fact support the claimed exemption from the vehicle excise tax and therefore, on June 13, 1986, the Protestant was assessed excise tax and penalty in the total amount of Thirty-two Thousand Three Hundred

Forty-one Dollars (\$32,341.00) plus penalty, to which the Protestant timely protested such on June 30, 1986. Following the protest being lodged by the Protestant, additional information was submitted to the Motor Vehicle Division of the Oklahoma Tax Commission which permitted an adjustment to be made to the June 13, 1986 assessment of excise tax and penalty, wherein certain vehicles were deleted from the original assessment and reducing the amount of excise tax and penalty to Twenty-five Thousand Ninety Dollars (\$25,090.00) representing the following vehicles:

| <u>YEAR</u> | <u>MAKE</u> | <u>VIN</u> | <u>EXCISE TAX</u> |
|-------------|-------------|-------------------|-------------------|
| 1986 | Marmon | 1JUCEB189G1000219 | \$ 2,145.00 |
| 1986 | Marmon | 1JUCEB18XG1000228 | 2,145.00 |
| 1986 | Marmon | 1JUCEB186G1000226 | 2,145.00 |
| 1986 | Marmon | 1JUCEB184G1000225 | 2,145.00 |
| 1986 | Marmon | 1JUCEB188G1000227 | 2,145.00 |
| 1986 | Marmon | 1JUCEB189G1000222 | 2,145.00 |
| 1986 | Marmon | 1JUCEB180G1000223 | 2,145.00 |
| 1986 | Marmon | 1JUCEB182G1000224 | 2,145.00 |
| 1986 | Marmon | 1JUCEB187G1000221 | 2,145.00 |
| 1986 | Marmon | 1JUCEB185G1000220 | 2,145.00 |
| 1986 | Trailmobile | 1PT01ANH9G9001672 | 910.00 |
| 1986 | Trailmobile | 1PT01ANH0G9001673 | 910.00 |
| 1986 | Trailmobile | 1PT01ANH2G9001674 | 910.00 |
| 1986 | Trailmobile | 1PT01ANH6G9001676 | 910.00 |
| | | TOTAL | \$25,090.00 |

ISSUES AND CONTENTIONS

It is the Protestant's contention that it is an Arkansas corporation domiciled with its principal place of business in the State of Arkansas and that the Oklahoma Tax Commission has erred in assessing the vehicle excise tax against the Protestant for the reason of the fact the vehicles subject to the assessment fall under one of the exemptions contained within the provisions of Section 2105 of Title 68 of the Oklahoma Statutes. In view of this fact the Protestant is exempt under these provisions and it would owe no excise tax and therefore should not be required to pay the assessment issued by the Motor Vehicle Division of the Oklahoma Tax Commission. Protestant also contends that it was in fact a victim of unauthorized action on behalf of its agent, AGENT, in that it did not authorize AGENT to make application for and/or obtain Oklahoma Certificates of Title for the vehicles in question and therefore, the agent exceeded the scope of its authority.

It is the Motor Vehicle Division of the Oklahoma Tax Commission's contention, by and through the General Counsel's Office, that the documentation provided by the Protestant at the time the applications for titles were made and processed does not in fact support any claimed for exemption under the provisions of Section 2105 of Title 68 of the Oklahoma Statutes and therefore, the excise tax as assessed is due and owing.

The Motor Vehicle Division of the Oklahoma Tax Commission also contends that in view of the fact that Protestant did avail itself of the privileges and benefits afforded Protestant under the Oklahoma law, by and through its agent, that it could not thereafter ask that the acts of its agent be withdrawn.

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 the application is made with a motor license agent, the application and the information contained therewith shall be transmitted to the Oklahoma Tax Commission by the motor license agent and upon the receipt of the 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 in confirmation of such issuance provided to the motor license agent. See Title 47 O.S. 1985 §1105.

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. See Title 47 O.S. 1985 §1112.

Contemporaneous with the provisions of the Oklahoma Vehicle License and Registration Act is the Vehicle Excise Tax Act found within the provisions of Title 68 O.S. 1985 §2101 et seq. The purpose of the Vehicle Excise Tax Act is to provide funds for general governmental functions of state government for the State of Oklahoma 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. Title 68 O.S. 1985 §2103(a) 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 on three and one-fourth percent (3¼%) 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 2109 of this title. The tax hereby levied shall be due at the time of the transfer of legal ownership of 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 . . .

The Vehicle Excise Tax Act does provide for certain specific exemptions to the above cited levy of excise tax, the relevant provisions, as set forth by the Protestant in the case at hand,

being subparagraphs (a) and (b) of Section 2105 of Title 68 of the Oklahoma Statutes, which state as follows:

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 operates 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 . . .

The Oklahoma Legislature, pursuant to the provisions of the Oklahoma Vehicle License and Registration Act found in Title 47 §1101 et seq. and the Vehicle Excise Tax Act found in Title 68 §2101 et seq., instituted a well defined and thought out scheme of legislative intent concerning the issues brought forth at the hearing. The Protestant, by and through its agent, did in fact comply with the above referenced provisions contained within the Oklahoma Vehicle License and Registration Act concerning making application for Oklahoma Certificates of Title and likewise, under the exemption provisions contained within the Vehicle Excise Tax Act found at Title 68 §2105, did in fact submit information coupled with the applications which showed that the vehicle excise tax was in fact exempt.

The Oklahoma Tax Commission, upon receipt of the applications and the respective information accompanying the applications, did in fact discover that the claimed exemption pursuant to the provisions of Section 2105 of Title 68 of the Oklahoma Statutes, were in fact not applicable and therefore an assessment was issued against the Protestant for excise tax pursuant to Section 2103 of Title 68 of the Oklahoma Statutes. The Protestant attempted to buttress its argument by averring that its agent, AGENT, exceeded the scope of its authority in making application for Oklahoma Certificates of Title and that had Protestant known that his agent had exceeded the authority granted, such would not have been ratified.

The applications for Oklahoma Certificates of Title reflect that the documents are signed under oath and a notary affixed a signature thereto. Each of the applications are executed by VICE-PRESIDENT, Vice-President of the Protestant, and notarized, although testimony of VICE-PRESIDENT reflects that the signature was not in fact his signature. Be that as it may, the Protestant's vehicles did in fact travel on a daily basis through the State of Oklahoma as per the testimony of the motor vehicle enforcement agent who witnessed the vehicles traveling through the State of Oklahoma; likewise,

The facts reflect that the Protestant did in fact avail itself of the rights, privileges and benefits contained within the Oklahoma Statutes and as such, must be held liable for the benefits that the Protestant has in fact used and/or received.

It is interesting to note that the applications for Oklahoma Certificates of Title were executed and notarized on December 6, 1985, January 9, 1986, February 10, 1986 and April 21, 1986, respectively, and filed with the motor license agent in TOWN, Oklahoma, yet Protestant was supposedly unaware for a period of almost five (5) months of what in fact its agent was attempting to do. Further, that Protestant remained unaware of the actions of its agent until it received notice from the Motor Vehicle Division of the Oklahoma Tax Commission as per the assessment dated June 13, 1986.

Protestant failed to provide any documentation to support that the vehicles in question had in fact been titled in the State of Arkansas as alleged, but rather, the evidence reflects that the Protestant, by and through their agent, applied for Oklahoma Certificates of Title and presented what purported to be titles and registration certificates issued by the State of Arkansas.

In view of the fact that exemption statutes must be strictly construed under the plethora of Oklahoma Supreme Court cases, and based upon the evidence presented in this case, the claimed exemption by the Protestant, pursuant to the provisions of Section 2105 of Title 68 of the Oklahoma Statutes, is unsubstantiated and therefore not applicable. See Dairy Queen of Oklahoma, Inc. v. Oklahoma Tax Commission, 238 P.2d 800 (Okla. 1951) and Phillips Petroleum Company v. Oklahoma Tax Commission, 542 P.2d 1301 (Okla. 1975).

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 are strictly construed against the person claiming the exemption. In light of the statutory directive set forth in Section 2105 of Title 68 of the Oklahoma Statutes, the Protestant fails to qualify for the exemption therein provided.
- (3) That the vehicle excise tax as assessed in the amount of Twenty-five Thousand Ninety Dollars (\$25,090.00) and any additional interest and/or penalty that may accrue from the date of the assessment as adjusted until paid in full is correct and proper.

WHEREFORE, IT IS HEREBY ORDERED by the Oklahoma Tax Commission that the protest of COMPANY be denied and that the assessment of excise tax and penalty in the amount of Twenty-five Thousand Ninety Dollars (\$25,090.00) be deemed correct and proper and that only additional penalty and/or interest should continue to accrue thereon from the date of the assessment until the entire assessment and additional penalty and/or interest accrued 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.