

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 90-11-06-012 / NON-PRECEDENTIAL
ID: P-88-337-P
DATE: NOVEMBER 6, 1990
DISPOSITION: DENIED
TAX TYPE: AIRCRAFT EXCISE
APPEAL: NO APPEAL TAKEN

ORDER

This comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed herein on the 15th day of June, 1990, and Supplemental Findings, Conclusions and Recommendations of the Administrative Law Judge, filed herein on the 31st day of July, 1990, marked as Exhibit "A" and "B", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission, with the exception that the fair market value of aircraft NXXXR is determined to be Six Thousand Dollars (\$6,000.00) and the assessment is hereby amended and abated in conformity therewith.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was had, at which hearing Protestant appeared on his own behalf. The Aircraft Section of the Motor Vehicle Division of the Oklahoma Tax Commission was represented by OTC ATTORNEY, Assistant General Counsel. Exhibits not herein itemized were admitted into evidence and testimony was heard. The parties filed supplemental briefs, after which this case was submitted for a decision.

STATEMENT OF FACTS

1. On the 1st day of April, 1988, the Division acted upon information it received from the records of the Federal Aviation Administration (FAA) and notified Protestant of his proposed liability for excise tax due upon the transfer of ownership of Protestant's aircraft within the State of Oklahoma.

2. On the 3rd day of June, 1988, the Division sent an assessment to the Protestant proposing a liability for excise tax in the amount of Seven Hundred Eighty Dollars and No Cents (\$780.00); for interest in the amount of Sixty-eight Dollars and Eighty-five Cents (\$68.85); and, for penalty in the amount of Seventy-eight Dollars and No Cents (\$78.00); for an aggregate amount due of Nine Hundred Twenty-six Dollars and Eighty-five Cents (\$926.85).

3. On the 30th day of June, 1988, Protestant filed a timely protest to the proposed assessment. The Protestant claimed that the change in registration of the aircraft involved only a one-half interest; that no sale had taken place; and, that the aircraft's condition was deteriorated and thus, the aircraft was improperly valued for assessment purposes.

4. A pre-hearing conference was set for October 21, 1988, and was stricken at the request of Protestant to allow for an informal conference with Division's counsel.

5. A pre-hearing conference was reset for June 29, 1989, at which Protestant appeared, the issues were discussed and the Protestant was furnished with copies of applicable statutes and prior decisions of the Commission.

6. On November 1, 1989, a hearing was held in this matter. Protestant appeared on his own behalf. Also testifying on behalf of Protestant was WITNESS. OTC WITNESS, employee of the Aircraft Section of the Motor Vehicle Division, testified for the Division.

7. The aircraft at issue was originally acquired by PROTESTANT and WITNESS, who registered with the FAA as co-owners of the aircraft. This registration took place in 1981. On December 1, 1987, a new registration was filed with the FAA and PROTESTANT was listed as owner in his individual capacity.

8. The Division issued a proposed assessment to PROTESTANT on the basis that a transfer of legal ownership of the aircraft had taken place and tax was due pursuant to 68 O.S. §6001 et seq.

9. Both PROTESTANT and WITNESS asserted at the hearing that the transfer of the ownership of the aircraft from WITNESS to PROTESTANT was exempt from tax because of the exemptions from tax for transfers involving partners. PROTESTANT and WITNESS both testified that they owned the aircraft as partners.

10. PROTESTANT testified that the partnership was based on oral agreement. Both men had their separate businesses but their common business, according to PROTESTANT, was the plane. The payment for gas, oil, etc. fell on the one using the plane while all other expenses were divided in half to be paid by both. PROTESTANT was responsible for care and maintenance of the plane and was reimbursed one-half his expenses. WITNESS was responsible for payment of bills and checking on the plane when it was tied down in CITY.

11. WITNESS testified that he and his brother had a business partnership and asserted that evidence of the partnership was the joint ownership in the airplane and the bank note executed by both of them using the aircraft as collateral.

12. While title to the aircraft was in both brothers' names, the aircraft was collateralized by three different loans. The first loan was taken out on May 4, 1984, for \$10,000.00 and paid off on August 6, 1984. The second loan was taken out on September 5, 1984, for \$9,015.00 and due on December 4, 1984. It was not paid off until October 28, 1987, when a third loan was taken out to pay off the second loan. When the third loan was paid down to a balance of \$6,000.00 the aircraft was sold to BUYER and the proceeds were used to pay off the note. WITNESS contended that the loan amounts were not indicative of the aircraft's value.

13. WITNESS disputed the fair market value assigned to the plane by the Division for the proposed assessment. According to his testimony, they purchased the plane in 1981 for

\$22,000.00 and in 1988 the plane was sold to a third party for approximately \$6,000.00 for salvage.

14. From the time the men purchased the plane in 1981 until it was sold for salvage, several factors affected its value according to WITNESS. The plane market in Oklahoma was “down” for one. Added to this was the fact that the plane was wooden and it deteriorated while being tied down outside. Both men had experienced financial losses in their respective businesses and could not afford the plane’s upkeep. The plane was not even flyable when it was sold.

15. When WITNESS transferred his interest in the plane to PROTESTANT, he owed PROTESTANT \$3,000.00, which debt was cancelled by the transfer.

16. OTC WITNESS testified that the blue book value of the aircraft, representing the fair market value, was \$24,000.00. The proposed assessment was based on this value. Protestant had not supplied the Division with any other value for the aircraft transfer.

17. Following the hearing, Protestant submitted a letter for consideration from BUYER, the purchaser of the aircraft from PROTESTANT. The letter, addressed to the Oklahoma Tax Commission, reads as follows:

I have been asked by PROTESTANT to give an appraisal of his 1973 NAME NXXXXR. I think the best appraisal (sic) was the fact that I purchased the airplane from him for \$6,000.00. The aircraft was in a state of extreme deterioration and we dismantled it for salvage.

The Division did not have an opportunity to review this evidence or to examine BUYER at the hearing.

ISSUES AND CONTENTIONS

ISSUE ONE: Whether the transfer of the above described aircraft from PROTESTANT and WITNESS to PROTESTANT is a transfer which is exempt from aircraft excise tax under the provisions of 68 O.S. §6003(I) or §6003(J).

ISSUE TWO: If the transfer is subject to aircraft excise tax, whether the aircraft was properly valued for determining the amount of tax due.

The Protestant contends that the transfer of legal ownership triggering this proposed assessment is exempt from aircraft excise tax pursuant to the provisions of 68 O.S. §6003(I) or 68 O.S. §6003(J). Protestant further contends that the Motor Vehicle Division incorrectly valued the plane for the purpose of the proposed assessment.

The Motor Vehicle Division asserts that Protestant is ineligible for the above stated exemptions from aircraft excise tax and asserts that the valuation upon which it based its proposed assessment is correct.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest.

2. An excise tax of 3 1/4% of the purchase price of each aircraft that is to be registered with the FAA is imposed “upon the transfer of legal ownership of any such aircraft or the use of any such aircraft within this state . . .” 68 O.S. Supp. 1985, §6002. Protestant has not disputed that the excise tax is due on the transfer of the aircraft under the levying provision. Either of two exemptions from the tax levy are applicable to the aircraft transfer, however, Protestant argues. These two exemptions provide as follows:

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

* * *

(I) aircraft transferred from a partnership to the members of said partnership and if made in payment in kind in the dissolution of said partnership;

(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;

* * *

2. Subsection (I) is applicable to specific transfers from a partnership to its members in dissolution of the partnership. It necessarily follows that a partnership must exist for the exemption to apply. In the instant protest, this requires that a determination be made of whether Protestant and his brother had a partnership.

Partnership is defined under Oklahoma law as, “[a]n association of two or more persons to carry on as co-owners of a business for profit.” 54 O.S. 1981, §206. Title 54 O.S. 1981, §207 states that, “[j]oint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the property.”

The Oklahoma Court of Appeals addressed the standard of proof to be met for establishing that a partnership created by oral agreement exists. In Singer v. Singer, 634 P.2d 766 (Okla.Ct.App. 1981), the Court reasoned as follows:

Partnership is a creature of voluntary agreement. A partnership relationship can be created by oral agreement but proof of the fact of partnership and its terms must be established, by “clear, unequivocal and decisive” evidence. Oral testimony offered to prove these facts is not given much weight.

Therefore, the question presented here is whether the terms and fact of the alleged oral partnership have been proven by clear, unequivocal and decisive evidence.

634 P.2d at 770.

3. The aircraft was registered in the Protestant's name and WITNESS'S name as co-owners. Each co-owner treated the aircraft as an article of joint ownership. Use was made by each brother in pursuit of separate business and personal interests. Each party collateralized the aircraft by separate loans unrelated to any enterprise requiring a joint purpose.

When the evidence is reviewed as a whole, there has not been clear, unequivocal and decisive evidence that a partnership existed. Consequently, the exemption from the aircraft excise tax for aircraft transferred from a partnership to the members is inapplicable. 68 O.S. §6003(I).

4. The exemption in subsection (J) likewise is inapplicable to the facts of this case. 68 O.S. §6003(3). Subsection (J) requires that following the transfer of the aircraft, a partner or other person must own a joint interest in the aircraft.

In the case at hand, the two men owned a joint interest prior to the transfer. Following the transfer, PROTESTANT was sole owner of the aircraft. Clearly, the aircraft transfer does not fall within the exemption provision.

5. Protestant also contested the valuation of the aircraft by the Division. Since there was no purchase price for the aircraft, the Division utilized blue book value to apply the rate of taxation. The tax is levied at the rate of 3 1/4% of the purchase price. 68 O.S. §6002. Purchase price is defined in Section 6001(B) as "the total amount paid for the aircraft whether paid in money or otherwise." When no current purchase is involved, purchase price is defined as "fair market value." 68 O.S. Supp. 1984, §6001. Black's Law Dictionary provides the following definition of the fair market value:

Fair market value. The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser Black's Law Dictionary, 537 (5th ed. 1979).

6. The Protestant has the burden of showing in what respect the action of the Division is incorrect. Rule 02.026.00 of the Oklahoma Tax Commission Permanent Rules. Through Protestant's testimony and WITNESS' testimony, as to the deteriorated condition of the aircraft, as well as the evidence of the subsequent sale within a year of the aircraft for salvage to a third

party for a significantly lesser amount of money, Protestant showed that the \$24,000.00 blue book value was incorrect as the fair market value of his aircraft. While the Division was justified in utilizing the blue book value for purposes of the proposed assessment, since that was their best available information, the blue book value in this specific instance does not reflect the fair market value of this aircraft.

7. In this matter, neither the evidence presented by the Protestant, nor the evidence presented by the Division establishes that their respective values for the aircraft was the fair market value. The evidence presented by the parties, however, does preclude a finding that their values would be that which the aircraft would have brought considering its highest most profitable use if offered in the open market. Hence, in order to properly value the aircraft for the excise tax levy, further evidence is required.

DISPOSITION

Based upon the conclusions of law, the parties are given an additional thirty (30) days from the date of issuance of these Findings, Conclusions and Recommendations to submit additional evidence as to the fair market value of the aircraft at the time of the transfer of the aircraft from WITNESS to PROTESTANT. Upon receipt and review of such evidence, supplemental Findings, Conclusions and Recommendations will be issued with further recommendation to the Commissioners.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing was had, at which hearing Protestant appeared on his own behalf. The Aircraft Section of the Motor Vehicle Division of the Oklahoma Tax Commission was represented by OTC ATTORNEY, Assistant General Counsel. Exhibits not herein itemized were admitted into evidence and testimony was heard. The parties filed supplemental briefs, after which this case was submitted for a decision.

Findings, Conclusions and Recommendations were issued on June 15, 1990. The parties were given thirty days in which to submit additional evidence as to the fair market value of the aircraft at the time of the transfer of the aircraft from WITNESS to PROTESTANT, Protestant herein. Neither party submitted any additional evidence.

SUPPLEMENTAL CONCLUSIONS OF LAW

1. At the hearing in this matter, the Protestant was able to show that the aircraft's condition was such that a lesser value than the value utilized by the Division in the proposed assessment would reflect the fair market value of the aircraft. While Protestant was able to meet that part of his burden at the hearing, he failed to provide sufficient evidence to establish a fair market value for the aircraft. Since the burden of providing sufficient evidence from which a value can be determined lies with the Protestant, and no evidence was forthcoming during the additional time period provided to Protestant, the burden has not been met.

2. The protest should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the aircraft excise tax protest of PROTESTANT, be 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.