

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 99-06-14-006 / NOT PRECEDENTIAL
ID: P9700286
DATE: 06-14-99
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE EXCISE / REGISTRATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the file and records, including the Stipulation of Facts and attached exhibits, and the arguments of the parties, the undersigned finds:

FINDINGS OF FACT

The parties stipulate to the following:

A. PARTIES:

1. ANONYMOUS CORPORATION is an Oklahoma corporation, in good standing with the State of Oklahoma, with its principal place of business in ANYTOWN, Oklahoma. ANONYMOUS CORPORATION is a franchised Oklahoma new and used motor vehicle dealer, as defined in Okla. Stat. tit. 47, § 1102, and is authorized to sell new and used Pontiac, Buick, Chrysler, Plymouth, Jeep and Eagle automobiles and GMC trucks.

2. The Oklahoma Tax Commission, Motor Vehicle Division, is an authorized agency of the State of Oklahoma (hereinafter Commission).

B. ORDER OF EVENTS:

1. ANONYMOUS CORPORATION is licensed to sell used motor vehicles in the State of Oklahoma and all vehicles involved in this proceeding are vehicles for which ANONYMOUS CORPORATION is licensed to sell.

2. ANONYMOUS CORPORATION placed a UD tag on the used vehicles, pursuant to Okla. Stat. tit 47, § 1137.1, and as a "courtesy" would loan a customer a used motor vehicle for use without charge while the customer's vehicle was being repaired.

3. The Oklahoma Highway Patrol advised one of ANONYMOUS CORPORATION'S customers and/or ANONYMOUS CORPORATION that it was improper to drive said vehicles using a UD tag. ANONYMOUS CORPORATION asked THE TAG AGENT at ANYTOWN, Oklahoma, what to do, and ANONYMOUS CORPORATION was advised to register the vehicles as "rental" vehicles. ANONYMOUS CORPORATION did register each vehicle as a rental vehicle and paid the required registration fees to the State of Oklahoma.

4. ANONYMOUS CORPORATION never received any rental fees or charged rental fees for the temporary use of the vehicles by its customers, but was reimbursed by the manufacturer in the sum of \$10,522.00.

5. All the vehicles in question were manufacturer's "factory program vehicles" purchased from TWO DEALER'S AUTO AUCTION.

6. It was the intent of ANONYMOUS CORPORATION that all vehicles purchased were for sale as used motor vehicles, at retail, to ANONYMOUS CORPORATION customers. The automobiles were registered, for rental purposes, in the name of ANONYMOUS CORPORATION RENTALS and not ANONYMOUS CORPORATION MOTORS.

C. PREHEARING CONFERENCE ISSUES AND FINDINGS:

1. A Prehearing Conference Order was entered by this Court on December 16, 1997, and found that the parties hereto have resolved to submit this cause for decision pursuant to Rule 710:1-5-38, Submission of Case on Briefs, of the Oklahoma Administrative Code.

2. A Stipulation of Facts was to be filed by the parties on January 15, 1998, but the Court extended the date for filing the Stipulations until January 26, 1998.

3. The Court further ordered that ANONYMOUS CORPORATION would file a brief in chief on or before February 16, 1998, and the Commission file a reply brief on or before March 19, 1998.

D. LEGAL ISSUES AND PARTIES POSITION:

1. LAW TO BE CITED BY THE PARTIES:

- a. Title 68 O.S. § 2101.
- b. Title 68 O.S. § 2104.
- c. Title 68 O.S. § 2105.
- d. Title 68 O.S. § 2110.
- e. Title 47 O.S. § 1102.
- f. Title 47 O.S. § 1120.1.
- g. Title 47 O.S. § 1128.
- h. Title 47 O.S. § 1137.1.

2. COMMISSION'S POSITION:

a. That on September 10, 1997, the Commission assessed ANONYMOUS CORPORATION excise tax and registration fees on 17 vehicles, that were registered as rental vehicles. The total assessment on the vehicles was \$8,231.00.

b. MR. ANONYMOUS responded to the assessment by stating that the vehicles were not used as rentals but for loaner purposes in the service department.

c. It is the position of the Commission that ANONYMOUS CORPORATION did not intend to charge rental fees, as provided in Title 68 O.S. § 2110. However, ANONYMOUS CORPORATION took advantage of the \$30.00 annual rental rate in lieu of the excise tax and registration fees. By the statement of ANONYMOUS CORPORATION, they were advised by a tag agent to register the vehicles as "rental vehicles", and registered said vehicles through mistake or misunderstanding. However, a motor license agent is a self-employed independent contractor and is not an agent of the Oklahoma Tax Commission, Oklahoma Tax Commission Rules, OAC 710:60-9-114.

d. ANONYMOUS CORPORATION was prohibited from using a UD tag for other purposes than test driving by customers. A dealer is prohibited from using a UD tag for "a service car, or private use or for hire".

3. ANONYMOUS CORPORATION'S POSITION:

a. ANONYMOUS CORPORATION denies that excise taxes and registration fees are due for the reason that ANONYMOUS CORPORATION was being reimbursed for rental fees by the manufacturer. ANONYMOUS CORPORATION requests consideration of 68 O.S. §§ 2103 and 2108.

ISSUE AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the assessment of motor vehicle excise taxes and registration fees on the vehicles in question is erroneous. The second issue is whether the Division should be estopped from the assessment of excise tax and registration fees on the vehicles in question.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Oklahoma licensed used motor vehicle dealers upon the purchase or receipt by transfer of ownership of an out-of-state used motor vehicle which will be operated or sold in Oklahoma shall make application for an Oklahoma certificate of title to the vehicle. 47 O.S. Supp. 1994, § 1137.1(B).

3. Every licensed dealer shall obtain and affix a used dealer license plate to the vehicle "for demonstrating, transporting or any other normal business of the dealer" provided that when the vehicle is parked on the dealer's licensed place of business, it shall not be required to have a license plate of any kind affixed. 47 O.S. Supp. 1994, § 1137.1(A).

4. Use of a used dealer license plate by a licensed dealer for other than the purposes set forth in Section 1137.1(A) shall constitute grounds for revocation of the dealer's license. 47 O.S. Supp. 1994, § 1137.1(A).

5. Licensed Dealers following the procedure set forth in Section 1137.1 shall not be required to register vehicles nor will the registration fee otherwise required be assessed. 47 O.S. Supp. 1994, § 1137.1(G).

6. An original or transfer certificate of title shall be issued without the payment of motor vehicle excise tax for any used motor vehicle which is owned and being offered for sale by a person licensed as a dealer to sell the same, provided such vehicle has been registered in Oklahoma and the excise tax paid thereon or such vehicle has been registered in some other state but is not the latest manufactured model. 68 O.S. Supp. 1994, § 2105(5).

7. Also exempted from the levy of motor vehicle excise tax is any vehicle which is purchased by a person to be used by a business engaged in renting motor vehicles without a driver, provided the vehicle is not rented for a period exceeding ninety (90) days, the vehicle is not placed under any type of lease agreement and the vehicle is neither sold nor transferred in this state prior to the expiration of twelve months from the date of issuance of the original title. 68 O.S. Supp. 1994, § 2105(10).

8. A rental tax is levied on the gross receipts of any motor vehicle rental agreement of ninety (90) days or less duration whereby any motor vehicle is rented to a person by a business engaged in renting such vehicles without a driver in Oklahoma, irrespective of the state in which the vehicle is registered. 68 O.S. Supp. 1992, § 2110(A).

9. The rental tax is required to be collected, reported and remitted by the business engaged in renting the motor vehicles. 68 O.S. Supp. § 2110(C).

10. Upon registration and payment of an initial registration fee of \$15.00 and \$10.00 annually thereafter, which fees shall be in lieu of the registration fees assessed and payable under Section 1132 of Title 47 of the Oklahoma Statutes, a license plate shall be issued for a rental motor vehicle which license plate shall be valid until the vehicle is permanently withdrawn from the rental fleet. 47 O.S. 1991, § 1120.1(B) and (C).

11. When a statute plainly speaks and its provisions are unambiguous, there is no room for construction or further inquiry and its evident meaning must be accepted. **Mindemann v. Independent School Dist. No. 6 of Caddo County**, 771 P.2d 996 (Okla. 1989). Where ambiguity exists, the first and foremost rule of statutory construction is to ascertain and give effect to the legislature's intention. **Petuskey v. Freeman**, 890 P.2d 948 (Okla. 1995). Determination of legislative intent controls statutory interpretation. **Carlson v. City of Broken Arrow**, 844 P.2d 152 (Okla. 1992).

Any ambiguity or doubt involving the provisions of a taxing statute is to be resolved in favor of the taxpayer. **C. H. Leavell & Co. v. Oklahoma Tax Commission**, 450 P.2d 211 (Okla. 1968). Tax statutes are construed strictly against the state. **Matter of Estate Tax Protest of Leake Estate**, 891 P.2d 1299 (Okla.App. 1994). Strict construction means that the provisions of the statute will not be extended by implication beyond the clear import of the language used. **Magnolia Pipe Line Co. v. Oklahoma Tax Commission**, 196 Okl. 633, 167 P.2d 884 (1946).

12. Here, ANONYMOUS CORPORATION MOTORS purchased several used vehicles and pursuant to 47 O.S. Supp. 1994, § 1137.1(A) affixed used dealer license plates to said vehicles. Although the vehicles were for sale at all times to its customers, ANONYMOUS CORPORATION Motors used the vehicles as "loaners" to its service customers. After being notified that this constituted an improper use of the used dealer license plates and upon advise of a tag agent, the vehicles were registered as rental vehicles in the name of ANONYMOUS CORPORATION RENTALS. ANONYMOUS CORPORATION RENTALS never charged nor received any rental fees from its customers, but was reimbursed by the manufacturer for the use of the vehicles.

13. A used motor vehicle dealer license plate may be affixed to a used motor vehicle by the dealer for "demonstrating, transporting or any other normal business of [the] used motor vehicle dealer." 47 O.S. Supp. 1994, § 1137.1(A). Although the Division admits that the rules of the Used Motor Vehicle and Parts Commission, Rule 765:10-1-1 of the Oklahoma Administrative Code, et seq., do not address the above language, the Division attempts to place into evidence a letter construing such language from the Executive Director of the Used Motor Vehicle and Parts Commission. This letter will not be considered herein since the letter was not properly introduced and the letter represents an administrative interpretation of general import or application which has not been promulgated as a rule. See, 75 O.S. 1991, §§ 302(C), (D) and (E) and 308.2(A).

The undersigned further finds that the determination of this protest is not dependent on the provisions of Section 1137.1 of Title 47 of the Oklahoma Statutes. ANONYMOUS CORPORATION MOTORS, albeit on the advice of a tag agent, had the vehicles registered as "rental vehicles" in the name of ANONYMOUS CORPORATION RENTALS. The assessment at issue was issued against ANONYMOUS CORPORATION RENTALS.

Nothing presented herein suggests that ANONYMOUS CORPORATION MOTORS and ANONYMOUS CORPORATION RENTALS were not separate and distinct legal entities. In addition, no evidence was presented to show that ANONYMOUS CORPORATION RENTALS was a licensed dealer of these cars. Further, the evidence does not support a finding that ANONYMOUS CORPORATION RENTALS was engaged in the business of renting motor vehicles as contemplated by the statute. Therefore, none of the exemptions from motor vehicle excise taxes and registration fees are applicable to ANONYMOUS CORPORATION RENTALS and the assessment thereof was proper and correct.

Had ANONYMOUS CORPORATION MOTORS ignored the advice of the tag agent and assuming arguendo that ANONYMOUS CORPORATION MOTORS' use of the used dealers license plates was unauthorized under Section 1137.1(A), only registration fees could have been assessed against the vehicles in question. ANONYMOUS CORPORATION MOTORS is a licensed dealer of these cars and the cars were being offered for sale. The unauthorized use of the license plates, however, constitutes grounds for revocation of ANONYMOUS CORPORATION MOTORS' dealers license.

14. The essential elements of an equitable estoppel are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the knowledge, actual or constructive, of the real facts; (3) the intention, or at least the expectation, that such conduct will be acted upon by, or influence, the other party; (4) lack of knowledge and the means of knowledge of the truth as to the facts in question by the party to whom the conduct is made; (5) reliance, in good faith, upon the conduct; and (6) action or inaction based thereon of such a character as to change the position or status of the party to his injury, detriment, or prejudice. See, **Board of County Commissioners of Marshall County v. Snellgrove**, 428 P.2d 272 (Okl. 1967). See, generally, 28 Am Jur 2d **Estoppel and Waiver** § 35.

15. As a general rule, estoppel does not apply against the state acting in its sovereign capacity, and the Tax Commission as an agency of the state is not bound by the unauthorized acts of its officers; **State ex rel. Cartwright v. Dunbar**, 618 P.2d 900, 911 (Okl. 1980), or because of the mistakes or errors of its employees, **State ex rel. Oklahoma Tax Commission v. Emery**, 645 P.2d 1048, 1051 (Okl. 1982). An exception is applicable, however, where the facts and circumstances show the interposition of estoppel will further some prevailing principle of public policy or interest; **Burdick v. Independent School District**, 702 P.2d 48 (Okl. 1985), or where the officers and employees act within their authority, **State ex rel. Commissioners of Land Office v. Lamascus**, 263 P.2d 426 (Okl. 1953).

16. Motor license agents are self-employed independent contractors. 68 O.S. 1991, § 1140(B). A motor license agent may not under any circumstance hold himself/herself out as an agent of the Tax Commission. Rule 710:60-9-114 of the Oklahoma Administrative Code.

17. Rules promulgated pursuant to the Administrative Procedures Act¹ are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. Id.

¹75 O.S. Supp. 1987, § 250 et seq., § 301 et seq.

18. Protestant's protest to the assessment of motor vehicle excise tax and registration fees on the vehicles in question should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest of Protestant, ANONYMOUS CORPORATION RENTALS, be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.