

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 99-05-25-012 / NOT PRECEDENTIAL
ID: P9700224
DATE: 05-25-99
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:

1. ORDER OF EVENTS

a. That Protestant purchased a 1992 Buick Regal Custom, a used automobile, on or about September 24, 1992.

b. The above automobile was registered on or about October 2, 1992, and reflected a Factory Delivered Price in the amount of Twenty-Six Thousand Eight Hundred Sixty-Five Dollars (\$26,865.00) and a Total Delivered Price of Twenty-Seven Thousand Eight Hundred Fifty Dollars (\$27,850.00) on the Certificate of Title and also on the Vehicle Title Receipt (registration).

c. That at the time of registering the vehicle at AN ANONYMOUS TAG AGENCY, the Protestant questioned the value of the Factory and Total Delivered Price. He was advised by MRS. ANONYMOUS at the ANONYMOUS TAG AGENCY that all the tag agent could go by was the amount on the title.

d. The Protestant again registered the automobile on February 5, 1993, and the Factory and Total Delivered Price remained in the amount as shown in paragraph 2. Again, the Protestant questioned the value of the Factory and Total Delivered Price and was again advised that all the tag agent could go by was the amount on the title.

e. The Protestant registered the automobile on October 26, 1994; October 16, 1995; and October 1, 1996; and the Factory and Total Delivered Price on the Vehicle Registration for each of the above years was the same price as shown in paragraph 2. Each time the Protestant questioned the value of the Factory and Total Delivered Price and each time was advised by the tag agent that all we could go by was the amount on the title.

f. Approximately May, 1997, the Protestant was advised that he could have the Commission investigate the Factory and Total Delivered Price on the automobile. After investigation, the Commission determined that the Factory and Total Delivered Price on the automobile should have been Sixteen Thousand Eight Hundred Sixty-five Dollars (\$16,865.00) and Seventeen Thousand Eight Hundred Fifty Dollars (\$17,850.00) respectively, and assigned that amount to the Certificate of Title on said automobile. The Commission agreed to refund to Protestant the difference of the registration fees on the new Factory Delivered Price for the years 1994, 1995, and 1996. The Commission refused to refund taxes and fees for the years 1992 and 1993, claiming they were past the three year statute of limitation. As of this date, no refund has been paid to the Protestant.

g. The registration fees are based on a percentage of the Factory Delivered Price of a vehicle, Title 47 O.S. § 1132. The excise tax is based on a percentage of the Total Delivered Price of a vehicle, Title 68 O.S. § 2103.

2. PREHEARING CONFERENCE

a. The above cause was set for a Prehearing Conference at 10:30 a.m. on December 3, 1997. Both parties appeared and the Division was ordered to prepare an initial draft of the stipulations and forward the same to the Protestant for his review on or before January 5, 1998.

b. The Court ordered that a statement of the issues and the stipulation of facts shall be filed on or before February 4, 1998.

3. LEGAL AND EQUITABLE ISSUES

A. PROTESTANT'S POSITION

1. The Protestant notified the tag agency on numerous occasions that the Factory Delivered Price and the Total Delivered Price as shown on the Certificate of Title and the Registration documents were inaccurate.

2. The Commission changed the value on the Certificate of Title and the Registration documents to reflect the true and accurate Factory and Total Delivered Price for the vehicle.

3. The Protestant was not the cause or reason for the improper valuation on the vehicle and should be reimbursed for the error of evaluation for all the years the vehicle was registered, not just the last three years of registration.

4. The tag agent is the agency that the Oklahoma Tax Commission uses to collect their monies; therefore, the tag agent or the Tax Commission should be responsible for the information given out by the tag agent.

5. The Tax Commission is the agency that received the overpayment of the monies and should, therefore, return any overpayment.

B. COMMISSION'S POSITION

1. Title 68 O.S. § 227(a)(b), limits any refund of taxes, paid to the State of Oklahoma through error of fact, or computation, or misinterpretation of law to three (3) years from the date of payment. The Commission agrees to pay Protestant for the years 1994, 1995, and 1996, as provided by law.

2. A Motor License Agent is a self-employed independent contractor. Any communication between the Motor License Agent and the Protestant is not binding upon the Commission. Oklahoma Tax Commission Rules, Title 710, Chapter 60-9-114.

ISSUE

The issue presented for decision is whether the Tax Commission should be estopped from denying the refund of the excess excise taxes and registration fees paid in 1992 and 1993.

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. Motor vehicle excise tax is levied at the rate of three and one-fourth percent (3¼%) of the value of each vehicle. 68 O.S. 1991, § 2103(A)(1). The value of any new vehicle manufactured in the United States shall be determined as of the date of sale or other transfer of ownership, and assignment of the certificate of title and shall include the manufacturer's price of such a vehicle delivered at the factory plus the value of all extra or optional equipment and accessories physically attached to such vehicle at the time of sale and sold as a part thereof minus any portion of the value of such optional equipment and accessories deducted by the dealer at the time of sale if such optional equipment and accessories are sold by the dealer as a discount package. 68 O.S. Supp. 1992, § 2104(B).

3. The value of a used vehicle shall be sixty-five percent (65%) of the new vehicle value of such vehicle for transfers occurring in the first and second year for which the vehicle has been previously registered. 68 O.S. Supp. 1992, § 2104(G).

4. A fee of one and one-quarter percent (1¼%) of the factory delivered price of each vehicle shall be computed and assessed at the time of initial registration. 47 O.S. 1991, § 1132(A)(2). Thereafter, the registration fee shall be assessed at ninety percent (90%) of the previous years fee through the twelfth year of registration. *Id.*

5. The total value of the vehicle shall be entered on the bill of sale furnished by the seller to the purchaser, or on such other form as may be prescribed by the Tax Commission and the seller shall also show thereon separately, for license fee rate purposes, the factory delivered price of the vehicle without extra or optional equipment. 68 O.S. Supp. 1992, § 2104(B).

6. 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.

7. 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).

8. 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.

9. 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.

10. Here, Claimant notified a tag agent of the discrepancies in the factory delivered and total delivered prices of the vehicle. The Tax Commission was not notified of the discrepancies until May, 1997. Therefore, the Division properly denied the request for refund of the excess excise taxes and registration fees paid on the vehicle more than three years prior to said notification. See, 68 O.S. Supp. 1993, § 227(b).

11. Claimant's protest to the Division's denial of the claim for refund of motor vehicle excise taxes and registration fees paid in 1992 and 1993 should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protest to the denial of the claim for refund of CLAIMANT, 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.