JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-01-08-010 / PRECEDENTIAL
ID: CR010006
DATE: 01-08-02
DISPOSITION: SUSTAINED
TAX TYPE: MOTOR VEHICLE EXCISE / REGISTRATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about December 23, 2000, Claimant sold (assigned and delivered) a 1996 VEHICLE, Vehicle Identification Number 00000000000000000, to BUYER.

2. In partial consideration for the purchase of the subject vehicle, BUYER traded in a 1997 TRADE IN, Vehicle Identification Number 99999999999999999.

3. At the time the purchase agreement for the subject vehicle was executed, Claimant was only made aware of one (1) lien existing against the trade-in vehicle.

4. Upon further investigation, Claimant discovered that a second lien existed against the trade-in vehicle.

5. Due to the existence of the second lien, financing for the purchase of the subject vehicle could not be secured and the purchase agreement was voided.

6. Pursuant to the purchase agreement, the transfer of ownership of the vehicle was contingent upon the purchaser obtaining financing.

7. Upon returning the subject vehicle, the trade-in vehicle was returned to BUYER.

8. On February 6, 2001, the subject vehicle was titled and registered in the name of BUYER upon the payment of excise tax and registration fees in the total amount of $478.00.

9. Receipts for the excise taxes and fees were issued in the name of BUYER.

10. It is not disputed that Claimant paid the excise tax and registration fees on the subject vehicle.

11. By letter dated July 6, 2001, Claimant filed a request for refund of the excise taxes and fees paid on the subject vehicle.

12. By letter dated July 19, 2001, the Division denied the refund request for the following stated reason, to-wit:

If the buyer does not take delivery (as when a lease falls through) and title is [not] (sic) issued, it can be voided. In this case, he took delivery and the vehicle was titled, tagged, etc. There is no provision to void the transaction. The buyer will have a tag that will not expire until December 2001.

13. By letter dated July 23, 2001, Claimant protested the denial and requested a hearing.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the Division erroneously denied the refund of the excise tax and registration fees remitted on a vehicle which is assigned and delivered to a purchaser, but is returned to the seller and the purchase agreement is voided because of the failure to obtain financing for the purchase of the vehicle.

Claimant contends that the denial of the refund request is erroneous. In support of this contention, Claimant argues that the purchase agreement on the vehicle was rescinded because the purchaser was unable to obtain financing.

The Division contends that the denial of the refund is correct. In support of this contention, the Division argues that the excise tax and registration fees were not paid through error of fact, or computation, or misinterpretation of law. In support of this argument, the Division asserts that the subject vehicle was repossessed. The Division further argues that Claimant does not have standing to seek a refund since the taxpayer is BUYER and all receipts for payment were made to BUYER. Finally, the Division argues that the vehicle in question is a used vehicle and as such, no statutory provision permits the refund of excise tax and registration fees paid upon the transfer of legal ownership of such vehicles.

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 and shall be collected upon the <u>transfer of legal ownership</u> of any vehicle registered in this state, upon the use of any vehicle registered in this state or upon the use of any vehicle registered for the first time in this state; 68 O.S. 1991, § 2103(A)(1), and upon all subsequent transfers of legal ownership. (Emphasis added). 68 O.S. 1991, § 2103(A)(2). The tax is due at the time of the <u>transfer of legal ownership</u> or first registration and shall be collected at the time of the issuance of a certificate of title. Id.

3. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle. 47 O.S. 1991, § 1112. All motor vehicles registered with a permanent non-expiring license plate pursuant to Section 1113 of the Oklahoma Vehicle License and Registration Act, 47 O.S. 1991, § 1101 et seq., unless otherwise specifically provided, shall be registered annually; 47 O.S. 1991, § 1115(A), and a fee shall be paid. 47 O.S. 1991, §§ 1132 and 1132.1.

4. The term "legal ownership" is defined by the Vehicle Excise Tax Code, 68 O.S. 1991, § 2101 et seq., to mean "the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner." 68 O.S. 1991, § 2101(l). The "[t]ransfer of bare legal title is not the same as transfer of legal ownership". Imaging Services, Inc. v. Oklahoma Tax Commission, 866 P.2d 1204 (Okla. 1993). The change of legal ownership contemplated by the statute involves a change of ownership and possession. Id.

5. Here, Claimant transferred bare legal title to the subject vehicle, not legal ownership. The sale of the vehicle was subject to the purchase agreement which agreement was contingent upon the purchaser obtaining financing. The purchaser failed to obtain financing for the purchase of the vehicle which voided the purchase agreement. Since legal ownership of the vehicle was not transferred, the excise tax and registration fees were not due and payment thereof was erroneous. See, 68 O.S. 1991, § 2104 and 47 O.S. 1991, §§ 1132 and 1132.1.

6. "Any taxpayer who has paid * * *, through error of fact, or computation, or misinterpretation of law, any tax * * * may, * * *, be refunded the amount of such tax so erroneously paid, without interest." 68 O.S. 1991, § 227(a). The provisions of Section 227 apply to vehicle excise taxes and registration fees. Op.Atty.Gen. No. 84-42, Jan. 22, 1985.

7. "Taxpayer" is defined to mean "[a]ny person owing or liable to pay any state tax." 68 O.S. 1991, § 201(d)(1). In McMillin v. Oklahoma Tax Commission, 894 P.2d 1060 (Okla. 1995), the Supreme Court of Oklahoma held that individual owners of condominium units were taxpayers and had standing to sue for the refund of sales tax, notwithstanding the condominium corporation reported and remitted the taxes, since the individual owners ultimately paid the sales taxes.

8. Here, Claimant paid the vehicle excise tax and registration fees on the subject vehicle. The Division does not dispute this fact. Accordingly, Claimant is the taxpayer and has standing to sue for a refund of the excise tax and registration fees erroneously paid, notwithstanding that the receipt for the payment of the taxes and fees were issued to the purchaser.

9. Claimant's protest to the denial of the claim for refund of excise tax and registration fees should be sustained.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the CLAIMANT'S protest to the REFUND DENIAL be sustained.

OKLAHOMA TAX COMMISSION