

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-07-23-008 / NOT PRECEDENTIAL
ID: CR010001
DATE: 07-23-02
DISPOSITION: SUSTAINED IN PART / DENIED IN PART
TAX TYPE: MOTOR VEHICLE EXCISE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. CLAIMANT purchased a used 1994 Oldsmobile Bravada utility vehicle at a cost of \$4,100.00.

2. On December 1, 2000, CLAIMANT made application to title and register the 1994 Oldsmobile Bravada. The taxable value of the vehicle, in the amount of \$9,800.00, was utilized for computation of the tax. A flat fee of \$20.00 was applied to the first \$1,000.00 of value and a rate of 33% was applied to the remainder, resulting in excise tax due in the amount of \$306.00.

3. The assessed excise tax in the amount of \$306.00 was paid under protest, and by letter dated December 22, 2000, Claimant requested a partial refund of the tax paid or an explanation of how the assigned value was derived.

4. By letter dated January 10, 2001, the Motor Vehicle Division denied Claimant's request for refund for the reason that the excise tax was assessed correctly under the statutory criteria, and no refund was due.

5. Claimant protested the denial of his claim for refund by letter dated January 31, 2001.

6. At the hearing CLAIMANT submitted a printout of a calculation of the estimated value of the 1994 Oldsmobile Bravada from a C.D. Rom, edition May 2001 through June 2001, obtained from National Market Reports. The printout, entitled Electronic Automobile Blue Book Valuation Report, indicated that a mileage adjustment was incorporated in the calculation of the value of the vehicle.

7. AN Administrator, Motor Vehicle Division, referencing the registration receipt issued December 1, 2000, for the 1994 Oldsmobile Bravada, stated that its taxable value was \$9,800.00. He explained that by statute the taxable value must be within 20% of the average retail value. The average retail value, at the time of registration of the 1994 Oldsmobile Bravada, was \$12,250.00.

THE ADMINISTRATOR stated that the vehicle's purchase price was less than 20% of the average retail value; therefore, the taxable value was adjusted to within 20% of the average retail value and excise tax was calculated on the adjusted amount. THE ADMINISTRATOR further stated that the average retail value is determined from a software program obtained through National Market Reports and that the system utilized by the Division to determine average retail price value does not incorporate a mileage adjustment.

ISSUE AND CONTENTIONS

Whether the correct value was utilized to calculate the amount of excise tax due on the purchase of Claimant's motor vehicle.

Claimant contends that excise tax should be calculated using the value of \$8,660.00, and that the amount in excess of that figure, paid under protest, should be refunded. In support of this conclusion, Claimant argues that the base value of the vehicle as of December 1, 2000, was \$12,100.00, that an adjustment in the amount of \$1,275.00 for the vehicle's mileage of 118,000 should be deducted from the base value, arriving at \$10,825.00, the average retail value, and that 80% of the average retail value, or \$8,660.00, is the value upon which the excise tax should be calculated. Claimant contends that the National Market Reports software program provides for a mileage adjustment and that a mileage adjustment should be allowed because the resulting value after the adjustment is a better measure of the true value of the vehicle.

The Division contends that Claimant's vehicle was properly and correctly valued and assessed the proper excise tax due thereon. Additionally, Division contends that Claimant cannot support a basis for a refund of excise tax as it was not paid through error of fact, or computation or misinterpretation of law.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, Section 207.
2. Motor vehicle excise tax is levied and shall be collected upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicles registered for the first time in this state; 68 O.S. Supp. 2000, Section 2103(A)(1).

The tax is due at the time of transfer of legal ownership or first registration and shall be collected at the time of the issuance of a certificate of title. 68 O.S. Supp. 2000, Section 2103(A)(3). The excise tax is measured by the value of the vehicle as of the date of sale or other transfer of ownership, and assignment of the certificate of title. 68 O.S. Supp. 2000, Section 2104(A). A vehicle's value for purposes of the imposition of excise tax is the actual sales price before any discounts or trade-in credits are given. 68 O.S. Supp. 2000, Section 2104(B). However, Section 2104(B) contains a specific qualification that the value (actual sales price prior to any discounts or trade-in allowances) must be within 20% of the average retail price value of the vehicle as listed in the automotive reference material prescribed by the Tax Commission. *Id.* The Commission, pursuant to a contract entered into on or about September 7, 2000, with Intertec Publishing Corporation, prescribed the National Market Report as the automotive reference material for its use in determining the average retail price value. *Oklahoma Administrative Code 710:60-5-50 and 710:60-7-1.*

3. In the instant case, the Division determined by reference to the National Market Report that the average retail price value of a 1994 Oldsmobile Bravada was \$12,250.00. To determine the minimum amount upon which excise tax would be due, the Division calculated 20% of \$12,250.00, subtracted that amount therefrom and arrived at \$9,800.00. Comparatively, the \$4,100.00 sales price of the 1994 Oldsmobile Bravada was not within 20% of the average retail price value of a 1994 Oldsmobile Bravada. Furthermore, there is no statutory authority to adjust the average retail price value for the mileage, condition or marketability of the vehicle. Therefore, excise tax was properly calculated on the value of \$9,800.00.

4. Claimant's protest to the denial of the claim for refund should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, 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.