

Motor Vehicle Sales Tax Upheld by Court

On August 31, 2017, the Oklahoma State Supreme Court issued an opinion affirming the constitutionality of a new 1.25% sales tax on motor vehicle sales. The sales tax was imposed by the state legislature in the final days of the 2017 regular session as part of a multi-prong effort to satisfy state budget shortfalls. In response to the legislation, the Oklahoma Automobile Dealers Association (OADA) and gubernatorial candidate Gary Richardson filed independent, separate suits challenging the constitutionality of the legislation, House Bill 2433.

OADA and Richardson charged that HB 2433 was enacted in violation of Article 5 Section 33 of the Oklahoma Constitution. Article 5 Section 33 addresses the origination and passage of revenue bills by the State. Among other stipulations, Section 33 prohibits the passage of revenue bills during the last five days of the session. Further, Section 33 requires that any revenue bill must be referred to the people for approval at the next general election or be approved by a three-fourths majority in both the House and Senate. Since HB 2433 was passed in the final five days of the session on a simple majority, all parties to the suits agreed that the legislation did not satisfy Section 33.

The constitutionality of the legislation hinged on the Court's definition of a "revenue bill." During legislative debate, authors of the bill argued that it was not a revenue bill, per se, but was merely a policy change. The policy change was to partially remove the motor vehicle sales tax exemption so that the combined excise and sales tax percentage equaled the current state sales tax percentage of 4.5%. In its opinion, the Court sided with the State and ruled against the petitioners.

The affirming opinion said that the Court's "century-old test" was that a "revenue bill" must have the primary purpose of raising revenue for the support of state government *and* it must levy "a new tax in the strict sense of the word." The Court further opined that precedent shows that measures removing a tax exemption are specifically not "revenue bills."

In accordance with the Court's ruling, the 1.25% motor vehicle sales tax levy instituted on July 1, 2017, will continue. From a procedural perspective, the sales tax will be collected in the same manner as the excise tax. Motor License Agents will assess and collect the tax when a newly purchased vehicle is registered. Like the excise tax, the sales tax is due at the time of sale, typically when the purchaser takes possession of the vehicle. The purchaser is allowed thirty days to register the vehicle and pay the excise and sales taxes. In the event of late payment, the sales tax is subject to a continuing interest charge at the rate of 1.25% monthly on the tax amount in addition to a one-time 10% penalty assessed on day 46 following the assignment date.

In a separate ruling, the Court struck down as unconstitutional a \$1.50 fee on the sale of each pack of cigarettes. The fee was imposed by the Legislature in the final week of the 2017 regular session. Because of that ruling and its impact on the budget, the Legislature has been called back into a special session. OIADA maintains an active presence at the Capitol and is looking forward to this special opportunity to meet with legislators regarding the impact of the sales tax on the used dealer industry.