

Motor Vehicle Sales Tax Challenged in Court

The Oklahoma Automobile Dealers Association (OADA) filed suit against the State of Oklahoma on Friday, June 23, 2017, challenging House Bill 2433 that imposes a 1.25% sales tax on motor vehicle sales. The day before, on Thursday, June 22, 2017, gubernatorial candidate Gary Richardson announced that he plans to file a lawsuit challenging the constitutionality of House Bills 2433 as well as House Bill 1449 and House Bill 2348. House Bill 1449 creates the “Motor Fuel Tax Fee” which charges a fee to owners of electric and compressed natural gas vehicles in order to make up for the fact that they don’t pay the motor fuel tax. House Bill 2348 uncouples the state income tax deduction rate from the federal rate. OADA and Richardson charge that HB 2433 was enacted in violation of Article 5, Section 33 of the Oklahoma Constitution which was enacted by State Question 640 in 1992.

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, the constitutionality of the legislation hinges on the Court’s definition of a “revenue” bill. During debate, supporters 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%. From the consumer’s perspective, the measure has the same effect as raising the excise tax from 3.25% to 4.5%. The Court will have to decide whether the legislature’s approach of removing an exemption rather than raising a rate technically falls outside their definition of a revenue measure.

The title of House Bill 2433 is “An Act relating to revenue and taxation” and the subject is “Revenue and taxation.” The bill provides that the new sales tax will be paid by the consumer concurrently with the excise tax with the bulk of the \$123,000,000 going to the General Revenue Fund. As the OADA petition points out, the Oklahoma Supreme court has defined “revenue bills” as those laws “whose principal object is the raising of revenue, and not those under which revenue may incidentally arise.” Further, “[I]f the purpose of the act is to levy or collect taxes for the State, it must comply with the Okla. Const. art. 5, § 33.”

The ultimate resolution of HB 2433 remains to be seen. Unless the Court imposes an order stopping implementation, the tax increase will take effect July 1, 2017. A separate measure, originating in the Senate, imposed a \$1.50 “fee” on the sale of each pack of cigarettes. Proponents of that legislation argued that it was not a tax, but was a fee that will be directed toward “smoking cessation” efforts. The deep pockets of the tobacco industry promptly filed suit, alleging the unconstitutionality of the “fee” and the manner in which the legislation was developed and passed. Like the OADA petition challenging HB 2433, the tobacco industry

lawsuit notes multiple points over which the law could easily be overturned. Because of these suites and the potential for others, it is quite possible that the legislature will be called into special session and the whole budget issue be revisited. If, and when, that happens, dealers can be assured that Jami Longacre and the OIADA staff will be looking out for the industry and fighting on behalf of our dealers.