

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001162-MR

REVENUE CABINET,  
COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DOUGHLAS M. GEORGE, JUDGE  
ACTION NO. 99-CI-00056

H. E. O'DANIEL, SR.  
AND LUCY M. O'DANIEL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, KNOFF AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. The Revenue Cabinet appeals from an order of the Marion Circuit Court that reversed a decision of the Kentucky Board of Tax Appeals finding the O'Daniels responsible for 1995 property taxes on their automobile purchased in December, 1994. After reviewing the arguments of counsel and the applicable law, we affirm.

On December 26, 1994, the O'Daniels purchased a 1994 Lincoln Town Car from a car dealership in Frankfort, Kentucky. At that time, they took physical possession of the vehicle. The O'Daniels' vehicle was not officially registered until January

19, 1995,<sup>1</sup> when the Vehicle Transaction Record (VTR) was filed with the Marion County Clerk,<sup>2</sup> who assessed and collected a \$930 usage tax but no ad valorem taxes. The vehicle was entered into the Automated Vehicle Identification System (AVIS) upon registration. The O'Daniels did not pay a property tax on the vehicle for 1995. As part of a compliance program developed by the Revenue Cabinet to collect allegedly past due ad valorem property taxes on vehicles purchased before but registered after January 1, 1995, the Revenue Cabinet sent the O'Daniels a delinquent tax notice in October 1996, for \$314.17.<sup>3</sup>

The O'Daniels filed a letter of protest of the ad valorem tangible personal property tax assessment arguing they were not responsible for the tax because they were not registered owners until January 19, 1995. In response, Jesse Alexander, a field auditor with the Revenue Cabinet stated the Cabinet's position was that as equitable owners of the vehicle as of December 26, 1994, the O'Daniels' were the owners of the vehicle for tax purposes on January 1, 1995, and therefore were responsible for payment of the ad valorem tangible personal property tax. Upon failing to pay the tax, the Revenue Cabinet issued a final ruling in January, 1997, holding the O'Daniels responsible for 1995 ad valorem personal property tax on the

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<sup>1</sup>There is some indication in the record that the vehicle was registered in Virginia on January 1, 1995.

<sup>2</sup>The seller/buyer sections of the VTR were completed and signed on the date of purchase on December 26, 1994.

<sup>3</sup>Approximately 6,000 - 8,000 delinquent notices were sent out as part of the compliance program.

vehicle. The O'Daniels filed a complaint with the Kentucky Board of Tax Appeals appealing the decision. See KRS 131.340.

The parties submitted the issue to the Kentucky Board of Tax Appeals by way of separate motions for summary judgment without a hearing. In an order dated February 10, 1997, the Board of Tax Appeals granted the Revenue Cabinet's summary judgment motion and found the O'Daniels responsible for the 1995 ad valorem tangible personal property tax assessment of \$314.17. On March 5, 1999, the O'Daniels appealed this decision to the Marion Circuit Court. See KRS 13B.140(1) and KRS 131.370(1).

Following the submission of briefs by the parties, the circuit court held an oral hearing on February 10, 2000. On May 1, 2000, the circuit court entered an order reversing the Board of Tax Appeals. It stated that the statutes appear to create a "loophole" excluding taxation for vehicles purchased at the end of the year but not registered until after January 1 of the next year. The court relied on KRS 186A.095, which allows an owner a 15 day grace period in which to officially register a vehicle. It also cited KRS 132.220(1), which provides for assessment of tangible personal property as of January 1 of each year. The court stated that an owner cannot be required to pay tax on a vehicle that was registered under the laws of the Commonwealth if the grace period extended the time of registration beyond the January 1 tax date. It also held that the O'Daniels' vehicle was not omitted property under KRS 32.290 because it was registered before April 15. The court held that

the O'Daniels owed no tax on their 1994 Lincoln for the year 1995. This appeal followed.

The Revenue Cabinet challenges the circuit court's interpretation of the relevant statutes alleging that the court's finding of a tax "loophole" represents a judicially created exemption from property tax in contravention of Sections 3, 170, 172, and 174 of the Kentucky Constitution requiring that all property must be subject to taxation unless specifically exempted by the Constitution. It contends that the circuit court's opinion ignores the controlling statutory framework for taxation of vehicles.

As an initial matter, we note that judicial review of administrative decisions by the Board of Tax Appeals is somewhat limited. See generally, Revenue Cabinet v. Kentucky-American Water Co., Ky., 997 S.W.2d 2 (1999). Aggrieved parties may appeal from the final order of the Kentucky Board of Tax Appeals in accordance with KRS Chapter 13B. See KRS 131.370(1). Although a court cannot substitute its judgment for that of the agency as to the weight of the evidence on factual questions, it may review legal issues de novo to determine if the agency's decision is: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority; (3) without support of substantial evidence; (4) arbitrary, capricious, or an abuse of discretion; or (5) based on improper ex parte communications. See KRS 13B.150. "An erroneous application of the law by an administrative board or by the circuit court is clearly reviewable by this Court. Also, where an administrative

body has misapplied the legal effect of the facts, courts are not bound to accept the legal conclusions of the administrative body." Epsilon Trading Co., Inc. v. Revenue Cabinet, Ky. App., 775 S.W.2d 937, 940 (1989) (citation omitted). See also Revenue Cabinet v. Joy Technologies, Inc., Ky. App., 838 S.W.2d 406 (1992) (appellate court's role is reviewing whether the Board's order is in conformity with the law).

In the current case, the facts are not in dispute, and resolution of the appeal involves solely legal issues based on interpretation of the constitution and statutes. Although courts give some deference to an agency's interpretation of statutes and regulations administered by the agency, that deference is limited where the interpretation is not derived from an adversarial proceeding. See White v. Checkholders, Inc., Ky., 996 S.W.2d 496, 498 (1999); Delta Airlines, Inc. v. Commonwealth, Revenue Cabinet, Ky., 689 S.W.2d 14, 20 (1985). Statutory construction is ultimately a legal issue for the courts and a reviewing court is not bound by an administrative agency's interpretation of a statute. Delta Airlines, 689 S.W.2d at 20; Commonwealth, Cabinet for Human Resources, Interim Office of Health Planning and Certification v. Jewish Hospital Healthcare Services, Inc., Ky. App., 832 S.W.2d 388, 390 (1996). KRS 46.080(4) requires this Court to give statutory language its plain, ordinary meaning. See also Revenue Cabinet v. Kentucky American Water Co., 997 S.W.2d 27 (1999); Commonwealth v. Harrelson, Ky., 14 S.W.3d 541 (2000). In interpreting a statute, the courts are not at liberty to add or subtract from the statute or discover meanings not

reasonably ascertainable from the language used. Harrelson, 14 S.W.3d at 546; Commonwealth v. Frodge, Ky., 962 S.W.2d 864, 866 (1998). Generally, tax statutes must be strictly construed and any ambiguities resolved in favor of the taxpayer. George Wohrley, Inc. v. Commonwealth, Dept. Of Revenue, Ky., 495 S.W.2d 173, 175 (1973); Square D. Co. v. Kentucky Board of Tax Appeals, Ky., 415 S.W.2d 594, 602 (1967); Barnes v. Dept. Of Revenue, Ky. App., 575 S.W.2d 169, 172 (1978).

The major issue in this case involves when the O'Daniels became owners of the 1994 Lincoln Continental for purposes of assessing an ad valorem tax. The O'Daniels maintain that under the property tax laws in KRS Chapter 132, the relevant date is the date a vehicle is officially registered with the county clerk. They rely primarily on KRS 132.485(2), which provides:

The registration of a motor vehicle on or before the date that the registration of such vehicle is required is prima facie evidence of ownership on January 1.

Pursuant to KRS 132.220(1), tangible personal property for purposes of ad valorem taxes are valued and assessed as of January 1 of each year. The O'Daniels do not dispute the principle that the property owner is responsible for the taxes, but they argue that because the vehicle was not officially registered by the filing and issuance of the VTR by the county clerk until January 19, 1995, they were not the "owners" for purposes of paying the ad valorem tax on property assessed as of January 1. They also point to the AVIS system, which was developed by the Transportation Cabinet but is utilized by the

Revenue Cabinet to identify, prepare, and maintain the tax rolls of motor vehicles, as evidence that the date of registration is the relevant date when vehicles are included on the tax rolls for ad valorem taxation. See KRS 132.487 and KRS 186.025.

On the other hand, the Revenue Cabinet contends that the relevant date of ownership for taxation purposes is the date a buyer takes physical possession of a vehicle in a bona fide sale. The Cabinet relies on several statutory provisions including KRS 186.010(7) (a) and (c) which state:

(a) "Owner" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received possession of the vehicle subject to any applicable security interest.

. . . .

(c) A licensed motor vehicle dealer who transfers physical possession of a motor vehicle to a purchaser pursuant to a bona fide sale, and complies with the requirements of KRS 186A.220, shall not be deemed the owner of that motor vehicle solely due to an assignment to his dealership or a certificate of title in the dealership's name. Rather, under these circumstances, ownership shall transfer upon delivery of the vehicle to the purchaser, subject to any applicable security interest. (Emphasis added).

The Revenue Cabinet also asserts that the O'Daniels were equitable title holders of the vehicle as of the date of purchase in December, 1994, and therefore, had a superior obligation for payment of taxes as opposed to a legal title holder pursuant to KRS 134.060, which provides:

Except as provided in subsection (5) of KRS 132.190, the holder of the legal title, the holder of the equitable title, and the claimant or bailee in possession of the property on the assessment date provided by

law shall be liable for taxes thereon; but, as between themselves, the holder of the equitable title shall list the property and pay the taxes thereon, whether the property is in possession or not at the time of the payment.

The Board of Tax Appeals adopted the Revenue Cabinet's position by finding that the O'Daniels were "owners" of the vehicle as of December 26, 1994, and as equitable titleholders, they were primarily responsible for payment of the ad valorem property tax.

The trial court held that because KRS 186A.095 provides a 15 day grace period before a new owner is required to file for registration of a vehicle, the purchaser cannot be required to pay taxes on a vehicle that has not been registered to the new owner as of the assessment date of January 1 where the assessment date occurs prior to the end of the grace period. Although the court did not specifically address the Revenue Cabinet's arguments, it effectively rejected its view that ownership for tax purposes transferred in December, 1994.

After reviewing the statutory law, we believe that the statutes cited and relied upon by the parties and the trial court fail to provide sufficient support for their positions. However, there are other statutory provisions that support the circuit court's decision that the O'Daniels were not responsible for the 1995 ad valorem taxes.

As noted earlier, under KRS 132.220, motor vehicles are "listed, assessed, and valued as of January 1 of each year" for purposes of imposing an ad valorem tax. KRS 186.021(2) states as follows:



Pursuant to KRS 134.810(4), the owner of record on January 1 of any year shall be liable for taxes due on a motor vehicle. A person other than the owner of record who applies to a county clerk to transfer the registration of a motor vehicle may pay any delinquent ad valorem taxes due on the motor vehicle to facilitate the county clerk's transferring registration of the motor vehicle. The person applying shall not be required to pay delinquent ad valorem taxes due on any other motor vehicle owned by the owner of record from which he is purchasing his motor vehicle as a condition of registration.

Correspondingly, KRS 134.810(4) and (5) provide as follows:

(4) When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner of record on January 1 of any year shall be liable for the taxes on the motor vehicle, except as hereinafter provided.

(5) If an owner obtains a certificate of registration for a motor vehicle valid through the last day of his second birth month following the month and year in which he applied for a certificate of registration, all state, county, city, urban-county government, school, and special tax district ad valorem liabilities arising from the assessment date following initial registration shall be due and payable on or before the last day of the first birth month following the assessment date or date of transfer, whichever is earlier. Any taxes due under the provisions of this subsection and not paid as set forth above shall be considered delinquent and subject to the same penalties found in subsection (3) of this section. (Emphasis added).

These statutes indicate that the "owner of record" on January 1 of each year is the party responsible for paying the ad valorem taxes for the year on vehicles assessed on that date. In fact, KRS 186.025(2) distinguishes between the "owner of record" and a purchaser of a vehicle who applies for a transfer of

registration and places the tax obligation on the former. Similarly, KRS 134.810(4) indicates that the "owner of record on January 1" is liable for the taxes when a vehicle is transferred before the registered owner renews the registration or before taxes due have been paid. In addition, KRS 134.805(5)(a) requires county clerks to send notice to the "January 1 owner of record" of ad valorem taxes due one month prior to registration renewal. Because these statutes are more specific in dealing with taxation of motor vehicles and ad valorem taxes, the Revenue Cabinet's reliance on the definition of an "owner" in KRS 186.010(7)(a) and (c), as well as the general division of liability between a legal title holder and an equitable title holder expressed in KRS 134.060, is misplaced. See e.g., Commonwealth v. Phon, Ky., 17 S.W.3d 106, 107 (2000) (specific provisions take precedence over general provisions); DeStock #14, Inc. v. Logsdon, Ky., 993 S.W.2d 952, 959 (1999) (same). The Revenue Cabinet's suggestion that the O'Daniels should be considered the owners of record as of December, 1994, because the VTR indicated they purchased the vehicle at that time is inconsistent with the ordinary meaning of the statutory language, the title registration process, and the rule of strict construction in favor of the taxpayer.

In the case sub judice, the O'Daniels applied for registration of their 1994 Lincoln Town Car on January 19, 1995. They became owners of record on that date. In addition, the Marion County Clerk issued a certificate of registration that expired in June 1996. Under KRS 186.025(2) and KRS 134.810(4),

the O'Daniels were not liable for the taxes due for 1995 because they were not the owners of record on January 1, 1995.

Furthermore, KRS 134.810(5) indicates that the only ad valorem taxes due and payable under the extended registration process involved the 1996 property tax to be paid in June, 1996.

Our interpretation of the statutory scheme is further supported by the legislative history of KRS 134.810(4). Prior to 1988, KRS 134.180(4) read as follows: "When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the purchaser shall become liable for the taxes on said motor vehicle." Effective December 31, 1988, the General Assembly amended this provision to place responsibility for ad valorem taxes on the "owner of record on January 1 of any year," rather than the purchaser of a vehicle. See 1988 Ky. Acts 113, Section 4. This amendment indicates an intent to assign liability for ad valorem property taxes for vehicles on the registered owner of record as of January 1.

Having determined that the "owner of record" on January 1 of each year is the party responsible for paying the ad valorem taxes for that year on vehicles assessed on that date, we now turn to the Revenue Cabinet's next argument that such a determination violates the Kentucky Constitution. The Revenue Cabinet argues on page 12 of its brief, that:

Property tax in Kentucky is a matter of constitutional law. The Circuit Court's Order violates the express requirements of Sections 3, 170, 172 and 174 of the Kentucky Constitution. Section 172 of the Kentucky Constitution provides in relevant part as follows:

All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale...(Emphasis added).

In addition to Section 172, Section 3 of the Constitution also requires that "no property shall be exempt from taxation except as provided in this Constitution..." Section 174 provides that all property shall be taxed in proportion to its value, "unless exempted by this Constitution..."

The property which the Kentucky Constitution specifically exempts is listed in Section 170. Section 170 has never included a separate exemption for motor vehicles among the properties that are expressly exempt from property tax, unless the motor vehicle is owned by one of the enumerated exempt entities.

We do not agree with the Revenue Cabinet's contention. However, as we have previously expressed, it is the owner of record on January 1 who is responsible for the tax. In the context of this appeal, the O'Daniels were not the owner of record as of January 1, 1995, and as such, are not responsible for or legally liable for the ad valorem taxes assessed on the vehicle in question as of that date. Whether or not another entity is liable for the tax or whether statutory law exempts that entity from paying the tax has not been addressed in this matter and was not presented to the Marion Circuit Court and it is not properly before this court. As such, we will not address potential parties not joined in this case, issues not raised or addressed by the lower court, and facts merely alleged or speculated upon which may give rise to a constitution issue.

As to the Revenue Cabinet's argument that the O'Daniels' failure to pay their 1995 motor vehicle property taxes was correctly billed as omitted property, we find such contention to be meritless. Omitted personal property is defined by KRS 132.290(1) as:

Any real property which has not been listed for taxation, for any year in which it is taxable, by the time the board of assessment appeals completes its work for that year shall be deemed omitted property. Any personal property which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be deemed omitted property.

The evidence presented clearly indicated that the O'Daniels' vehicle was properly and completely listed for taxation on January 19, 1995, and was so certified by the county clerk. The registration of the vehicle complied with all statutory provisions and the vehicle was properly listed for taxation and placed on the AVIS system which is now used to insure tax compliance. We find no merit to the Revenue Cabinet's argument to the contrary.

For the forgoing reasons, the order of the Marion Circuit Court is affirmed.

ALL CONCUR.

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