



STOLL
KEENON
OGDEN

STATE & FEDERAL TAX PRACTICE

Timothy Eifler
Louisville
502.568.4208
Timothy.Eifler@skofirm.com

Jennifer S. Smart
Lexington
859.231.3619
Jennifer.Smart@skofirm.com

Erica L. Horn
Lexington
859.231.3037
Erica.Horn@skofirm.com

Jackson White
Lexington
859.231.3617
Jackson.White@skofirm.com

A Kentucky First – Board of Tax Appeals’ Chairperson
Authors Dissenting Opinion in *Clark v. Department of Revenue*

Erica L. Horn

The opinion of the Kentucky Board of Tax Appeals (“KBTA” or “Board”) in *Clark v. Department of Revenue*¹ is not significant for its holding, but is notable because it is the first occasion (in the collective memory of the practitioners in this firm) of a member of the Board issuing a dissenting opinion. The case involved the assessment by the Department of Revenue of property tax on a vehicle allegedly omitted from the property tax rolls.

Mr. Clark purchased a new vehicle on December 31, 2007. Because the car was not registered with the county clerk until January 9, it was not listed on the property tax rolls as of the January 1, 2008 lien date. As a result, Mr. Clark did not receive a notice of property tax due for the 2008 tax year. The Department assessed tax on the vehicle describing the vehicle as “omitted property”.

Relying on a previous Kentucky Supreme Court case, two of the three members of the KBTA held that the vehicle was not omitted property. In *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815 (Ky. 2005), the Court held that a vehicle registered with the clerk on January 19, 1995 was “listed for taxation” and was not omitted property.

Recognizing that there is a lag in time between the purchase of a car and its registration, and likely frustrated by the Court’s holding in *O’Daniel*, the Kentucky General Assembly amended KRS § 132.485(3) to address this specific factual situation and to give specific authority to the Department to assess property tax “when a motor vehicle is purchased in one (1) year, but registration takes place after January 1 of the following year through no fault of the owner.” The amended statute became effective in 2009 and was not in effect at the time of Mr. Clark’s purchase and registration of his vehicle. As a result of the effective date of the amendment and the holding in *O’Daniel*, the two person Board majority reversed the Department’s assessment of Mr. Clark’s vehicle.

In his dissent, Chairman Hayes began with the constitutional charge that all property must be taxed unless exempted by statute or the constitution. He then stated that the amendment to KRS § 132.485 clarified the authority of the Department to assess tax in this situation, and therefore, the assessment was valid. Stay tuned to see if this case is a harbinger of things to come.

¹ K11-R-12, Order No. K-21885 (March 22, 2012).