

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 98-07-23-009 / NOT PRECEDENTIAL  
**ID:** CR970012  
**DATE:** 07-23-98  
**DISPOSITION:** DISMISSED  
**TAX TYPE:** SPECIAL INDEMNITY FUND  
**APPEAL:** OK SUP CT 91,737 / OTC DECIS AFFIRMED

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 22nd day of June, 1998, the above styled and numbered cause comes on for decision pursuant to a hearing held on June 18, 1998, to consider the Motion to Dismiss filed by A DIVISION of the Tax Commission (hereinafter "Division") and the Objection to Motion to Dismiss filed by CLAIMANT.

The Motion to Dismiss is based on the allegation that the Tax Commission lacks subject matter jurisdiction of the claim for refund. In support of the Motion, the Division argues that the provisions of 68 O.S. Supp. 1993, § 227 do not apply to the refund of taxes erroneously levied by the Order of the Workers' Compensation Court, that the Commission does not have authority to amend or review an Order of the Workers' Compensation Court, and that only the Workers' Compensation Court has authority to order a refund of taxes out of the Special Indemnity Fund.

In its Objection to Motion to Dismiss, Claimant asserts that the Commission is vested with jurisdiction of the claim for refund in accordance with 85 O.S. Supp. 1993, § 173(I). In support of its position, Claimant argues that the amount of tax to be paid to the Special Indemnity Fund is set by statute, that the determination of the amount of tax by the Workers' Compensation Court is perfunctory and that any Order of Workers' Compensation Court requiring the payment of an amount of tax which is different than that set by statute is void. Claimant also argues that if it is determined that the Commission lacks subject matter jurisdiction of the refund claim, its rights of procedural due process shall be denied.

Upon review of the file and records, including the Motion to Dismiss, the Objection to Motion to Dismiss, and the record of the hearing, the undersigned finds:

1. That Claimant pursuant to certain Orders of the Workers' Compensation Court in several cases remitted special indemnity fund taxes to the Tax Commission at the rate of five percent (5%) rather than three percent (3%).

2. That the taxes remitted by Claimant have been forwarded to the State Treasurer to the credit of the Special Indemnity Fund.

3. That Claimant on September 15, 1997, filed a claim for refund of the taxes remitted in excess of three percent (3%) with the Tax Commission.

4. That the Division by letter dated October 1, 1997, denied the claim for refund.

5. That Claimant on October 16, 1997, protested the denial and requested a hearing.

### CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes that Claimant in this cause essentially requests the Tax Commission to determine the amount of tax to be levied and paid to the Special Indemnity Fund; that this determination lies specifically with the Workers' Compensation Court, 85 O.S. Supp. 1993, § 173(E); and that the Tax Commission is without jurisdiction to make this determination. See, *Ishower v. Ishower*, 666 P.2d 238 (Okl. App. 1983). Further, the undersigned concludes that Claimant was afforded a plain, adequate, clear and certain procedure and remedy under 85 O.S. Supp. 1994, § 84 and Rule 39 of the Workers' Compensation Act, to which it failed to avail itself and for which it should not now be heard.

### DISPOSITION

THEREFORE, it is recommended that the protest to the denial of the claim for refund of Claimant be dismissed.

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.