**JURISDICTION:** **OKLAHOMA TAX COMMISSION - DECISION**
**CITE:** **2001-03-08-007 / NOT PRECEDENTIAL**
**ID:** **P9900127**
**DATE:** **03-08-01**
**DISPOSITION:** **DENIED**
**TAX TYPE:** **MOTOR VEHICLE / INCOME**
**APPEAL:** **NO APPEAL TAKEN**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 1st day of February, 2001, the above protest to the claim of the Motor Vehicle Division of the Oklahoma Tax Commission to PROTESTANT's income tax refund (hereinafter "Protestant") comes on for consideration. A hearing was held in this matter pursuant to the provisions of Section 250 et seq. of Title 75 of the Oklahoma Statutes. Upon review of the files and records, the undersigned finds:

1. That PROTESTANT AND SPOUSE own a 1997 GMC pickup acquired on or about November 24, 1997. Mr. and Mrs. PROTESTANT, on or about March 19, 1998, made application to title and register their 1997 GMC pickup truck at a tag agency in ANYTOWN, Oklahoma. In payment of the applicable title, registration, and other miscellaneous fees, excise tax, and late payment penalties, a check, filled out and signed by Protestant in the amount of $894.75 was tendered by her husband to the tag agent.

The amounts paid are set forth as follows:

| | |
|---|---|
| Registration Fee | $224.00 |
| Penalty (Registration) | 25.00 |
| Excise Tax | 605.00 |
| Penalty (Excise) | 21.25 |
| Title Fee | 11.00 |
| Insurance Fee[1] | 1.50 |
| Waste Tire Fee[2] | 5.00 |
| Notary/Mail Fee[3] | 2.00 |
| Total | $894.75 |

The check was returned by Protestant's bank marked insufficient funds. The insufficient funds check was turned over to the Commission.

2. That by letter dated June 17, 1998, the Division notified Protestant that the check was returned by her bank unpaid and demanded remittance of the amount of the check, additional penalty in the amount of $20.75 and service charges totaling $50.00.

[1] 47 O.S. 1991, § 7-602(C)
[2] 27A O.S. Supp. 1997, § 2-11-403(A)(1)
[3] 47 O.S. Supp. 1995, § 1143(B)(C)

3. That on June 24, 1998, Protestant was notified by the Motor Vehicle Division of its intent to apply her income tax refund of $398.00 to the outstanding motor vehicle taxes, fees and corresponding penalties.

4. That Protestant, by letter dated July 1, 1998, filed a written protest.

5. That a hearing was held in this matter. Protestant questioned at the hearing and in her *Statement of Fact* filed subsequent to the hearing whether the vehicle should be registered in Oklahoma or in Kansas.

6. That a *Proposed Order* was issued by the undersigned recommending that the protest of Protestant be denied.

7. That Protestant made an application for a hearing before the Commission en banc.
8. That upon order of the Commission, the matter was remanded for further proceedings, as necessary, and for a determination of the validity of the entire debt asserted by the Motor Vehicle Division.

9. That a *Proposed Order* was issued by the undersigned, finding that the excise taxes, fees, and applicable penalties, in the amount of $965.00 were a valid debt of Protestant to the State of Oklahoma and that the income tax refund in the amount of $398.00 requested by Protestant on her income tax return was properly suspended by the Oklahoma Tax Commission in partial satisfaction of the debt she owes the State of Oklahoma in the amount of $965.00.

10. That the Commission adopted the *Proposed Order* by Order No. 2000-05-23-022.

11. That by letter dated April 14, 1999, the Division notified Protestant that a claim had been filed against her 1998 state tax refund for outstanding motor vehicle taxes, fees and penalties owed pursuant to the application to title and register a 1997 GMC pickup and fees associated with the insufficient fund check tendered on March 19, 1998, in payment thereof.

12. That by letter dated April 26, 1999, Protestant filed a timely protest.

13. That a hearing was held on November 13, 2000. At the hearing it was announced that the Division was claiming only $567.00 of the income tax refund claimed by Protestant.

14. That the remaining $191.50 was disbursed to Protestant on June 10, 1999.

## CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Oklahoma Tax Commission has jurisdiction over the parties and subject matter of this action, 68 O.S. Supp. 1997, § 205.2; that the Tax Commission is authorized to deduct from any state tax refund due a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law, prior to payment of the refund, 68 O.S. Supp. 1997, § 205.2(E); that in the event of a protest to the deduction of the delinquent taxes from the refund due the taxpayer, the only issues subject to determination are whether the claimed sum is correct or whether an adjustment to the claim shall be made, 68 O.S. Supp. 1997, § 205.2(B); that the outstanding motor vehicle taxes, fees and penalties are a valid debt of Protestant due the State of Oklahoma, Order No. 2000-05-23-022; and that the Division properly applied a portion of the refund claimed by Protestant on her 1998 income tax return to satisfy the outstanding liability in the amount of $567.00 and refunded the balance to Protestant in the amount of $191.00.

## DISPOSITION

THEREFORE, based on the above and foregoing findings and conclusions, it is recommended that the protest be denied.

**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.