

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-01-08-012 / NOT PRECEDENTIAL  
**ID:** P0100202  
**DATE:** 01-08-02  
**DISPOSITION:** DISMISSED  
**TAX TYPE:** MOTOR VEHICLE EXCISE  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 4th day of December, 2001, the Motion to Dismiss filed by the Motor Vehicle Division (hereinafter "Division") of the Tax Commission in the above styled and numbered cause comes on for decision pursuant to a hearing held on November 14, 2001. RESPONDENT is represented by ITS Owner/President. The Division is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Upon review of the file and records, including the record of the hearing to consider the Motion to Dismiss and the exhibits received into evidence, the undersigned finds:

1. That by letter dated August 3, 2001, the Division caused to be issued against Respondent a proposed assessment of motor vehicle excise tax in the amount of \$781.00.
2. That the assessment is based on the Division's determination that the licensed dealer excise tax exemption granted to Respondent did not apply to a 2001 vehicle registered by Respondent which had previously been registered in the State of Ohio.
3. That the proposed assessment was forwarded to Respondent at its last known address in accordance with 68 O.S. Supp. 1993, § 208.
4. That Respondent neither asked for nor received an extension of time within which to file a written protest.
5. That by letter to the Oklahoma Tax Commission dated June 6, 2001 and post-marked September 7, 2001, Respondent requested a hearing in this matter.
6. That on September 26, 2001, the Division forwarded the file to the Office of the Administrative Law Judges for further proceedings.
7. That the total amount in controversy in this proceeding is \$781.00.
8. That on October 30, 2001, the Division caused to be filed the Motion to Dismiss.

9. That dismissal of the protest is requested on the grounds and for the reason that a protest to the proposed assessment was not timely filed. The Division asserts that the date of the protest letter, June 6, 2001, is in error since the assessment letter from the Division was dated August 3, 2001. The Division further asserts that the protest letter probably should have been dated September 6, 2001, since the envelope which contained the letter was post-marked September 7, 2001.

10. That a Notice to Appear or Respond in Writing was served on Respondent.

11. That Respondent neither responded to the Notice nor appeared at the hearing.

### **CONCLUSIONS OF LAW**

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction to consider the Motion to Dismiss, 68 O.S. 1991, § 207 and Rule 710:1-5-46 of the Oklahoma Administrative Code; that Respondent did not file a timely protest to the proposed motor vehicle excise tax assessment, 68 O.S. 1991, § 221(c); and that the proposed assessment is final and absolute and the Tax Commission is without jurisdiction to consider the merits of the protest, 68 O.S. 1991, § 221(e).

### **DISPOSITION**

THEREFORE, it is DETERMINED that the protest of Respondent be dismissed. It is further DETERMINED that the amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing.

**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.