

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-08-28-016 / NOT PRECEDENTIAL  
**ID:** P0200067  
**DATE:** 08-28-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT and SPOUSE own a motorcycle acquired on or about July 8, 2000. On September 14, 2000, application was made to title and register the motorcycle at a tag agency in Norman, Oklahoma. In payment of the applicable title, registration and other miscellaneous fees, excise tax and late payment penalties, a check written on the account of CORPORATION X and bearing the signature of PROTESTANT in the amount of \$414.00 was tendered to the tag agent.

The amounts paid are set forth as follows:

Registration Fee	\$ 75.00
Penalty (Registration)	25.00
Excise Tax	289.00
Penalty (Excise)	9.50
Title Fee	11.00
Insurance Fee	1.50 <sup>1</sup>
Notary Fee	1.00 <sup>2</sup>
Mail Fees	<u>2.00<sup>3</sup></u>
Total	\$414.00

The check was returned insufficient funds.

The Division, by letter dated May 29, 2001, 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 \$19.00 and service charges totaling \$50.00.

On March 18, 2002, PROTESTANT filed a 2001 Oklahoma income tax return claiming a refund in the amount of \$1,208.00. On April 23, 2002, PROTESTANT was notified by the Motor Vehicle Division of its intent to apply her income tax refund to the outstanding motor vehicle taxes, fees and corresponding penalties in the amount of \$483.00.

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<sup>1</sup> 47 O.S. 1999, § 7-602(B).

<sup>2</sup> 47 O.S. Supp. 1995, § 1143(B).

<sup>3</sup> 47 O.S. Supp. 1995, § 1143(B) and (C).

PROTESTANT by letter dated April 25, 2002, requested a hearing to protest this claim, stating that the "check in question #XXXXXX in the amount of \$414.00 was written by my son on CORPORATION X company account. SON forged my signature on this and several other checks. [H]e wrote the check to pay the excise tax for a motorcycle that I co-signed for him."

### CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest. 68 O.S. Supp 1997, § 205.2.

2. The Tax Commission is authorized to deduct from any state tax refund due to 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).

3. Where a taxpayer protests the application of the refund to a delinquency, the issues to be decided are whether the claimed sum is correct and whether an adjustment to the claim shall be made. 68 O.S. Supp. 1997, § 205.2(B).

4. The owner of every vehicle in this State shall possess a certificate of title as proof of ownership. 47 O.S. Supp. 1998, § 1105(B).

5. Application for a certificate of title may be made to the Oklahoma Tax Commission or any motor license agent. *Id.*

6. An applicant, in order to obtain an original certificate of title for a vehicle that is being registered for the first time in this State, shall deliver as evidence of ownership, a manufacturer's certificate of origin. 47 O.S. Supp. 1998, § 1105(D).

7. The charge for each certificate of title issued is \$11.00. 47 O.S. Supp. 1998, § 1105(H).

8. Every owner of a vehicle possessing a certificate of title shall, before using the same in the state, make an application for the registration of such vehicle. 47 O.S. 1991, § 1112. Section 1112 provides that an owner making application for registration shall furnish the following information:

1. A full description of the vehicle including the manufacturer's serial or other identification number, the manufacturer's factory delivered price, total delivered price, any security interest upon said vehicle, an odometer reading of said vehicle when applicable, and the insurance security verification to said vehicle;

2. The correct name and address, the name of the city, county and state in which the person in whose name the vehicle is to be registered resides, the driver's license number of the owner if the owner has a driver's license or the Federal Employers Identification Number of the owner if such owner is not an individual, and such other information as may be prescribed by the Commission; and

3. a. The name of the carrier of the owner's insurance policy for such vehicle,

b. The policy number of the owner's policy for such vehicle, if available, or the name of the agent or office where the existence of security may be verified, if other than the carrier,

c. The effective dates of the owner's policy for such vehicle, and

d. A statement of the existence of a nonuse affidavit if filed by the vehicle owner pursuant to the provisions of Section 7-607 of this title.

9. In addition to the other vehicle registration fees required by Sections 1132(A)(1), 1132.1(A) and 1140(E) of Title 47, the owner of a vehicle upon initial registration of the vehicle is assessed a fee of one and one-quarter percent of the factory delivered price. 47 O.S. Supp. 1995, § 1132(A)(2).

10. If a vehicle is not registered, titled and tagged within thirty (30) days from the date of transfer of ownership, a penalty shall accrue at the rate of \$.25 per day, not to exceed \$25.00. 47 O.S. Supp. 1995, § 1132(C).

11. Motor vehicle excise tax is levied and shall be collected upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicles registered for the first time in this state. 68 O.S. Supp. 1997, § 2103(A)(1). The tax is due at the time of transfer of legal ownership or first registration and shall be collected at the time of the issuance of a certificate of title. 68 O.S. Supp. 1997, § 2103(A)(2). The value of any new vehicle manufactured in the United States shall be determined as of the date of sale or other transfer or ownership, and assignment of the certificate of title shall include the manufacturer's price of such a vehicle delivered at the factory plus the value of all extra or optional equipment or accessories minus any portion of the value of such optional equipment deducted by the dealer at the time of the sale if such optional equipment and accessories are sold by the dealer as a discount package. 68 O.S. Supp. 1992, § 2104(B).

12. The excise tax levied by Section 2103 is delinquent thirty (30) days after legal ownership or possession of any vehicle is obtained. A penalty for failure to remit the excise tax in a timely manner accrues in the amount of \$.25 per day until the excise tax is paid or until the penalty equals the tax. 68 O.S. Supp. 1992, § 2103(A)(2).

13. All fees and taxes levied by the Oklahoma Vehicle License and Registration Act are, and remain, a first lien on the vehicle upon which the fees or taxes are due, until paid. 47 O.S. Supp. 1998, § 1133(H).

14. A \$25.00 service charge to cover the Motor License Agent's cost of processing the check was imposed. 47 O.S. 1991, § 1121. An additional service charge was assessed pursuant to Section 218 of Title 68.

15. By making application to title and register the motorcycle, it was reported to the Tax Commission that registration fees and excise taxes were due on the vehicle and reported the basis upon which to calculate the fees and taxes. This situation is not unlike an individual reporting adjusted gross income to calculate an income tax liability or a vendor reporting gross receipts to calculate a sales tax liability. Therefore, the amount of the motor vehicle taxes and fees of PROTESTANT AND SPOUSE are an admitted liability. Regardless of the fact that PROTESTANT'S son forged the check in payment of the fees and taxes, PROTESTANT, as co-owner of the motorcycle, is responsible for the outstanding registration fees, excise tax and penalties on the motorcycle. Based on the foregoing, the taxes, fees and penalties in the amount of \$483.00 are a valid debt of PROTESTANT to the State of Oklahoma.

Therefore, the refund of income tax requested by PROTESTANT on her income tax return was properly suspended by the Oklahoma Tax Commission. A portion of the refund, in the amount of \$483.00, should be applied in satisfaction of the debt she owes to the State of Oklahoma and the remaining balance, in the amount of \$725.00, should be refunded.

### DISPOSITION

It is the DETERMINATION of the undersigned that the protest to the claim of the Motor Vehicle Division to the income tax refund of PROTESTANT be denied; that the portion of the refund, in the amount of \$483.00, be applied in satisfaction of the debt she owes the State of Oklahoma and the balance of the refund, in the amount of \$725.00, be refunded forthwith.

### 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.