JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-10-01-032 / NOT PRECEDENTIAL**
ID: **CR020007**
DATE: **10-01-02**
DISPOSITION: **SUSTAINED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of August, 2002, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Claimant represents herself in this matter. The Motor Vehicle Division is represented by AN Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission. A hearing was held. Notice of the hearing was mailed to CLAIMANT at her last known address, yet she did not appear. At the conclusion of the hearing, this matter was submitted for decision.

FINDINGS OF FACT

1. On December 12, 2000, Claimant applied and was allowed to register a 1997 Ford pursuant to a special physically disabled registration rate.

2. Claimant, on January 23, 2002, made application to register the subject vehicle, but was refused the special registration as requested and was required to pay the standard non-commercial registration of $81.00.

3. By letter dated March 3, 2002, Claimant requested a refund of the difference between the $81.00 she paid and the special registration rate of $30.00[1].

4. In support of her refund claim, Claimant provided a prescription for a lumbar seat, dated February 25, 2002, based on the doctor's diagnosis of osteoarthropathy, lumbar spinal stenosis and osteoporosis. Additionally, Claimant provided an *Affidavit for Physically Disabled Registration Fee* wherein she described the modification made to her vehicle as a "lumbar seat to alleviate spinal pain, due to lumbar spinal stenosis, osteoporises (sic) and other physical problems." Claimant provided her Department of Public Safety Handicapped Parking Insignia Number, XXXXXX, on the affidavit.

[1] The thirty dollar total includes the $25.00 registration fee provided for in Section 1136(8) of Title 47 in addition to other fees, rounded to $5.00, provided for in Sections 1132.1 and 1140(E) of Title 47.

5. The Division, by letter dated March 19, 2002, denied Claimant's refund request. The basis for the denial as stated in the letter was, "The lumbar seat does not qualify for the handicap tag rate. Modifications that would qualify include hand controls, wheelchair lift, etc."

6. By letter dated April 16, 2002, Claimant protested the denial of the refund claim and requested a hearing.

7. AN Administrator, Motor Vehicle Division, testified that it was his understanding from a discussion with Claimant that the lumbar seat was factory equipped. He stated that although the lumbar seat is not standard equipment, it is an option and that under these circumstances he did not consider the lumbar seat to be a modification. However, THE ADMINISTRATOR did state that if Claimant would have taken the vehicle and had the lumbar seat added after purchase, he would have considered the lumbar seat to be a modification that would qualify for the special registration rate.

ISSUE

The issue presented for decision is whether Division's denial of the claim for refund of the difference between the standard non-commercial registration fee and the special registration rate is erroneous.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, Section 207.

2. Section 1136(8) of Title 47 provides for a physically disabled license plate for any person who is eligible for an insignia as a physically disabled person under the provisions of Section 15-112 of Title 47[2]. Any person who is eligible for that license plate and whose vehicle has had modifications because of the physical disability may register the vehicle for a flat fee of $25.00. This fee shall be in lieu of all other registration fees provided by the Oklahoma Vehicle License and Registration Act. 47 O.S. 2001, Section 1136(8).

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[2] 47 O.S. 2001, ∋ 15-112(B)

> 1. The Department of Public Safety shall issue a detachable placard indicating physical disability to any person who submits an application on a form furnished by the Department and certified by a physician attesting that the applicant has a physical disability . . . .

Section 15-112(b) was amended by Laws 1996, c. 129 ∋ 2 to require the Department of Public Safety to issue a placard instead of an insignia.

3. The Commission, to implement of the provision, promulgated *Oklahoma Administrative Code 710:60-3-169* and *710:60-3-170*, which describe the application process to qualify for the special registration rate and sets forth examples of qualifying modifications, in pertinent part as follows:

> An applicant for the special rate must sign an affidavit[3] describing the modification. Examples of qualifying modifications are: hand controls, raised pedals, wheel chair lift, or other permanent modification.

Oklahoma Administrative Code 710:60-3-170(b).

4. Here, the Claimant complied with the provisions of Section 15-112 of Title 47 and provided an *Affidavit for Physically Disabled Registration Fee* as set forth in *Oklahoma Administrative Code 710:60-3-170*. The fact that Claimant modified the vehicle by adding the lumbar seat as an option to the vehicle at the time of purchase instead of having the lumbar seat added sometime thereafter, should not disqualify Claimant from being able to register the vehicle pursuant to the special registration rate.

5. Section 1136(8) of Title 47 provides that there shall be no fee for the physically disabled license plate in addition to the $25.00 registration fee, and further, that the $25.00 fee is in lieu of all other registration fees provided by the Act. Therefore, Claimant should not be required to pay the $1.75 registration fee to be collected for each license plate or decal issued as set out in Section 1140(E) of Title 47.

6. The claim for refund should be granted.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the motor vehicle registration fee claim for refund of CLAIMANT be sustained.

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.

[3] OTC Form 760 Affidavit for Physically Disabled Registration Fee must be completed by the owner of the vehicle. *OAC* 710:60-3-169.