

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2008-01-08-03 / NON-PRECEDENTIAL
ID: CR-07-008-H
DATE: JANUARY 8, 2008
DISPOSITION: SUSTAINED
TAX TYPE: MOTOR VEHICLE EXCISE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CLAIMANT (“Claimant”) appears pro se.¹ The Accounting Section of the Motor Vehicle Division (“Division”), Oklahoma Tax Commission, appears by and through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On September 20, 2007, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code² and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.³ On September 27, 2007, the parties were notified by letter that this matter had been set for hearing on October 17, 2007, at 1:30 p.m.⁴ The parties were also advised that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number CR-07-008-H. A copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*⁵ was enclosed.

On October 5, 2007, the Division requested that the hearing be reset due to a scheduling conflict. On October 8, 2007, the parties were advised by letter that the hearing set for October 17, 2007, at 1:30 p.m. had been stricken from the docket and reset on October 23, 2007, at 9:30 a.m., with position letters or memorandum briefs due on or before October 16, 2007. On October 5, 2007, the Position Letter of the Motor Vehicle Division of the Oklahoma Tax Commission was filed of record. On October 11, 2007, the Position Letter of the Claimant was filed of record.

¹ “**pro se**” (proh say or see), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at <http://westlaw.com>. (March 16, 2006).

² OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

³ OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

⁴ See OKLA. ADMIN. CODE § 710:1-5-24.

⁵ OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Claimant at CLAIMANT'S ADDRESS.

An open hearing was held on October 23, 2007, at approximately 9:30 a.m.⁶ The Division called two (2) witnesses, SUPERVISOR, Supervisor, Accounting Section of the Motor Vehicle Division, who testified regarding the procedures utilized in conducting the audit of the claim for refund and as custodian of the Division's records. The Division also called ADMINISTRATOR, Administrator of the Accounting Section of the Motor Vehicle Division, Oklahoma Tax Commission, who testified regarding the Division's procedures. The Division's Exhibits A through D were identified, offered, and admitted into evidence. The Claimant testified on his own behalf. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on October 23, 2007.⁷

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the position letters, the undersigned finds:

1. On or about June 5, 2007, the Claimant purchased a 2006 Big Dog "K-9" motorcycle ("Motorcycle")⁸ from SELLER at CITY A, Ohio, for \$23,000.00.⁹

2. The Motorcycle was titled in the State of Ohio, listing SELLER as the record owner with vehicle identification number ("VIN")¹⁰ XYZ123.¹¹ Prior to purchasing the Motorcycle, CLAIMANT obtained the VIN and verified with the State of Ohio that SELLER was the owner and the VIN was XYZ123 ("Ohio VIN").¹²

⁶ The Claimant waived his right to a confidential hearing. *See* OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2007).

⁷ OKLA. ADMIN. CODE § 710:1-5-39 (June 25, 1999).

⁸ Big Dog Motorcycles, LLC, started production in 1994 and has since built nearly 25,000 motorcycles, becoming the world's largest manufacturer of custom motorcycles. The nine (9) foot long "K-9" was introduced in 2006, as the benchmark of the Chopper Line. Other models include the "Bulldog", "Mastiff", and "Pitbull". *See* <http://www.bigdogmotorcycles.com> (October 25, 2007).

The Administrative Law Judge is taking judicial notice of the website to understand the factual details and background of this claim for refund. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

⁹ Division's Exhibit A. Testimony of CLAIMANT.

¹⁰ "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the first-stage manufacturer. OKLA. STAT. ANN. tit. 47, § 1105.1(9) (West 2001).

"First-stage manufacturer" means a person who performs manufacturing operations on an incomplete vehicle so that it becomes a completed vehicle. OKLA. STAT. ANN. tit. 47, § 1105.1(3) (West 2001). *See* OKLA. STAT. ANN. tit. 47, § 1105.2(A) (West 2001).

¹¹ Division's Exhibit A. Testimony of CLAIMANT and SUPERVISOR.

¹² Division's Exhibit A. *See* State of Ohio Certificate of Registration and Ohio Department of Public Safety "Online Vehicle/Watercraft Title Inquiry."

3. On June 5, 2007, the Claimant insured the Motorcycle with INSURANCE COMPANY, ADDRESS, Policy #XXX, with an effective date of June 6, 2007, and expiration date of August 25, 2007.¹³

4. On June 6, 2007, Claimant registered the Motorcycle with the Division, and paid the registration fee (\$91.00), vehicle excise tax (\$719.00), title fee (\$11.00), and misc. fees (\$5.50) for a total of \$826.50.¹⁴ The title from the State of Oklahoma for the Motorcycle was held by the Division until the Motorcycle was produced for inspection.¹⁵

5. On or about June 7, 2007, the Claimant took the Motorcycle to REPAIR SHOP in CITY B, Oklahoma, for repairs (the Motorcycle would not start), which were scheduled for June 12, 2007.¹⁶

6. On June 12, 2007, the Claimant returned the Motorcycle to REPAIR SHOP for the repairs previously scheduled. Besides the visible Ohio VIN, the Motorcycle apparently contains a computer chip, from the manufacturer. When REPAIR SHOP connected the Motorcycle to the computer to perform the diagnostic, it was discovered, through the computer chip, that the VIN of the Motorcycle should have been "ABC999".¹⁷

7. Upon discovering the discrepancy, REPAIR SHOP notified the CITY B Police Department, which responded immediately. The CITY B Police Department Incident Report (Incident Number XXX) states that the Motorcycle was reported stolen from CITY 3, S.C., on May 16, 2006. The CITY B Police Department subsequently towed the Motorcycle to its garage for further investigation.¹⁸

¹³ Division's Exhibit B. Testimony of CLAIMANT.

¹⁴ Division's Exhibit B.

¹⁵ Testimony of SUPERVISOR.

See OKLA. ADMIN. CODE § 710:60-5-30(9) (June 25, 2007):

(9) Vehicle inspection.

(A) **Inspection required.** All previously registered vehicles entering Oklahoma from another state, with the exception of vehicles intending to prorate, must be physically inspected before an original Oklahoma certificate of title may be issued. The vehicle identification number (VIN) and odometer reading from the vehicle will be entered in this portion of the application. The VIN found on the vehicle will be compared to the number listed on the out-of-state documentation to ensure they match.

¹⁶ Division's Exhibit C.

¹⁷ Division's Exhibit C. Testimony of CLAIMANT.

¹⁸ Division's Exhibit C. Testimony of CLAIMANT. CLAIMANT also testified that the Motorcycle is now in the possession of the FBI, as part of the investigation of a seven (7) state motorcycle theft ring.

8. On June 20, 2007, the Division received a letter from the Claimant requesting a refund of the \$826.50 in vehicle excise tax and fees paid to the Division on June 7, 2007.¹⁹

9. On August 15, 2007, the Division denied the Claimant's request for refund, stating, "The excise tax fees you paid were properly assessed under Oklahoma law. There is no statutory provision for a refund on excise taxes you paid."²⁰

10. By letter dated September 9, 2007, the Division received a timely filed letter of protest from the Claimant.²¹

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.²²

2. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle.²³

3. An excise tax is levied upon the *transfer of legal ownership* of any vehicle registered in the State of Oklahoma.²⁴

4. "Legal Ownership" and "Legally Owned" mean the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner.²⁵

5. The "[t]ransfer of bare legal title is not the same as transfer of legal ownership." The change of legal ownership contemplated by the statute involves a change of ownership and possession.²⁶

¹⁹ Division's Exhibit D. The letter explains in detail the circumstances of why the refund is being requested.

²⁰ Division's Exhibit D.

²¹ Division's Exhibit D. The letter does not reflect the date it was received by the Division, but SUPERVISOR testified that the protest was received within thirty (30) days of the denial.

See OKLA. STAT. ANN. tit. 68, § 227(d) (West 2001).

²² OKLA. STAT. ANN. tit. 68, § 227 (West 2001). See OKLA. STAT. ANN. tit. 47, § 1106 (West Supp. 2007).

²³ OKLA. STAT. ANN. tit. 47, § 1112 (West Supp. 2007).

²⁴ OKLA. STAT. ANN. tit. 68, § 2103(A)(3) (West Supp. 2007).

²⁵ OKLA. STAT. ANN. tit. 68, § 2101(14) (West Supp. 2007).

²⁶ *Imaging Services, Inc. v. Oklahoma Tax Commission*, 1993 OK 164, 866 P.2d 1204. See OTC (Precedential) Order No. 2002-01-08-006 (January 1, 2002).

6. “Any taxpayer who has paid..., through error of fact, or computation, or misinterpretation of law, any tax... may..., be refunded the amount of such tax so erroneously paid, without interest.”²⁷

7. The provisions of Section 227 of Title 68 apply to vehicle excise tax and registration fees.²⁸

8. The Division’s action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.²⁹

The Claimant’s position is that “[he] did everything within [his] power to make certain that [he] had legal title to this vehicle ...” to effect a change in legal ownership and the right to possession of the Motorcycle.

It is the position of the Division that excise tax and fees are due upon the first registration of the Motorcycle and are not subject to a refund,³⁰ although the Division acknowledges that a refund may be granted by the Commission under Section 227 of Title 68. However, the Division states, “None of the factors are present in this matter...” and, “The [Claimant] controlled all the facts in this matter.” In support of its position, the Division cites *Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com’n*, 1989 OK 67, 773 P.2d 736.

However, *Budget Rent-A-Car*, also holds that “Our characterization of the payment as one made through error of fact is consistent with those cases which hold, where a material fact is within the sole possession of a third party with peculiar knowledge, an erroneous representation with regard to such fact constitutes a fact not a mere expression of opinion.”³¹

²⁷ OKLA. STAT. ANN. tit. 68, § 227(a) (West 2001).

²⁸ See Note 27. See also Okla. A.G. Opin. 84-42.

²⁹ *Enterprise Management Consultants, Inc. v. State, ex rel. Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

See OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

... “preponderance of the evidence” means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

³⁰ The Vehicle Excise Tax Act does not contain a provision providing for a refund of vehicle excise tax.

³¹ *Id.*

Contrary to the Division's position, the facts in this matter were not controlled by the Claimant. From an inspection of the Motorcycle, it appeared that the Ohio VIN on the Motorcycle was genuine. The Motorcycle had been titled by the State of Ohio, without any problem or indication that the Motorcycle was stolen.

The Division indicated during the hearing that if the Claimant had produced the Motorcycle for inspection, the State of Oklahoma would also have issued title to the Claimant. The Division, like the State of Ohio, would not have been able to tell from an inspection of the Ohio VIN that the Motorcycle was stolen.

In this matter, the Claimant is not entitled to legal ownership and the rights to possession of the Motorcycle, despite all the efforts of the Claimant. These are material facts within the sole possession of a third party, not the Claimant.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest to the denial of the claim for refund should be sustained.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.