JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2008-05-08-02 / NON-PRECEDENTIAL**
ID: **P-08-017-H**
DATE: **MAY 8, 2008**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME INTERCEPT**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. PROTESTANT("Protestant") appears pro se.[1] 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 February 22, 2008, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] On February 29, 2008, a letter was mailed to the parties stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-08-017-H. The letter also advised the parties that this matter had been set for hearing on March 19, 2008, at 1:30 p.m., with position letters or memorandum briefs due on or before March 12, 2008. Enclosed was a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.*[4] On March 12, 2008, the Division's Memorandum Brief was filed of record, with attachments thereto. No response was received from the Protestant.

The hearing was held as scheduled on March 19, 2008, at approximately 1:30 p.m. The Protestant failed to appear at the hearing. The Division announced Protestant had informed the Office of General Counsel that she would not be present for the hearing.

The Division called two (2) witnesses. The first witness, AUDITOR, Auditor, Account Maintenance Division, Oklahoma Tax Commission, testified regarding the pending intercept of the Protestant's 2007 refund and as custodian of the Account Maintenance Division's records. The Division's second witness, SUPERVISOR, Supervisor, Accounting Section, Motor Vehicle Division, Oklahoma Tax Commission, testified regarding the dishonored check and as custodian

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[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] OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

of the Division's records. The Division's Exhibits A through J were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision on March 19, 2008.

On March 25, 2008, the Division filed a Post-Hearing Memorandum to clarify the calculation of the Protestant's 2007 refund. The record was reopened and the Division's filing was accepted, with Exhibits L through M attached thereto, which are admitted into evidence. The record was re-closed and the cased re-submitted for decision March 26, 2008.

FINDINGS OF FACT

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

1. On or about December 8, 2006, PURCHASER submitted check number 1037 ("Check") for $201.00 to TAG AGENCY, Motor License Agent #XXX ("Agent") for payment of vehicle registration fees and excise taxes,[5] as follows, to-wit:

Vehicle Title Receipt	
Title Fee:	$ 11.00
Excise Tax:	81.00
Insurance Fee:	1.50
Mail Fee:	1.00
Sub-Total	$ 94.50
Vehicle Registration	
Registration Fee:	$ 81.00
Replacement Tag:	4.00
Sub-Total	$ 85.00
Transfer Fee	
Registration Fee:	$ 17.00
Notary:	1.00
Tax Stamp:	3.50
Sub-Total	$ 21.50
Total	$201.00[6]

2. PURCHASER submitted the Check for a 2000 Ford, CST, VIN#XYZ123, registered to Protestant.[7]

[5] Division's Exhibit A.

[6] Division's Exhibit D-4.

[7] Division's Exhibits B-1 and B-2.

3. On December 12, 2006, the Agent presented the Check to BANK for payment. The Bank dishonored the Check, which was returned, bearing a stamp reading "Return Reason-D Closed Account."[8]

4. On December 14, 2006, the Check was presented to the Bank a second time for payment, as required by Section 1121, Title 47.[9] The Bank dishonored the Check for a second time.[10]

5. On or about January 21, 2007, the Agent submitted documentation to the Division requesting credit to its account for the dishonored Check.[11]

6. On January 26, 2008, Protestant filed her Oklahoma Income Tax Return for the 2007 tax year claiming a refund of $677.00.[12]

7. On January 29, 2008, Division mailed Protestant a notice of its intention to intercept the 2007 refund and apply it to the outstanding balance due to the dishonored Check written for her vehicle registration by PURCHASER.[13]

8. The Protestant's 2007 refund ($677.00) includes a "sales tax credit" ($120.00). On January 29, 2008, the Account Maintenance Division refunded $80.00 of the "sales tax credit" to the Protestant. The remaining $40.00 of the "sales tax credit" was transferred to the Department of Human Services pursuant to Section 5013(B)(1).[14] The remaining $557.00 was suspended pending the refund intercept.[15]

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[8] Division's Exhibits C-1 and C-2.

[9] OKLA. STAT. ANN. tit. 47, § 1121(A) (West 2001).

[10] *See* Note 8.

[11] Division's Exhibits D-1 through D-4.

[12] Division's Exhibit E. Protestant filed as "Head of household with qualifying person."

[13] Division's Exhibit G. The notice was mailed to Protestant at PREVIOUS ADDRESS.

[14] OKLA. STAT. ANN. tit. 68, § 5013(B)(1) (West Supp. 2008), which in pertinent part states:

> Sales tax relief for families receiving assistance pursuant to the federal program of Temporary Aid to Needy Families shall be transferred from the Oklahoma Tax Commission to the Department of Human Services as provided in this subsection for purposes of obtaining federal matching funds to increase the payments to recipients of Temporary Aid to Needy Families.

See Division's Exhibits L and M. *See also* Division's Post-Hearing Memorandum filed March 25, 2008.

[15] Division's Exhibit F. Testimony of AUDITOR.

9. On or about February 19, 2008, Protestant timely filed a protest, by facsimile, to the pending intercept of the 2007 refund. The basis of the protest is that PURCHASER was considering buying the Protestant's vehicle and he wrote the dishonored check to the Agent and another dishonored check for insurance on the vehicle, but PURCHASER did not purchase the vehicle. The Protestant is also a single mother of three (3).[16]

10. The Protestant informed the Division that her current address is CURRENT ADDRESS. The Protestant also signed an un-notarized affidavit,[17] with the style of the captioned case as follows, to-wit:

> I, PROTESTANT, acknowledge receipt of the notice of the suspension of my 2007 income tax refund in satisfaction of the liability to the Motor Vehicle Division of the Oklahoma Tax Commission for registration fees, excise tax, and motor vehicle penalty. The notice was dated January 29, 2008 and was mailed to me at PREVIOUS ADDRESS. I filed a timely protest to this notice.

11. The Division announced at hearing that the Service Charge Fee of $50.00 was not being pursued against the Protestant because PURCHASER wrote the dishonored Check.[18]

12. At the time of hearing, the amount claimed by the Division consists of the amount of the Check ($201.00) and penalty ($60.00), for a total of $261.00.[19]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[20]

2. The certificate of registration and other such instruments issued at the time of registration of such vehicle shall be invalid, when payment is made by check for fees and taxes

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[16] Division's Exhibit H.

[17] Division's Exhibit J.

[18] Testimony of SUPERVISOR.

[19] Division's Exhibit I.

[20] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West Supp. 2008):

> If the district court or agency asserting the claim receives a written request from the debtor or taxpayer against whom no debt or final judgment is claimed requesting a hearing, the agency or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt or final judgment asserted by the district court or the agency, no action shall be taken in furtherance of the collection of the debt or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

and the check is not paid by the bank on which drawn for any reason (after said check has been presented for payment a second time).[21]

3. The motor license agent shall transmit all documents and the dishonored check to the Oklahoma Tax Commission for credit to the motor license agent's account.[22]

4. In all such cases, the vehicle shall be subject to the license fees and penalties provided by the Oklahoma Vehicle License and Registration Act[23] as though no attempt to register the vehicle had been made.[24]

5. The Oklahoma 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.[25]

6. In the event of a protest to the application to deduct 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.[26] No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[27]

7. A challenge to the validity of the debt requires a determination that the notice of assessment, which gave rise to the debt, was provided in a manner that satisfies due process requirements.[28]

8. The assessment of taxes or additional taxes shall be proposed in writing and shall be mailed to the taxpayer at the taxpayer's last-known address in accordance with statutory due process requirements.[29]

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[21] OKLA. STAT. ANN. tit. 47, § 1121(A) (West 2008). This section also contains a provision for the charge of a $25.00 processing fee for each returned check. The fee is imposed against the person who wrote the dishonored check.

[22] *See* Note 21.

[23] OKLA. STAT. ANN. tit. 47, § 1101 et seq. (West 2008).

[24] *See* Note 21.

[25] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West Supp. 2008):

> The Tax Commission shall deduct from any state 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 such refund.

[26] *See* Note 20.

[27] *See* Note 20.

[28] *See* Note 20.

[29] OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

9. In all proceedings before the Oklahoma Tax Commission, the taxpayer has the burden of proof to show the action of the Commission is incorrect, and in what respects.[30]

10. The Protestant has failed to meet her burden of proof. The Protestant has not presented any evidence that the Division's claim ($261.00) of her 2007 refund ($557.00) is incorrect, or an adjustment should be made by the Division. The Protestant has not cited any authority which supports her equitable position for receiving the full amount of her refund for the 2007 tax year.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the protest to the claim ($261.00) of the Division to the Protestant's refund ($577.00) for the 2007 tax year should be denied.

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.

[30] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). *See Enterprise Management Consultants, Inc. v. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.