

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 2008-07-01-05 / NON-PRECEDENTIAL
ID: P-08-037-K
DATE: JULY 1, 2008
DISPOSITION: DENIED
TAX TYPE: INCOME INTERCEPT
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Motor Vehicle Division of the Tax Commission (“Division”) is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

By letter dated February 8, 2008, the Division notified Protestant that a portion of her 2007 income tax refund had been suspended due to reported liabilities for motor vehicle excise taxes and registration fees attributable to two (2) dishonored checks written in remittance of the taxes and fees. Protestant timely protested the Division’s suspension.

On April 19, 2008, the Division referred its file to the Office of the Administrative Law Judges (“ALJ’s Office”) for further proceeding consistent with the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure before the Oklahoma Tax Commission². The protest was docketed as Case No. P-08-037-K and assigned to ALJ, Administrative Law Judge.³

A hearing was scheduled for May 1, 2008, by letter issued April 11, 2008.⁴ The hearing notice was forwarded to Protestant’s last-known address.⁵ Protestant did not appear at the hearing, or respond to the notice. The Division called two witnesses: AUDITOR, Auditor III, Account Maintenance Division, who testified with respect to Protestant’s income tax records; and, SUPERVISOR, Supervisor-Accounting Section of the Motor Vehicle Division, who testified with respect to the records of the Motor Vehicle Division. Exhibits A through L were identified, offered and admitted into evidence. Upon conclusion of the Division’s case, the record was closed and the protest was submitted for decision.⁶

¹ 68 O.S. 2001, § 201 et seq.

² Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* (“OAC”).

³ OAC, 710:1-5-22(b).

⁴ OAC, 710:1-5-29 and 68 O.S. Supp. 2003, § 205.2(B).

⁵ 68 O.S. Supp. 2007, § 205.2(A)(2).

⁶ OAC, 710:1-5-39(a).

FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the hearing, Protestant's protest and the exhibits received into evidence, the undersigned finds:

1. On May 10, 2005, a check drawn on Protestant's account at BANK in the amount of \$182.50 was submitted to Motor License Agent # XXX in payment of vehicle registration fees, title fees, insurance and mailing fees, excise taxes and penalties for late registration on a 1997 Land Rover, VIN XYZ123, which vehicle was registered and titled in Protestant's name. Exhibits A and B.

2. The check was presented to the drawer's bank for payment on two (2) separate occasions, but was dishonored and returned. Exhibits A and C.

3. On December 4, 2006, a check drawn on the account of HUSBAND OR PROTESTANT at BANK 2, in the amount of \$142.50 was submitted to Motor License Agent # ZZZ in payment of vehicle registration fees, excise taxes and penalties for late registration on a 1990 Buick, VIN ABC999, which vehicle was registered and titled in the names of "HUSBAND OR PROTESTANT". Exhibit D.

4. The check was presented to the drawer's bank for payment on two (2) separate occasions, but was dishonored and returned. Exhibit E.

5. The title to and registration of the subject vehicles were cancelled upon notice from the tag agents of the dishonored checks. Exhibits A and F. The Division subsequently credited the accounts of the motor license agents with the amount of the checks on each of the transactions. Exhibits J and K.

6. Protestant's indebtedness to the state from the above transactions is \$247.75, consisting of \$50.00 in insufficient funds check fees on the check written for registration of the Land Rover as this vehicle was repossessed by the lender on or around August 15, 2005, and the face amount of the check written for registration of the Buick and additional penalties of \$55.25. Exhibits J and K.

7. On January 30, 2008, Protestant electronically filed her resident 2007 Oklahoma income tax return, Form 511, reporting a "Head of household with qualifying person" filing status and claiming a refund of the overpayment of income tax in the amount of \$539.00. Exhibit G and testimony of AUDITOR. The refund consists of excess withholding of \$183.00, a refundable Sales Tax Relief Credit of \$120.00 and an Oklahoma Earned Income Credit of \$236.00. Exhibit G.

8. The true refund or amount available to be applied to any indebtedness owed the State of Oklahoma is \$419.00. Exhibit H and testimony of AUDITOR.

9. On February 8, 2008, Protestant was notified by letter that a portion of her 2007 income tax refund had been suspended for "[a]n outstanding balance in the amount of \$297.75 is due the Motor Vehicle Division due to an insufficient check that was written for motor vehicle taxes on 5/10/05." Exhibit I.

10. By letter mailed March 31, 2008, Protestant timely protested the suspension, asserting that she has no access to HUSBAND'S checking account and the refund is needed to support her children. Exhibit L.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this action is vested in the Tax Commission. 68 O.S. Supp. 2003, § 205.2(B).

2. The Tax Commission is authorized to deduct from any taxpayer's state income tax refund the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law. 68 O.S. Supp. 2003, § 205.2(E).

3. The only issues subject to determination in this proceeding are: (1) whether the claimed sum is correct, and (2) whether an adjustment to the claim is required by the evidence. 68 O.S. Supp. 2003, § 205.2(B).

4. "It is the intent of the Legislature that the owner or owners of every vehicle in this state shall possess a certificate of title as proof of ownership and that every vehicle shall be registered in the name of the owner or owners thereof." 47 O.S. 2001, § 1103. Section 1103 of the Oklahoma Vehicle License and Registration Act ("Act")⁷ further provides: "[a]ll registration and license fees and mileage taxes imposed by [the] act" * * * "shall apply to every vehicle operated upon, over, along or across any avenue of public access within this state and when paid in full, shall be in lieu of all other taxes, general and local unless otherwise specifically provided." Id.

5. "In the event of the sale or transfer of the ownership of a vehicle for which a certificate of title has been issued * * * [t]he purchaser or transferee * * * shall, within thirty (30) days from the time of delivery to the purchaser or transferee of the vehicle, present the assigned certificate of title and the insurance security verification to the vehicle to the Oklahoma Tax Commission, or one of its motor license agents, accompanied by a fee of Eleven Dollars (\$11.00), together with any motor vehicle excise tax or license fee that may be due, whereupon a new certificate of title, shall be issued to the assignee." 47 O.S. 2001, § 1107(A).

6. "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"; 47 O.S. 2001, § 1112, and "[u]pon the filing of a registration application and the payment of the fees provided" * * * "the Oklahoma Tax Commission shall assign to the vehicle described in the application a distinctive number, and issue to the owner of the vehicle a certificate of registration"; 47 O.S. 2001, § 1113(A)(1). All vehicles are required to be registered annually, and the registration and license fees shall become delinquent if they are not paid by the end of the month following the expiration

⁷ 47 O.S. 2001, § 1101 et seq., as amended.

date. 47 O.S. 2001, § 1115(B)(1). “A penalty of twenty-five cents (\$0.25) per day shall be assessed after the last day of the month following the expiration date and shall be added to the license fee of such vehicle and shall accrue for three (3) months; thereafter, the penalty shall be Twenty-five Dollars (\$25.00), provided that the penalty shall not exceed the amount equal to the license fee of such vehicle.” 47 O.S. 2001, § 1115(C)(4).

7. Unless otherwise specifically provided by the Act, a registration fee shall be assessed on all vehicles at the time of initial registration by the owner and annually thereafter. 47 O.S. 2001, § 1132(A)(1). “Upon every transfer or change of ownership of a vehicle, the new owner shall obtain title for and, * * * register the vehicle within thirty (30) days of change of ownership and pay a transfer fee of Fifteen Dollars (\$15.00) in addition to any other fees provided for in this act.” Id. “In the event the vehicle is not registered, titled and tagged within thirty (30) days from the date of transfer of ownership, the penalty for the failure of the owner of the vehicle to register the vehicle within thirty (30) days shall be twenty-five cents (\$0.25) per day, provided that in no event shall the penalty exceed Twenty-five Dollars (\$25.00).” 47 O.S. 2001, § 1132(C).

8. Except as otherwise provided in the Oklahoma Vehicle Excise Tax Code (“Code”)⁸, “an excise tax is levied 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 vehicle registered for the first time in this state.” 68 O.S. 2001, § 2103(A)(1). The tax is due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected at the time of the issuance of a certificate of title for any such vehicle. 68 O.S. 2001, § 2103(A)(2). Section 2103(A)(2) further provided:

The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

9. “When, at the time of registration of any vehicle, payment is made by check for fees and taxes 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, such certificate of registration and other such instruments issued at the time of registration of such vehicle shall be invalid.” 47 O.S. 2001, § 1121(A). Section 1121(A) further provides:

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. The Commission may enter into a contract for the collection of dishonored checks and canceled instruments. In all such cases, such vehicles shall be subject to the license fees and penalties provided in this act as though no attempt to register the vehicle had been made and the motor license agent shall

⁸ 68 O.S. 2001, § 2101 et seq., as amended.

charge the person issuing the check a fee of Twenty-five Dollars (\$25.00) for each check to cover the costs of processing each returned check.

Section 1142(C) of the Act provides that all checks or similar instruments accepted and received by motor license agent for taxes and fees must be deposited in the Oklahoma Tax Commission Motor License Agent Account. Section 1142(C) further provides:

Items deposited shall be credited at par and should payment be refused on any such check, draft, order or voucher, or should the same prove otherwise worthless, the amount thereof shall not be charged by the Commission against the individual subaccounts of the agent. The agent shall continue to attempt to require proper payment of all such worthless items, but shall not be personally liable to the Commission for their payment. The Commission or agent shall charge the person issuing the check a fee of Twenty-five Dollars (\$25.00) for each check to cover the costs of the processing of each returned check, * * * provided, such charge shall not be made unless efforts have been made to present such check, draft, order or voucher for payment a second time.

10. Here, Protestant was the drawer of the check for the registration of the Land Rover and she was listed as one of the owners of the Buick; therefore, she is statutorily liable for the service charges (\$50.00) on the check written for registration of the Land Rover and the excise taxes; title, registration and transfer fees, and additional penalties (\$197.75) due for the transfer of ownership of the Buick. Further, Protestant failed to come forward with any evidence to show the sum claimed by the Division is incorrect, and not due and owing; or to show that an adjustment to the suspended refund is required.

11. Protestant's protest to the Division's claim to her 2007 income tax refund should be and the same is hereby denied. \$247.75 of Protestant's 2007 income tax refund should be applied to the liability owed to the Division.

DISPOSITION

THEREFORE, based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be denied. It is further ORDERED that \$247.75 of Protestant's 2007 income tax refund be applied to the indebtedness owed to the Motor Vehicle Division, Oklahoma Tax Commission.

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.