JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2009-10-08-02 / NON-PRECEDENTIAL**
ID: **P-09-094-H**
DATE: **OCTOBER 8, 2009**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND AND WIFE ("Protestants") appear pro se,[1] through WIFE. The Accounting Section of the Motor Vehicle Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY 1, Assistant General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On June 4, 2009, the protest file was received by the Office of Administrative Law Judges 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 June 12, 2009, a letter was mailed to the Protestants setting this matter for hearing on July 8, 2009, at 9:30 a.m. before ALJ, Administrative Law Judge, and docketed as Case Number P-09-094-H. The letter also advised the parties that position letters or memorandum briefs were due on or before July 1, 2009, and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.*[4]

On June 12, 2009, OTC ATTORNEY 1 filed an Entry of Appearance as Counsel of record for the Division.

On July 1, 2009, the Division's Brief was filed with the clerk of the court ("Clerk"), with Exhibits A through K attached thereto. On July 6, 2009, OTC ATTORNEY 2, Assistant General Counsel, filed an Entry of Appearance as Co-Counsel of record for the Division.

On July 8, 2009, at 9:30 a.m., the hearing was held as scheduled, with the parties in attendance. WIFE testified on behalf of the Protestants. The Division called two (2) witnesses. The Division's first witness, AUDITOR, Auditor III, Account Maintenance Division, Oklahoma

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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] *Id.*

Tax Commission, testified about the intercept of the Protestants' 2008 income tax refund and as custodian of the Account Maintenance Division's records. The Division's second witness, ADMINISTRATOR, Administrator, Motor Vehicle Division, Oklahoma Tax Commission, testified about the Division's procedures for collecting checks returned for insufficient funds and as custodian of the Division's records. The Division's Exhibits A through J were identified, offered, and admitted into evidence.

At the conclusion of the hearing, the record in this matter was held open for thirty (30) days for the Protestants to provide the following documentation to Counsel, as follows, to-wit:

Copy of a check from Protestants' joint checking account.

- Copy of a check from HUSBAND'S checking account.
- Social Security number of SON, son of Protestants
- Social Security number of PERSON, if available
- Tax exemption card for HUSBAND
- Any additional document to show who wrote the insufficient fund check

A status report was to be submitted on or before August 7, 2009.

On August 7, 2009, OTC ATTORNEY 1 filed the Status Report advising that the Protestants had not provided any documentation, and Counsel had not received any correspondence or telephone calls from the Protestants.

On August 11, 2009, a letter was mailed to the parties advising that the time had passed for the filing of any additional documentation, the record in this matter was closed, and this case was deemed submitted for decision as of August 11, 2009.

FINDINGS OF FACT

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

1. On or about December 15, 2008, HUSBAND submitted check number 9993 ("Check") for $439.50 to Motor License Agent # 5505 ("Agent")[5] for payment of vehicle excise tax, registration fees, penalties, and miscellaneous fees[6] for a 2008 Dodge (VIN# XYZ123) registered to HUSBAND and/or PERSON, as follows, to-wit:

2007	
Title Fee	$ 11.00

[5] Division's Exhibit A. There is not any name(s) and address printed on the Check. The address of ADDRESS is hand-written on the Check.

[6] Division's Exhibit B. The social security number XXX-XX-XXXX is handwritten on the receipts for each year. There is no indication in the record if the social security number was placed on the receipt by the Agent or the Division.

Excise Tax:	797.00
Registration Fees:	81.00
Insurance Fee:	1.50
Mail Fee:	1.00
Notary Fee:	1.00
Subtotal	$892.50
2008	
Registration Fee:	$ 91.00
Penalty	25.00
W.T. $1.00 each	5.00
Subtotal	$121.00
2009	
Registration Fee:	$ 91.00
Subtotal	$ 91.00
Minus Dealer's Check	665.00
Total	$439.50

2. On or about December 16, 2008, the Agent presented the Check to BANK for payment. BANK dishonored the Check, which was returned, bearing a stamp reading "RETURN REASON-A / NOT SUFFICIENT FUNDS."[7]

3. On or about December 24, 2008, the Check was presented to BANK a second time for payment, as required by Section 1121, Title 47.[8] BANK dishonored the Check for a second time.[9]

4. On January 20, 2009, the Agent notified the Division that the registration of the vehicle owned by HUSBAND and/or PERSON had been cancelled for non-payment of fees.[10]

5. On February 20, 2009, the Division requested that the Agent provide documentation to reconcile transaction receipts and the returned check amount.[11]

6. On April 14, 2009, the Protestants electronically filed their Oklahoma Income Tax Return for the 2008 tax year as "married filing joint return" claiming a refund of $704.00.[12]

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[7] *See* Note 5, *supra.*

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

[9] Testimony of ADMINISTRATOR. *See* Note 5, *supra.*

[10] Division's Exhibit C.

[11] Division's Exhibit D. *See* Division's Exhibits C and J. The difference in the transaction amount was the dealer's check for $665.00.

7. On April 16, 2009, the Division received an Oklahoma Tax Commission Liability Listing stating that $532.00 of the Protestants' 2008 refund was available to satisfy HUSBAND'S liability to the Division.[13] The current liability of HUSBAND is $439.50 (Check), $42.50 (additional penalties), and $50.00 (return check fees) for a total of $532.00.[14]

8. On April 22, 2009, the Division mailed the Protestants a notice of its intention to intercept their 2008 income tax refund and apply it to the outstanding balance due to the dishonored Check written for the vehicle registration by HUSBAND on December 15, 2008.[15]

9. On June 1, 2009, the Division received a timely filed protest to the pending intercept of a portion of the Protestants' 2008 income tax refund. The basis of the protest is that HUSBAND does not owe the liability because the Check was written by the Protestants' son, SON.

10. On June 24, 2009, the Division generated a breakdown of the Protestants' 2008 income tax refund attributable to each Protestant as follows:

$279.22 is attributable to HUSBAND (XXX-XX-XXXX)
$424.78 is attributable to WIFE (YYY-YY-YYYY).[16]
$704.00

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[17]

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 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).[18]

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[12] Division's Exhibits E-1 through E-2. Testimony of AUDITOR.

[13] Division's Exhibit F.

[14] Division's Exhibits J through K.

[15] Division's Exhibit G. The notice was mailed to the Protestants' last-known address at ADDRESS.

[16] Division's Exhibit I.

[17] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West Supp. 2009).

[18] OKLA. STAT. ANN. tit. 47, § 1121(A) (West Supp. 2009). 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.

3. 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.[19]

4. 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. No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[20]

5. 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.[21]

6. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[22] The Division's action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[23]

7. The Protestants have failed to meet their burden of proof. The Protestants have not presented any evidence that the Division's claim of $279.22 to the 2008 income tax refund attributable to HUSBAND is incorrect, or that any further adjustments should be made by the Division.

WIFE testified that the Check was written by the Protestants' son, SON, not HUSBAND, but the Protestants did not provide any documentation to substantiate their claim, even though the record was held open for thirty (30) days after the hearing solely for that purpose. The

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[19] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West Supp. 2009).

[20] *Id.*

[21] *Id.*

[22] 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.

[23] *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

veracity of WIFE'S testimony is not at issue, but WIFE'S testimony alone, without corroborating evidence is not enough to meet the Protestants' burden of proof.

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 of the Division to $279.22 of the Protestants' 2008 income tax refund attributable to HUSBAND 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.