JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2009-11-17-03 / NON-PRECEDENTIAL**
ID: **CR-09-004-K**
DATE: **NOVEMBER 17, 2009**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE EXCISE**
APPEAL: **NO APPEAL TAKEN**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 16th day of September, 2009, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

STATEMENT OF THE CASE

By letter dated February 24, 2009, Claimant requested a refund of a portion of the motor vehicle excise taxes she remitted to the State of Oklahoma on the transfers of ownership of at least one (1) and as many as three (3) vehicles. The Division denied the request by letter dated April 15, 2009. By letter dated April 20, 2009, Claimant timely requested a hearing on the refund denial.

On June 10, 2009, the Division referred the hearing request to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1], the Vehicle Excise Tax Act[2] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[3]. The case was docketed as Case No. CR-09-004-K and assigned to ALJ, Administrative Law Judge.[4]

A hearing was scheduled for July 22, 2009, by *Notice of Hearing* issued June 12, 2008.[5] Upon Claimant's request, the hearing was rescheduled for August 25, 2009, by *Notice of Hearing* issued July 15, 2009.

A closed hearing was held as rescheduled.[6] Claimant gave a statement as to the circumstances that led to the filing of the refund request and stated her arguments in support of the refund. SUPERVISOR, Supervisor-Accounting Section of the Division, testified with respect to the Division's records and the calculation of the excise tax on each of the transfers of legal ownership to the vehicles. Exhibits A through D were identified, offered and admitted into evidence. Upon

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[1] 68 O.S. 2001, § 201 et seq.

[2] 68 O.S. 2001, § 2101 et seq., as amended.

[3] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[4] *OAC*, 710:1-5-22(b).

[5] 68 O.S. 2001, §§ 207 and 227; *OAC*, 710:1-5-24.

[6] Confidentiality of the proceeding was invoked. 68 O.S. 2001, § 205.

conclusion of the hearing, the record was closed and the claim for refund was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing, the exhibits received into evidence and the pleadings of the parties, the undersigned finds:

1. On April 9, 2007, Claimant co-signed a promissory note for the purchase of a 2003 Pontiac. The total purchase price of the Pontiac, excluding any trade-in credit was $9,000.00. On May 25, 2007, excise tax in the amount of $277.00 was remitted on the transfer of ownership of the Pontiac to Claimant and/or CO-OWNER. The excise tax was calculated on a taxable value of $9,420.00 or twenty percent (20%) less than the average retail price value of the Pontiac. Exhibit A; testimony of Claimant and SUPERVISOR.

2. Claimant repossessed the Pontiac and on June 15, 2007, traded it in on the purchase of a 2005 Dodge. The cash purchase price of the Dodge was $15,900.00. The total purchase price of the Dodge was $23,207.00, which in part consisted of a trade-in credit of $9,500.00 and a trade-in payoff of $16,100.00. On July 13, 2007, excise tax in the amount of $488.00 was remitted on the transfer of ownership of the Dodge to Claimant. The excise tax was calculated on a taxable value of $15,900.00, which was the actual cash price of the Dodge. Exhibit B; testimony of SUPERVISOR.

3. On July 6, 2007, Claimant traded in the 2005 Dodge on the purchase a 2007 Dodge. The cash purchase price of the 2007 Dodge was $24,500.00. The *Retail Purchase Agreement* shows a total due of $32,408.00, which in part consists of a consumer rebate of $4,000.00, a trade-in allowance of $10,000.00 and a trade-in balance owed of $21,000.00. On August 6, 2007, excise tax in the amount of $666.00 was remitted on the transfer of ownership of the Dodge to Claimant. The excise tax was calculated on the actual purchase price of $20,500.00, which was the actual cash price of the Dodge less the consumer rebate. Exhibit C; testimony of SUPERVISOR.

4. On December 20, 2008, Claimant traded in the 2007 Dodge on the purchase of a 2008 Dodge. The *Purchase Agreement* shows a cash price of $35,278.00. The total purchase price in part consisted of Factory/Dealer rebate of $5,000.00, a trade-in credit of $25,200.00 and a trade-in payoff of $24,900.00. On January 20, 2009, excise tax in the amount of $901.00 was remitted on the transfer of ownership of the Dodge to Claimant. The excise tax was calculated on a taxable value of $27,720.00 or twenty percent (20%) more than the average retail price value of the Dodge. Exhibit D; testimony of SUPERVISOR.

5. The Purchase Agreement and the Installment Sales Contract indicate that the Claimant gave the Dealer $3,000.00 cash, a note for $30,986.00 and a 2007 Dodge. These documents indicate that the Claimant received from the dealer a service contract and miscellaneous fees valued at $4,008.00, payoff of the note on the 2007 Dodge of $24,900.00 and a 2008 Dodge.

[7] *OAC*, 710:1-5-39(a).

6. Claimant testified that the dealership told her that they were selling her the 2008 Dodge for half price; however, when the *Purchase Agreement* was written the amount shown as the cash price was more than the MSRP. She stated that she attempted to have the dealership provide her with a document showing the actual cash price of the Dodge, but was refused.

6. SUPERVISOR testified that the Division can only go by what the dealer lists as the cash price of a vehicle on the purchase agreement and that any trade-in value is not considered in determining the cash price of a vehicle.

7. The factory delivered price of the 2008 Dodge was $24,755.00. Exhibit D-1.

8. By letter dated February 24, 2009, Claimant requested a refund of a portion of the motor vehicle excise taxes she remitted to the State of Oklahoma on the transfers of ownership of at least one (1) and as many as three (3) vehicles. At the hearing, Claimant limited her refund claim to a portion of the excise taxes paid on the 2008 Dodge.

9. The Division denied the request by letter dated April 15, 2009.

10. By letter dated April 20, 2009, Claimant timely requested a hearing on the refund denial.

11. The amount in controversy is approximately $357.00 or the difference between the excise tax remitted on 2008 Dodge and the excise tax due on twenty percent (20%) less than the average retail price value of the vehicle.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the Division is bound by the cash price of a vehicle as reported on a purchase agreement even though the protestant testifies that the cash price includes the payoff balance of a trade-in.

Claimant contends that a portion of the excise taxes remitted on the transfer of ownership of the 2008 Dodge should be returned to her. In support of this contention, Claimant argues that the payoff balance of the old loan is now merely money owed and is not representative of the purchase price of the 2008 Dodge.

The Division contends that they are bound by the purchase agreement and that excise taxes were properly assessed on the value the dealership put on the vehicle. In support of this contention, the Division argues that there is no provision in the Vehicle Excise Tax Act which allows a credit for taxes paid on a trade-in vehicle.

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and subject matter of this protest is vested in the Oklahoma Tax Commission. 68 O.S. 2001, §§ 207 and 227.

2. An excise tax of three and one-fourth percent (3¼%) is levied on the value of each new vehicle upon the transfer of legal ownership of any vehicle registered in this state, the use of any vehicle registered in this state and the use of any vehicle registered for the first time in this state. 68 O.S. Supp. 2008, § 2103(A)(1). "The value of any motor vehicle * * * shall be determined as of the time the person applying for a certificate of title thereto obtained either ownership or possession of the vehicle, which shall be presumed to be the actual date of the sale or other transfer of ownership, and assignment of the certificate of title." 68 O.S. 2001, § 2104(A).

3. In general, the value of any vehicle for purposes of the levy of excise taxes is the actual sales price of such a vehicle before any discounts or credits are given for a trade-in. 68 O.S. 2001, § 2104(B). Section 2104(B) further provides, "[h]owever, the value of the vehicle prior to the subtraction of such discounts or credits for a trade-in shall be required to be within twenty percent (20%) of the average retail price value of such vehicle as listed in the automotive reference material prescribed by the Oklahoma Tax Commission."

4. Pursuant to its authority to administer and enforce each and every provision of any state tax law[8], the Tax Commission promulgated *OAC*, 710:60-7-1(b) which provides:

> **Taxable value.** On vehicles, other than manufactured homes and certain commercial vehicles, excise tax is based upon the actual sales or purchase price. The actual sales price, commonly referred to as 'purchase price', is the actual sales price of a vehicle excluding any consideration given for a trade-in. For the purpose of vehicle taxable value computation, actual sales price is to include the cost of the vehicle, including any equipment or product affixed to, or applied upon, the vehicle. It is not to include any fee included in the sale transaction that is related to a service provided by the seller, or an outside party (i.e. documentary fee; financing fee; insurance coverage fee; maintenance agreement fee). <u>No consideration for a vehicle trade-in, either debit or credit, is to be included in the actual sales price utilized for establishing the taxable value for the purpose of excise tax assessment.</u> The actual sales price must be within twenty percent (20%) of the average retail price value of the vehicle, as listed in the automotive reference material prescribed by the Oklahoma Tax Commission. [**See**: 710:60-5-50] If the actual sales price is not within that value range, the Tax Commission shall establish a taxable value as close to the actual sales price as possible while still within the prescribed value range.

(Emphasis added.)

5. The automotive reference material prescribed by the Tax Commission for use in determining the average retail price value for purposes of registering and titling motor vehicles in Oklahoma is "the automotive reference material set out in the contract between the Commission and

[8] 68 O.S. 2001, § 203.

N.A.D.A. Official Use Car Guide Company, Inc. and delineated in the terms of P.O. Y052341, issued January 16, 2002[9]", inclusive of the "N.A.D.A. Recreation Vehicle Appraisal Guide[10]." *OAC*, 710:60-5-50.

6. Rules promulgated pursuant to the Administrative Procedures Act[11] are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 2001, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2001, § 308.2(C).

The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, ***Arkansas Louisiana Gas Co. v. Travis***, 1984 OK 33, 682 P.2d 225; ***Boydston v. State***, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. ***Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission***, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party has the burden of proving the contrary by competent and convincing evidence. ***State ex rel. Hart v. Parham***, 1966 OK 9, 412 P.2d 142.

7. In administrative proceedings, the burden of proof is on taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC*, 710:1-5-47. See, ***Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission***, 1988 OK 91, 768 P.2d 359.

8. Here, Claimant failed to sustain her burden of proving that excise tax was not assessed on the "actual sales price" of the 2008 Dodge. The only documentary evidence of the "actual sales price" of the 2008 Dodge is the Purchase Agreement. Claimant's testimony that the dealer told her that he would put her into a 2008 truck for "half price" is not sufficient to sustain her burden of proof that the amount listed on the Purchase Agreement as the "cash price" is incorrect.

9. Claimant's protest to the denial of her claim for refund of a portion of the excise tax remitted on the transfer of ownership of the 2008 Dodge should be denied.

DISPOSITION

The protest to the denial of the claim for refund of excise taxes is denied.

OKLAHOMA TAX COMMISSION

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[9] *OAC*, 710:60-5-50(a).

[10] *OAC*, 710:60-5-50(b)(5).

[11] 75 O.S. 2001, § 250 et seq., § 301 et seq.

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.