JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2010-02-23-04 / NON-PRECEDENTIAL**
ID: **P-09-017-K**
DATE: **FEBRUARY 23, 2010**
DISPOSITION: **SUSTAINED**
TAX TYPE: **MOTOR VEHICLE EXCISE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice of these proceedings was served on Claimant, CLAIMANT, but Claimant neither filed a response to the notice nor appeared at the hearing. The Motor Vehicle Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Claimant requested a refund of the motor vehicle title fee, excise tax and notary fee remitted to the State of Oklahoma on February 4, 2009 for the registration of a 2005 Coach travel trailer, VIN XYZ123. The Division denied the request by letter dated July 29, 2009. By letter mailed August 28, 2009, Claimant protested the denial.

On September 24, 2009, the Division referred the request for a refund to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1], the Vehicle Excise Tax Code[2], the Oklahoma Vehicle License and Registration Act[3] and the Rules of Practice and Procedure before the Office of the Administrative Law Judges[4]. The case was docketed as Case No. CR-09-017-K and assigned to ALJ, Administrative Law Judge.[5]

A hearing was scheduled for November 10, 2009, by letter issued September 30, 2009.[6] A closed hearing[7] was held as rescheduled on November 17, 2009[8]. Claimant neither appeared at the hearing nor responded to the notice. Exhibits A through C attached to the *Position Letter of the Oklahoma Tax Commission* filed by the Division in this cause on November 10, 2009 were admitted into evidence. The record was held open for the Division to report whether an NCIC

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[1] 68 O.S. 2001, § 201 et seq., as amended.

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

[3] 47 O.S. 2001, § 1101 et seq., as amended.

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

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

[6] 68 O.S. 2001, § 227(e); *OAC*, 710:1-5-24.

[7] Lacking Claimant's consent, confidentiality of the proceeding was invoked. 68 O.S. Supp. 2009, § 205.

[8] Notice that the November 10th hearing was stricken due to unforeseen circumstances and rescheduled for November 17, 2009 was provided to the parties in a letter issued October 22, 2009.

report had been received with respect to the vehicle. The Division's report was filed December 7, 2009, whereupon the record was closed and the claim for refund was submitted for decision.[9]

FINDINGS OF FACT

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

1. On or about January 27, 2009, Claimant purchased the 2005 Coach travel trailer, VIN XYZ123 from the purported owner. Exhibit A.

2. On February 4, 2009, Claimant applied for an Oklahoma certificate of title to the vehicle upon presentment of the assigned Texas Certificate of Title executed by the purported owner of the vehicle as inscribed on the Texas title and the payment of a title fee in the amount of $11.00, excise taxes of $372.00 and a notary fee of $1.00. Exhibit A.

3. The Oklahoma title was held pending a VIN inspection. Exhibit A. See, 47 O.S. Supp. § 1105(L) and *OAC*, 710:60-5-30(9).

4. According to the Division's report, the vehicle was reported stolen on September 3, 2008, but the VIN was not run against the NCIC database until after the Oklahoma title was issued.

5. Claimant requested a refund of the taxes and fees remitted to the State of Oklahoma in regard to the registration of the vehicle.

6. The Division by letter dated July 29, 2009, denied the request writing:

> 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.

7. By letter mailed August 28, 2009, Claimant protested the denial, asserting:

> I feel the judgment against refunding my money is in error due to the fact that I could not have legally owned the stolen trailer. The trailer has been returned to the owner therefore, I feel the State of Oklahoma should not have been able to register this trailer in my name. Since I have no trailer to register, I feel I should be reimbursed the money I spent to register nothing.

Exhibit B.

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

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and the subject matter of the claim for refund is vested in the Oklahoma Tax Commission. 68 O.S. 2001, §227. See, Att'y Gen. Op. 84-042.

2. An excise tax is levied upon the transfer of legal ownership[10] of any vehicle[11] registered in this state, 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 excise 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 such vehicle. 68 O.S. 2001, § 2103(A)(3).[12]

3. The registration of motor vehicles in the State of Oklahoma is governed by the Oklahoma Vehicle License and Registration Act, 47 O.S. 2001, § 1101 et seq., ("Act"). 47 O.S. 2001, § 1103. Section 1103 provides in part:

> 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.

4. "The owner of every vehicle in this state shall possess a certificate of title as proof of ownership of such vehicle". 47 O.S. Supp. 2008, § 1105(B). "[N]o title for an out-of-state vehicle * * * shall be issued without an inspection of such vehicle". 47 O.S. Supp. 2008, § 1105(L). See, *OAC*, 710:60-5-30(9).

5. A registration fee shall be assessed on all vehicles at the time of initial registration by the owner and annually thereafter, for the use of the avenues of public access within this state. 47 O.S. Supp. 2008, § 1132(A). A credit is allowed with respect to the fee for registration of a new vehicle which is a replacement for "[a] new original vehicle which is stolen from the purchaser/registrant within ninety (90) days of the date of purchase of the original vehicle". 47 O.S. Supp. § 1132(D)(1).

6. Here, the vehicle was listed on the NCIC database as a stolen vehicle. If this information had been available to the Division at the time Claimant applied for an Oklahoma title, the Division would not have registered and titled the vehicle in Claimant's name and Claimant would not have owed the taxes and fees assessed.

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[10] Defined to mean "the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner". 68 O.S. 2001, § 2101(13).

[11] Defined for purposes of the Vehicle Excise Tax Act as "every device in, upon, or by which any person or property is, or may be, transported or drawn, excepting devices moved by human or animal power, when not used upon fixed rails or tracks, or in the air or on water". 68 O.S. 2001, § 2101(2).

[12] Amended by Laws 2000, c. 250, § 8, eff. Oct. 1, 2000.

7. Claimant's refund request should be sustained. See, Oklahoma Tax Commission Order No. 2008-01-08-03.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest to the denial of the motor vehicle excise tax and registration fees claim for refund of Claimant, CLAIMANT, 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.