

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2011-07-12-04 / NON-PRECEDENTIAL
ID: CR-11-003-H
DATE: JULY 12, 2011
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CLAIMANT (“Claimant”) appears pro se.¹ The Accounting Section, Motor Vehicle Division (“Division”) of the Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On March 25, 2011, 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 Office of Administrative Law Judges*.³ On March 30, 2011, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On April 12, 2011, the Division filed a *Motion for Summary Disposition* (“*Motion*”), with Exhibits A through D attached thereto. The Verification attached to the Division’s *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, of the Accounting Section, Motor Vehicle Division of the Oklahoma Tax Commission.⁴ On April 29, 2011, the *Notice to Appear* (“*Notice*”) was mailed to the Claimant setting the oral argument on the Division’s *Motion* for May 19, 2011, at 1:30 p.m.⁵

On May 19, 2011, at 1:30 p.m., the oral argument on the Division’s *Motion* was held as scheduled. The Claimant failed to appear, contact the Division, or respond in writing. OTC ATTORNEY waived oral argument and stood on the Division’s *Motion* as filed. The record was closed and the Division’s *Motion* was submitted for ruling on May 19, 2011.

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 See OKLA. ADMIN. CODE § 710:1-5-38(b)(1) (June 25, 2009).

⁵ The notice was mailed to the last-known address of the Claimant at ADDRESS.

STIPULATION OF FACTS

On April 12, 2011, the Division stipulated to the following facts, as follows, to-wit:

1. At the time of purchase the subject vehicle had complete hail and rain damage every where on the vehicle and the seller had retained the proceeds of an insurance casualty claim made as a consequence of the hail and rain damage; the engine had a “big noise,” suggesting that the engine was damaged or severely worn; the trunk was not able to be opened properly; the key or key control was inoperable; the heat and air conditioning was inoperable; the audio system was inoperable; three (3) doors were damaged; the sunroof was inoperable; the wheels were damaged; the driver and rear leather seats were broken and the set controls were inoperable; there was water damage inside the vehicle including damage to the carpet and inside material; two (2) seatbelts were not working; four (4) lights were inoperable; and, the door locks were inoperable.⁶

2. Based upon the damage present on the vehicle at the time of purchase, the true retail or purchase value of the subject vehicle was \$3,100.00.⁷

**FINDINGS OF MATERIAL FACTS
AS TO WHICH THERE IS NO CONTROVERSY**

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest, the Division’s *Motion* and the *Notice*, the undersigned finds:

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 *Motion* and *Notice*, the undersigned finds:

3. On December 16, 2010, the Claimant made application to title and register a 2001 Mercedes (“Vehicle”) with Tag Agent #5566 (“Tag Agent”). The Tag Agent determined the “Taxable Value”⁸ of the Vehicle to be \$11,660.00 and the purchase price as \$3,100.00. The Tag Agent charged a flat fee of Twenty Dollars (\$20.00) on the first \$1,500.00 of the “Taxable Value” and a rate of three and one-quarter percent (3¼%) on the remainder, resulting in excise tax due in the amount of \$350.00. The Claimant paid \$350.00 in excise tax under protest, an Eleven Dollar (\$11.00) title fee, and One Dollar and Fifty Cents (\$1.50) for the insurance fee, totaling \$362.50 for the transfer of title on the Vehicle.⁹

⁶ Division’s *Motion* at 2.

⁷ *Id.*

⁸ *See* Note 21, *infra*.

⁹ Division’s Exhibit A.

4. On January 10, 2011, the Tax Commission received a claim for refund of the \$350.00 in excise tax, which the Protestant asserts was overcharged by the Tag Agent due to the condition of the Vehicle.¹⁰

5. On February 22, 2011, the Division mailed a letter to the Claimant “formally” denying the request for refund of the excise tax paid under protest at the time of registration.¹¹

6. According to the N.A.D.A. “Official Older Used Car Guide,” for September 2010 through December 2010, the “Average Retail Price Value” of the Vehicle was \$14,575.00.¹²

CONCLUSIONS

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.¹³

2. The rules promulgated pursuant to the Administrative Procedures Act¹⁴ are presumed to be valid and binding on the persons they affect and have the force of law.

3. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.¹⁵ The procedures for such motion are as follows:

(1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.

¹⁰ Division’s Exhibit B. *See* Stipulations 1 through 2, *supra*.

¹¹ Division’s Exhibit C.

¹² Division’s Exhibit D. *See* Note 21, *infra*.

¹³ OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

¹⁴ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

¹⁵ OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

4. An excise tax is due at the time of transfer of legal ownership or first registration of any vehicle registered in this state and shall be collected at the time of the issuance of a certificate of title.¹⁶

5. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.¹⁷

6. 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.¹⁸

7. Beginning July 1, 2002, the excise tax for used vehicles shall be Twenty Dollars (\$20.00) on the first One Thousand Five Hundred Dollars (\$1,500.00) or less of value of such vehicle, and three and one-fourth percent (3¼%) of the remaining value of such vehicle.¹⁹

8. The value of any vehicle, for purposes of excise tax, shall be the actual sales price of such a vehicle before any discounts or credits are given for a trade-in.²⁰ However, the “Taxable 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 Tax Commission.²¹

9. 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.²²

10. 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 N.A.D.A. Official Use Car Guide Company, Inc. and delineated in the terms of

¹⁶ OKLA. STAT. ANN. tit. 68, § 2103(A)(1)(c) (West Supp. 2011).

¹⁷ OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

¹⁸ OKLA. STAT. ANN. tit. 68, § 2104(A) (West 2008).

¹⁹ OKLA. STAT. ANN. tit. 68, § 2103(A)(1)(c) (West Supp. 2011).

²⁰ OKLA. STAT. ANN. tit. 68, § 2104(B) (West 2008).

²¹ *Id.* *See* OKLA. ADMIN. CODE § 710:60-7-1 (July 1, 2008).

²² *Id.*

P.O. Y052341, issued January 16, 2002.²³ Incorporated by reference is the N.A.D.A. Official Older Used Car Guide.²⁴

DISCUSSION

The Claimant's position is that the "Taxable Value" of the Vehicle should be calculated using the actual purchase price (\$3,100.00), which he contends is reflective of the true value because of the Vehicle's condition, as stipulated by the Division.

The Division responds that there is no statutory authority to adjust the "Average Retail Price Value" of the Vehicle (\$14,575.00) based upon mileage, condition or marketability to determine the "Taxable Value" of the Vehicle.

The Division's reading of the statutory provisions and Tax Commission Rules is correct. The purchase price (\$3,100.00) of the Vehicle was not within twenty percent (20%) of the "Average Retail Price Value" (\$14,575.00) of the Vehicle as established by the automotive reference material prescribed by the Tax Commission. The Division utilized the then current N.A.D.A. Official Older Used Car Guide to determine the "Average Retail Price Value" (\$14,575.00) of the Vehicle and established a "Taxable Value" (\$11,660.00) as close as possible to the actual sales price while still remaining within the prescribed twenty percent (20%) value range.

Based upon the record, there is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Division's *Motion* should be granted.

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.

²³ OKLA. ADMIN. CODE § 710:60-5-50(a) (June 27, 2002).

²⁴ OKLA. ADMIN. CODE § 710:60-5-50(b) (June 27, 2002).

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”