JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-04-19-02 / NON-PRECEDENTIAL**
ID: **CR-12-001-H**
DATE: **APRIL 19, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND AND/OR WIFE ("Claimants") appear 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 January 17, 2012, 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 Office of Administrative Law Judges*.[3] On January 18, 2012, a letter was mailed to the Claimants, at their last-known address,[4] stating this matter had

---

[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*.

[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] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012):

> Any notice required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by mail. If mailed, it shall be addressed to the person to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. If the Tax Commission receives an address from the United States Postal Service as a result of a change of address submitted to the United States Postal Service, "last-known address" shall mean the address provided to the United States Postal Service. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed as provided in this section, failure of the person to receive such notice shall neither invalidate nor be grounds for invalidating any action taken pursuant thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

The Notice was mailed to the Claimants at LAST KNOWN ADDRESS.

been set for hearing on February 22, 2012, at 9:30 a.m., with position letters or memorandum briefs due on or before February 15, 2012. The notice of hearing ("Notice") also advised that this matter was assigned to ALJ, Administrative Law Judge, docketed as Case Number CR-12-001-H, and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.*[5] On January 19, 2012, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division.

On February 15, 2012, the Division's Pretrial Memorandum Brief ("Brief") was filed, with Exhibits A through H attached thereto. On February 22, 2012, the hearing was held as scheduled. The Division called ADMINISTRATOR, Accounting Section, Motor Vehicle Division of the Oklahoma Tax Commission, who testified about the claim for refund and as custodian of the Division's records. The Division's Exhibits A through H were identified, offered, and admitted into evidence. At the conclusion of the hearing, the record in this matter was closed and this case was submitted for decision on February 22, 2012.

FINDINGS OF FACT

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

1. On July 4, 2011, the Claimants purchased a "used" 2003 Toyota "Sienna LE" Van ("1st Used Vehicle") from DEALERSHIP, CITY, Oklahoma ("Dealer") for a total delivered price of $10,351.00.[6]

2. On August 8, 2011, the Claimants registered 1st Used Vehicle with Tag Agent ####, paying $313.00 in motor vehicle excise tax.[7]

3. Sometime after registering the 1st Used Vehicle, the Claimants determined that the van had a "serious problem," and the Claimants returned the 1st Used Vehicle to the Dealer for a replacement vehicle.[8]

4. On August 12, 2011, the Claimants purchased a "used" 2004 Toyota Highlander L Truck ("Replacement Vehicle") from the Dealer for a total delivered price of $13,701.00.[9]

5. On November 10, 2011, the Claimants registered the Replacement Vehicle with Tag Agent #### paying $417.00 in motor vehicle excise tax.[10]

---

[5] *See* Note 3, *supra.*

[6] Division's Exhibits A and B. The odometer reading at the time of sale was 86,701 miles.

[7] Division's Exhibit C.

[8] Division's Exhibit F.

[9] Division's Exhibit D. The odometer reading at the time of sale was 122,971 miles.

[10] Division's Exhibit E.

6. By letter dated November 22, 2011, the Claimants filed a request for refund of the $313.00 in motor vehicle excise tax paid on the 1st Used Vehicle, citing the reasons as more fully set forth herein, which are essentially equitable in nature.[11]

7. On December 23, 2011, the Division sent a letter to the Claimants by certified mail return receipt requested (####) acknowledging receipt of the November 22nd letter and denying the Claimants' request for the refund of the $313.00 paid in motor vehicle excise tax on the 1st Used Vehicle.[12]

8. By letter dated January 4, 2012, the Division received a written protest to the Division's denial of the refund.[13]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[14]

2. Except as otherwise provided in Vehicle Excise Tax Code,[15] there shall be levied an excise tax 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.[16]

3. The excise tax for used vehicles shall be for the year beginning July 1, 2002, and all subsequent years, 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.[17]

---

[11] Division's Exhibit F. The letter is not date-stamped and is not accompanied by the mailing envelope.

[12] Division's Exhibit G. According to the U.S. Postal website at https://usps.com, the letter was delivered on December 29, 2011, at 11:55 a.m. *See* OKLA. ADMIN. CODE 710:1-5-36 (June 25, 1999).

[13] Division's Exhibit H. The letter is not date-stamped and is not accompanied by the mailing envelope.

[14] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). *See* OKLA. STAT. ANN. tit. 68, § 227 (West 2001).

[15] OKLA. STAT. ANN. tit. 68, § 2101 *et seq.* (West 2008).

[16] OKLA. STAT. ANN. tit. 68, § 2103(A)(1) (West Supp. 2012).

[17] *Id.*

4. There shall be a credit allowed with respect to the excise tax paid for a *new* vehicle which is a replacement for:

a. a *new* original vehicle which is stolen from the purchaser/registrant within ninety (90) days of the date of purchase of the original vehicle as certified by a police report or other documentation as required by the Tax Commission, or
b. a defective *new* original vehicle returned by the purchaser/registrant to the seller within six (6) months of the date of purchase of the defective *new* original vehicle as certified by the manufacturer.[18] (Emphasis added.)

5. The credit allowed pursuant to Section 2103(D)(1) of Title 68[19] shall be in the amount of the excise tax which was paid for the *new* original vehicle and shall be applied to the excise tax due on the replacement vehicle. *In no event shall the credit be refunded.*[20]

6. Despite any other definitions of the terms "*new vehicle*" and "*used vehicle*", to the contrary, contained in any other law, the term "*new vehicle*" as used in this section shall also include any vehicle of the latest manufactured model which is owned or acquired by a licensed used motor vehicle dealer which has not previously been registered in this state and upon which the motor vehicle excise tax as set forth in this section has not been paid. However, upon the sale or transfer by a licensed used motor vehicle dealer located in this state of any such vehicle which is the latest manufactured model, the vehicle shall be considered a "*used*" vehicle for purposes of determining excise tax.[21]

DISCUSSION

There is no dispute that the 1st Used Vehicle is not a "new" vehicle, but a "used" vehicle as provided by the Vehicle Excise Tax Code.[22] As the Division notes, "The only credits allowed by the Vehicle Excise Tax Act are found in 68 O.S.2011, § 2103(D), which provides for a credit for excise tax paid for a 'new vehicle' if said vehicle is stolen within ninety days (90) days of purchase, or if a defective new original vehicle is returned by the purchaser within six (6) months of the date of purchase, and 68 O.S.2011, § 2103.1, if a vehicle is purchased to replace a vehicle destroyed by a tornado on May 3, 1999, October 9, 2000 or on May 8 or 9,of 2003. There are no other credits for excise tax provided for by statute."[23]

---

[18] OKLA. STAT. ANN. tit. 68, § 2103(D)(1) (West Supp. 2012).

[19] *Id.*

[20] OKLA. STAT. ANN. tit. 68, § 2103(D)(2) (West Supp. 2012).

[21] OKLA. STAT. ANN. tit. 68, § 2103(E) (West Supp. 2012).

[22] *See* Note 15, *supra*.

[23] Division's Brief at 3-4.

The Division's reading of the Vehicle Excise Tax Code is correct. A "credit" is only provided for the return or loss of a "new" vehicle, in limited circumstances as more fully set forth herein, and even then the Vehicle Excise Tax Code provides, "The credit allowed…shall be in the amount of the excise tax which was paid for the *new* original vehicle and shall be applied to the excise tax due on the replacement vehicle. *In no event shall the credit be refunded*."[24] (Emphasis added.)

The Claimants have failed to meet their burden of proof, by preponderance of the evidence, that the Division's denial of the claim for refund was incorrect and in what respect.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the protest 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.

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."

[24] *See* Note 20, *supra*.