JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-04-24-03 / NON-PRECEDENTIAL**
ID: **CR-11-010-K**
DATE: **APRIL 24, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, CLAIMANT appears pro se. The Motor Vehicle Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, General Counsel's Office, Oklahoma Tax Commission.

STATEMENT OF THE CASE

By letter dated September 1, 2011, Claimant requested a refund of the $100.00 penalty paid with respect to the renewal of his motor vehicle registration. The Division denied the request by letter dated September 1, 2011. Claimant timely protested the denial.

On December 7, 2011, the protest was referred to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1], the Oklahoma Vehicle License and Registration Act[2] and the Rules of Practice and Procedure before the Office of the Administrative Law Judges[3]. The case was docketed as Case No. CR-11-010-K and assigned to ALJ, Administrative Law Judge.[4]

A hearing was scheduled for January 19, 2012, by the *Notice of Hearing* issued December 16, 2011.[5] A response to the *Notice* was received from Claimant on December 19, 2011. In the response, Claimant requested that a ruling on his petition be made without his presence at the scheduled hearing. Claimant also requested that the $100.00 penalty be waived, specifically citing *OAC*, 710:1-5-12. The *Division's Pretrial Memorandum Brief* ("*Brief*") was filed January 12, 2011, with Exhibits A through E attached thereto.

A closed hearing[6] was held as scheduled. SUPERVISOR, Supervisor-Accounting Section of the Division testified with respect to the records of the Division and the reason for the denial of the refund claim. Exhibits A through E, one and the same as those attached to the Division's *Brief* were identified, offered and admitted into evidence. The record was held open for the Division to file a supplemental brief in regard to Claimant's contention that by paying both the fine and penalty,

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[1] 68 O.S. 2011, § 201 et seq., as amended.

[2] 47 O.S. 2011, § 1101 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. 2011, § 227(e); *OAC*, 710:1-5-24.

[6] Confidentiality of the proceeding was invoked. 68 O.S. 2011, § 205.

he was being penalized twice for the same offense. The Division's supplemental brief was filed January 23, 2012. An additional exhibit, marked Exhibit F was submitted with the supplement.[7] On February 13, 2012, the record was closed and the claim for refund was submitted for decision.[8]

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. Claimant is the owner of a 2001 Honda, VIN XYZ123 ("subject vehicle"). Exhibit A.

2. On August 17, 2011, Claimant was cited for operating the subject vehicle with an expired tag. Exhibit F.

3. On August 23, 2011, Claimant in response to the citation renewed the tag to the subject vehicle by remitting a registration fee of $61.00 and a penalty of $100.00. Exhibit A.

4. The "Delinquent Tax Receipt" indicates that the subject vehicle's tag "expires last day of Aug, 2010" and has as the remark "back tag 2011" for the "delinquent tax". Exhibit A.

5. On August 29, 2011, Claimant in satisfaction of the traffic violation of which he was cited, remitted the sum of the fine ($43.00) and court costs ($57.00) to the Dewey Municipal Court. Exhibit F.

6. On September 1, 2011, Claimant requested a refund of the $100 penalty paid for the renewal of the subject vehicle's tag, asserting that he did not receive a mail reminder of his tag renewal which caused the failure to timely renew the tag and that "[w]hile I understand that it is my responsibility to renew the tag on time whether or not I receive reminders, I feel $100 traffic ticket plus $100 penalty is too much for one time error." Exhibit B.

7. By letter dated September 1, 2011, the Division notified Claimant that the refund request was denied writing: "[i]t is taxpayer's responsibility to renew registration on time whether reminder is received or not." Exhibit C.

8. On September 20, 2011, Claimant appealed the denial of his refund request, asserting that "it is not justified to pay two penalties for one expired tag." Exhibit D.

9. On December 20, 2011, Claimant responded to a letter from the Division's counsel writing: "I feel $100 traffic ticket plus $100 penalty is too much for this incident that was caused by non receipt [sic] of the DMV reminder and hereby request waiver of the $100 penalty." Exhibit E.

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[7] Exhibit F consists of four (4) pages: a facsimile cover page from the TOWN Police Department, a copy of the municipal ordinance cited in the charge against Claimant and the TOWN Municipal Court citation against Claimant and disposition. Admitted into evidence by official notice, *OAC* 710:1-5-36.

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

10. A facsimile substantially similar to Exhibit E was sent to the Office of Administrative Law Judges on December 19, 2011. In this correspondence, Claimant requests that the $100.00 penalty be waived, specifically citing *OAC*, 710:1-5-12.

CONCLUSIONS OF LAW

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

1. Jurisdiction of the parties and the subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, §227. See Att'y Gen. Op. 84-042.[9]

2. The registration of motor vehicles in the State of Oklahoma is governed by the Oklahoma Vehicle License and Registration Act ("Act")[10]. § 1103 of the Act 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. * * * Such registration and license fees shall apply to every vehicle operated upon, over, along or across any avenue of public access within this state and when paid in full, shall be in lieu of all other taxes, general and local, unless otherwise specifically provided.

3. The subject vehicle is required to be registered annually. 47 O.S. Supp. 2009, § 1115(B)(1). See, 47 O.S. Supp. 2009, § 1132(A)[11]. The license and registration fees become delinquent for the new registration period after the end of the month following the expiration date of the registration and license. Id. In addition, a penalty is required to be assessed when the registration and license of the vehicle has not been renewed by the last day of the month following the expiration date. 47 O.S. Supp. 2009, § 1115(C)(4). The penalty accrues at One Dollar ($1.00) per day up to a maximum of One Hundred Dollars ($100.00). Id.

4. The Oklahoma Tax Commission is statutorily required to "annually notify all persons within the state who have a previous registration on record of the period for registration renewal" by sending the notifications to the electronic mail address provided by the person or through the mail. 47 O.S. Supp. 2010, § 1131. However, the "[f]ailure by any applicant to receive notification of renewal * * * shall not excuse the applicant from properly obtaining any registration or license at the proper time". Id.

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[9] Holding that the license fee collected under the Oklahoma Motor Vehicle License and Registration Act is in the nature of a tax, and that an owner of a motor vehicle who feels the license fee was erroneously calculated may file a claim for refund therefor under 68 O.S. § 227, and is entitled to a hearing thereon under the provisions of 68 O.S. § 228.

[10] 47 O.S. 2011, § 1101 et seq.

[11] This provision provides that a registration fee is assessed at the time of initial registration of a vehicle and annually thereafter, for the use of the avenues of public access within this state.

5. No person shall be twice put in jeopardy of life or liberty for the same offense. OK CONST. art. 2, § 21. The double jeopardy clause is intended to protect against two distinct abuses; the first is requiring an accused to endure a series of trials for the same offense and the second is the infliction of multiple punishments for a single offense. ***Johnson v. State***, 1980 OK CR 45, 611 P.2d 1137. The double jeopardy provision of the State Constitution applies only in criminal prosecutions. ***Price v. Reed***, 1986 OK 43, 725 P.2d 1254. Where the same transaction violates two or more statutory provisions, test to determine whether there are two offenses is whether each provision requires proof of a fact which the other does not. ***King v. State***, 1982 OK CR 15, 640 P.2d 983.

Here, the double jeopardy provision of the State Constitution is not implicated by the requirement of a monetary penalty for the late registration of a motor vehicle and a fine for operating the motor vehicle with an expired tag. The imposition of the penalty for late registration is not punitive; but rather, is a civil obligation that is remedial and coercive in its purpose and constitutes relief that is designed to foster compliance with the law or operates to raise revenue to offset the costs to correct non-compliance. See, ***Holliman v. Cole***, 1934 OK 381, ¶ 21, 34 P.2d 597; ***State ex rel. Oklahoma Bar Ass'n v. Giger***, 2004 OK 43, 93 P.3d 32. Further, Claimant is not being tried twice for the same offense. The municipal fine was the result of an act: operating a vehicle with an expired tag. The late registration penalty was the result of an omission: failing to timely renew the registration of the vehicle.

6. The authority to waive penalty and/or interest or any portion thereof ordinarily accruing by reason of a taxpayer's failure to pay a state tax within the statutory period allowed for its payment resides with the three (3) members of the Oklahoma Tax Commission or their designees. 68 O.S. 2011, § 220(A). The Administrative Law Judges of the Oklahoma Tax Commission have not been granted the authority to waive penalty and/or interest. Accordingly, Claimant's request for a waiver of the late registration penalty is not address herein.

7. Claimant's motor vehicle registration penalty claim for refund should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED without consideration of the waiver request that the protest to the denial of the motor vehicle registration penalty claim for refund of Claimant, CLAIMANT 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."