

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2012-07-17-08 / NON-PRECEDENTIAL  
**ID:** CR-12-003-H  
**DATE:** JULY 17, 2012  
**DISPOSITION:** DENIED  
**TAX TYPE:** MOTOR VEHICLE REGISTRATION  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

CLAIMANT (“Claimant”) appears pro se.<sup>1</sup> 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 February 24, 2012, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>2</sup> and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>3</sup> On February 28, 2012, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division. On February 29, 2012, a letter was mailed to the Claimant, at his last-known address,<sup>4</sup> stating this matter had been set for hearing on March 22, 2012, at 9:30 a.m., with position letters or memorandum briefs due on or before March 15, 2012. The notice of hearing (“Notice”) also advised that this matter was assigned to ALJ, Administrative Law Judge, and docketed as Case Number CR-12-003-H. Enclosed was a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>5</sup>

On March 6, 2012, a letter, from the Claimant (with attachments thereto) was filed with the Court Clerk<sup>6</sup> stating in pertinent parts “...I would like to settle out of court.”<sup>7</sup> On March 8, 2012, a letter was mailed to the parties acknowledging receipt of the March 6<sup>th</sup> letter and

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<sup>1</sup> “**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 (9<sup>th</sup> ed. 2009), available at <http://westlaw.com>.

<sup>2</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

<sup>3</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

<sup>4</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The *Notice* was mailed to the Claimant at ADDRESS.

<sup>5</sup> See Note 3, *supra*.

<sup>6</sup> OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

<sup>7</sup> The letter with its attachments was forwarded to OTC ATTORNEY by the Court Clerk.

advising the Claimant to contact OTC ATTORNEY, and if the parties had not advised of a settlement agreement prior to hearing, this matter would proceed according to the *Notice*. On March 14, 2012, the Division's Pretrial Memorandum Brief ("*Brief*") was filed with Exhibits A through H, attached thereto. On March 15, 2012, a letter from the Claimant was filed with the Court Clerk advising, "I no longer want to have the hearing on March 22, 2012 unless I can have a court date here in Tulsa."<sup>8</sup> On March 16, 2012, a letter was mailed to the parties acknowledging receipt of the Claimant's March 15<sup>th</sup> letter and advising the parties that all protest hearings are heard in the Courtroom in Oklahoma City and attendance is the choice of the Claimant; accordingly, the hearing would proceed as scheduled.

On March 22, 2012, the hearing was held as scheduled. The Claimant did not appear at the hearing.<sup>9</sup> The Division called SUPERVISOR, Supervisor, 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 I 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 March 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 February 11, 2011, the Claimant purchased a "new" 2011 Chevrolet Colorado Regular Cab Two Wheel Drive Pickup Truck ("1<sup>st</sup> New Vehicle") from DEALERSHIP, CITY, Oklahoma ("Dealer") for a cash price of \$17,889.00 minus a factory rebate of \$1,000.00 resulting in an actual selling price of \$16,889.00.<sup>10</sup>

2. On March 10, 2011, the Claimant registered 1<sup>st</sup> New Vehicle with Tag Agent #1234 ("Tag Agent") and paid the following,<sup>11</sup> to-wit:

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<sup>8</sup> See letter filed March 15<sup>th</sup> herein.

<sup>9</sup> *Id.* It was noted for the record that the Claimant had not contacted the Division or the Court Clerk regarding the hearing after the March 15<sup>th</sup> letter.

<sup>10</sup> Division's Exhibits A and B. The odometer reading at the time of sale was 7.0 miles. The Purchase Agreement contains a Dispute Resolution Clause.

<sup>11</sup> Division's Exhibit C.

Registration Fee:	\$ 91.00
Waste Tire Fee:	<u>12.50</u>
Subtotal	\$103.50 <sup>12</sup>
Title Fee:	\$ 11.00
Excise Tax:	549.00
Insurance Fee:	1.50
Notary Fee:	<u>1.00</u>
Subtotal	\$562.50
Total	\$666.00

3. Sometime after registering the 1<sup>st</sup> New Vehicle, the Claimant states that the vehicle was a “lemon”<sup>13</sup> (“...dealership worked on the same problem more than the reasonable amount of times and could not fix the problem”)<sup>14</sup> and the Claimant returned the 1<sup>st</sup> New Vehicle to the Dealer for a replacement vehicle.<sup>15</sup>

4. On November 1, 2011, the Claimant purchased a “new” 2012 Chevrolet Colorado Extended Cab Four Wheel Drive Pickup Truck (“Replacement Vehicle”) from the Dealer for a cash price of \$28,760.00 minus a factory rebate of \$2,000.00 resulting in an actual purchase price of \$26,760.00.<sup>16</sup>

5. On November 29, 2011, the Claimant registered the Replacement Vehicle with Tag Agent #1234 paying a \$91.00 registration fee, \$849.00 in motor vehicle excise tax, title fee of \$11.00, and insurance fee of \$1.50.<sup>17</sup>

6. A written request for a full tax refund (“Claim for Refund”) on the 1<sup>st</sup> New Vehicle was received by the Division stating, “I request a full tax refund on the 2011 Chevy Colorado regular cab two wheel drive because it turned out to be a lemon. I no longer own this vehicle. I was given a credit towards a new vehicle.”<sup>18</sup>

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<sup>12</sup> The court file contains an audit packet, which was forwarded by the Division as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

<sup>13</sup> Division’s Exhibit F.

<sup>14</sup> Division’s Exhibit H.

<sup>15</sup> Division’s Exhibit D. The Claimant did not obtain a statement from the manufacturer certifying that the 1<sup>st</sup> New Vehicle was defective. *See* Note 31, *infra*.

<sup>16</sup> *Id.* The odometer reading at the time of sale was 183.0 miles. The Dealer gave the Claimant a \$15,000.00 trade-in credit for the 1<sup>st</sup> New Vehicle, which had an odometer reading of 4293 miles.

<sup>17</sup> Division’s Exhibit E. *See* Note 12, *supra*. The Claimant would also have paid a waste tire fee, but that screen is not in the court file.

<sup>18</sup> Division’s Exhibit F. The letter is neither dated, nor date-stamped and is not accompanied by the mailing envelope. There are handwritten notations on the letter which were made by the Division’s personnel.

7. After reacquiring the 1<sup>st</sup> New Vehicle, the manufacturer did not cause the vehicle to be retitled in its name and did not request the Division to brand the certificate of title of the 1<sup>st</sup> New Vehicle with the notation “Lemon Law Buyback.”<sup>19</sup>

8. On January 4, 2012, the Dealer resold and reassigned the title to the 1<sup>st</sup> New Vehicle to new buyers for an actual purchase price of \$19,609.00, excluding credit for any trade-in.<sup>20</sup>

9. On January 26, 2012, the Division sent a letter<sup>21</sup> to the Claimant by certified mail return receipt requested (#####) acknowledging receipt of the Claim for Refund and denying the Claimant’s request for the taxes and fees paid on the 1<sup>st</sup> New Vehicle. The letter states in pertinent parts, as follows, to-wit:

“Vehicle not a Lemon Law buyback”

A review of our records revealed that the vehicle is not a Lemon Law buyback. Per Oklahoma Statutes Title 15 Sec 901.1, any manufacturer who reacquires, or assists a dealer or lienholder in reacquiring, an Oklahoma registered vehicle *must* apply for a new Oklahoma title in the *manufacturer’s* name with the notation “Lemon Law Buyback”. If no Lemon Law Buyback title has been issued, a stop flag will be placed on the record of the defective vehicle.

Hence, your taxes and fees were assessed correctly and there is no refund due.  
(Emphasis original.)

10. On January 31, 2012, the Tag Agent received a written protest by facsimile to the Division’s denial of the refund,<sup>22</sup> which states as follows, to-wit:

I am requesting a hearing before the Oklahoma Tax Commission about the refund request on [1<sup>st</sup> New Vehicle]. The [Dealership] impersonated and treated the buyback as a Lemon Law Buyback. They gave me a \$2,000 wear allowance, they told me that the GMC headquarters and [Dealership] both were involved, and records show that the dealership worked on the same problem more than the reasonable amount of times and could not fix the problem.

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<sup>19</sup> See Note 12, *supra*. See also Division’s Exhibit I.

<sup>20</sup> *Id.*

<sup>21</sup> Division’s Exhibit G. According to the U.S. Postal website at <https://usps.com>, the letter was delivered on January 31, 2012, at 3:15 p.m. See Note 12, *supra*.

<sup>22</sup> Division’s Exhibit H.

**CONCLUSIONS OF LAW**

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.<sup>23</sup>

2. Except as otherwise provided in Vehicle Excise Tax Code (“Vehicle Code”),<sup>24</sup> 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.<sup>25</sup>

3. The excise tax for new vehicles shall be levied at three and one-fourth percent (3 1/4%) of the value of each new vehicle.<sup>26</sup>

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.<sup>27</sup> (Emphasis added.)

5. The credit allowed pursuant to Section 2103(D)(1) of Title 68<sup>28</sup> 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.*<sup>29</sup>

6. Section 1132(D)(2) of Title 47,<sup>30</sup> provides as follows, to-wit:

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<sup>23</sup> OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). See OKLA. STAT. ANN. tit. 68, § 227 (West 2001).

<sup>24</sup> OKLA. STAT. ANN. tit. 68, § 2101 *et seq.* (West 2008).

<sup>25</sup> OKLA. STAT. ANN. tit. 68, § 2103(A)(1) (West Supp. 2012).

<sup>26</sup> *Id.*

<sup>27</sup> OKLA. STAT. ANN. tit. 68, § 2103(D)(1) (West Supp. 2012).

<sup>28</sup> *Id.*

<sup>29</sup> OKLA. STAT. ANN. tit. 68, § 2103(D)(2) (West Supp. 2012).

<sup>30</sup> OKLA. STAT. ANN. tit. 47, § 1132(D)(2) (West Supp. 2012).

There shall be a credit allowed with respect to the fee for registration of a new vehicle which is a replacement for:

...

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.

The *credit* shall be in the amount of the fee for registration which was paid for the new original vehicle and shall be applied to the registration fee for the replacement vehicle. *In no event will the credit be refunded.* (Emphasis added.)

7. The Oklahoma Administrative Code 710:60-3-18(b) (“Rule”),<sup>31</sup> provides as follows, to-wit:

If a new vehicle is certified by the manufacturer as defective *within 6 months of purchase*, credit will be allowed on the excise tax and registration fee for a new replacement vehicle. A statement from the manufacturer is required. Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall retitle the vehicle pursuant to the guidelines outlined in OAC 710:60-5-62. (Emphasis added.)

8. The Oklahoma Administrative Code 710:60-5-2,<sup>32</sup> provides as follows, to-wit:

Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall, prior to any sale, lease or transfer of the vehicle in this state, or prior to exporting the vehicle to another state, shall retitle the vehicle in the name of the manufacturer and the certificate of title shall be branded with the notation “Lemon Law Buyback”

9. The “Oklahoma Lemon Law” consists of the Sections 901 and 901.1 of Title 15<sup>33</sup> which provides as follows, to-wit:

Section 901:

A. As used in this section:

1. “Consumer” means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any

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<sup>31</sup> OKLA. ADMIN. CODE § 710:60-3-18(b) (July 11, 2010).

<sup>32</sup> OKLA. ADMIN. CODE § 710:60-5-62 (July 11, 2010).

<sup>33</sup> OKLA. STAT. tit. 15, §§ 901-901.1 (West Supp. 2009).

other person entitled by the terms of such warranty to enforce the obligations of the warranty; and

2. "Motor vehicle" means any motor-driven vehicle required to be registered under the Oklahoma Motor Vehicle License and Registration Act ("Registration Act"),<sup>34</sup> excluding vehicles above ten thousand (10,000) pounds gross vehicle weight and the living facilities of motor homes.

B. For the purposes of this act, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity, directly in writing, to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of *one (1) year* following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such *one-year period*.

C. If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either accept a return of the vehicle from the consumer and refund to the consumer the full purchase price including all taxes, license, registration fees and all similar governmental fees, excluding interest, less a reasonable allowance for the consumer's use of the vehicle or replace the motor vehicle with a comparable new model acceptable to the consumer. If a comparable model vehicle cannot be agreed upon, the purchase price shall be refunded less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator one hundred twenty thousand (120,000) miles and having as the numerator the miles directly attributable to use by the consumer beyond fifteen thousand (15,000) miles. It shall be an affirmative defense to any claim under this act:

1. That an alleged nonconformity does not substantially impair such use and value; or
2. That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle.

In no event shall the presumption described in this subsection apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged.

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<sup>34</sup> OKLA. STAT. tit. 47, § 1101 *et seq.* (West 2008).

D. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:

1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of *one (1) year* following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist; or

2. The vehicle is out of service by reason of repair for a cumulative total of thirty (30) business days during such term or during such period, whichever is the earlier date.

The term of an express warranty, such *one-year period* and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

E. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

F. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, the provisions of subsection C of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

G. The Oklahoma Attorney General shall prepare and place on the Attorney General's website a written statement explaining the rights of a purchaser under this law.<sup>35</sup> *The dealer shall provide to the purchaser at the time of the original purchase of a new motor vehicle the written statement prepared by the Attorney General.*

H. Vehicles returned pursuant to the provisions of this act may not be resold in this state unless:

1. The manufacturer provides the same express warranty the manufacturer provided the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; or

2. The manufacturer, through the licensed dealer, provides the consumer with a written statement on a separate piece of paper that clearly discloses the reason or reasons the vehicle was reacquired by the manufacturer.

I. Notwithstanding the provisions of subsection H of this section, returned vehicles shall not be resold if a new motor vehicle has been returned pursuant to the provisions of this act or a similar statute in another state because of

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<sup>35</sup> See Oklahoma Attorney General's website at <http://www.oag.state.ok.us>. Search for "lemon and law" and you will find available for download the Lemon Law Guide and Lemon Law Brochure, which explains the Claimant's rights and responsibilities.

nonconformity resulting in a complete failure of the braking or steering system likely to cause death or serious bodily injury if the vehicle is driven.

J. In any civil action pursuant to this section wherein the consumer is the prevailing party in the civil action, the consumer shall recover all costs and reasonable attorney fees as determined by the court. (Emphasis added.)

Section 901.1:

Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to this law shall:

1. Cause the vehicle to be retitled in the name of the manufacturer; and
2. Request the Oklahoma Tax Commission to brand the certificate of title with the notation "Lemon Law Buyback".

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>36</sup>

## DISCUSSION

The Claimant's position is simple: The 1<sup>st</sup> New Vehicle was a lemon; the Dealership "...worked on the same problem more than a reasonable amount of times and could not fix the problem;" the Dealership gave the Claimant a \$2,000.00 wear allowance; and the Dealership told him GMC was involved and both treated the buyback as a Lemon Law Buyback.<sup>37</sup> The Claimant wants all the taxes and fees paid to the Tax Commission refunded.

The Division states, "Claimant is seeking a credit of the excise tax that he paid as a result of the purchase of the first vehicle. However, he returned the first vehicle to the dealer on November 1, 2011, more than the requisite six (6) months from the date of the purchase, which deadline occurred on August 11, 2011. Therefore, Claimant's delayed return of the vehicle to

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<sup>36</sup> OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

..."preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

<sup>37</sup> See Note 22, *supra*.

the dealer, regardless of whether the first vehicle was defective or a Lemon Law Buyback, has disqualified him from the credit allowed.”<sup>38</sup>

There appears to be a conflict between the provisions of the Oklahoma Lemon Law,<sup>39</sup> and provisions of the Vehicle Code,<sup>40</sup> Tax Commission Rule,<sup>41</sup> and Registration Act.<sup>42</sup> The Oklahoma Lemon Law<sup>43</sup> provides a period of one (1) year from the date of purchase versus the Vehicle Code, Rule, and Registration Act which provides a period of six (6) months from the date of purchase.<sup>44</sup>

The original version of Section 901, Title 15 became law effective November 1, 1985.<sup>45</sup> The amended version, which is known as the Oklahoma Lemon Law, along with Section 901.1 of Title 15 became law effective November 1, 2009.<sup>46</sup>

Section 2103(D)(1)(b) of Title 68 provides a “credit” for “...excise tax paid for a new vehicle which is a replacement for 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.”<sup>47</sup> Section 1132 of Title 47 provides for a “credit” for the registration fee paid for a new vehicle which is a replacement for 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.”<sup>48</sup> The Tax Commission Rule<sup>49</sup> mirrors both sections providing for a credit for excise tax and the registration fee, and ties both sections back to the Oklahoma Lemon Law as follows, to-wit:

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<sup>38</sup> Division’s *Brief* at 3-4.

<sup>39</sup> See Note 33, *supra*.

<sup>40</sup> See Note 27, *supra*.

<sup>41</sup> See Note 31, *supra*.

<sup>42</sup> See Note 30, *supra*.

<sup>43</sup> See Note 33, *supra*.

<sup>44</sup> See Notes 27 and 31, *supra*.

<sup>45</sup> Laws 1985, c. 279, § 1, eff. Nov. 1, 1985.

<sup>46</sup> Laws 2009, c. 279, § 2, eff. Nov. 1, 2009.

<sup>47</sup> This section has remained unchanged since it was added by Laws 1988, c. 156, § 4, emerg. eff. May 5, 1988.

<sup>48</sup> See Note 30, *supra*.

<sup>49</sup> See Note 31, *supra*.

Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall retitle the vehicle pursuant to the guidelines outlined in OAC 710:60-5-62.<sup>50</sup>

There does not appear to be an explanation as to why there is a difference between the statutory provisions. The general rule in Oklahoma is that specific statutes control over general statutes.<sup>51</sup> With that being the general rule, does the return of the 1<sup>st</sup> Vehicle to the Dealership within one (1) year affect the outcome of this matter? No it does not. The Claimant did not comply with the provisions of the Oklahoma Lemon Law (as more fully set forth herein) nor did the Claimant comply with the provisions of the Vehicle Code, Rule, and Registration Act because these provisions provide the Claimant with a *credit only* for the excise tax and registration fee paid by the Claimant on the 1<sup>st</sup> Vehicle (not a refund),<sup>52</sup> if (1) the new vehicle is certified by the manufacturer as defective (a statement from the manufacturer is required) and (2) Any manufacturer reacquiring or assisting a dealer or lienholder in requiring a motor vehicle registered in this state shall retitle the vehicle pursuant to the guidelines outlined in the Oklahoma Administrative Code 710:60-5-62. Neither of these requirements was met by the Claimant in this matter.

The Claimant has failed to meet his 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

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<sup>50</sup> *See* Note 32, *supra*.

<sup>51</sup> *Southwestern Bell Telephone Co. v. Oklahoma County Excise Bd.*, 1980 OK 97, 618 P.2d 915, and *City of Tulsa v. Smittle*, 1985 OK 37, 702 P.2d 367.

<sup>52</sup> A refund is specifically prohibited. *See* Notes 28-31, *supra*.

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.”