JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-12-13-13 / NON-PRECEDENTIAL**
ID: **P-12-166-H**
DATE: **DECEMBER 13, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME / MOTOR VEHICLE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Accounting Section, Motor Vehicle Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY, First Deputy General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 21, 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 August 23, 2012, OTC ATTORNEY filed an Entry of Appearance as Counsel for the Division with the Court Clerk.[4] On August 24, 2012, this office mailed a letter to the Protestant's last-known address[5] of the case assignment to ALJ, Administrative Law Judge docketed as Case Number P-12-166-H. The letter also advised the Protestant that this matter was set for hearing on October 16, 2012, at 9:30 a.m., with position letters and/or memorandum briefs due on or before October 9, 2012.

On October 9, 2012, the Division filed its Brief with Exhibits A through F, attached thereto. The Protestant did not file a position letter and/or memorandum brief. On October 16, 2012, the hearing convened as scheduled. OTC ATTORNEY appeared on behalf of the Division. The Protestant did not appear at the hearing.[6] The Division called DEPUTY DIRECTOR, Deputy Director ("Deputy Director"), Motor Vehicle Division of the Oklahoma Tax Commission, who testified about details of the refund-intercept and as custodian of the

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[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 (9th ed. 2009).

[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. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

[5] OKLA. STAT. ANN. tit. 68, § 208 (West Supp. 2012). The notice was mailed to the Protestant at LAST KNOWN ADDRESS.

[6] The undersigned noted for the record that the Protestant did not contact the Division or the Court Clerk concerning the hearing.

Division's records. The Division's Exhibits A through F were identified, offered, and admitted into evidence. At the conclusion of the hearing, the undersigned closed the record and this case submitted for decision on October 16, 2012.

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 Brief, the undersigned finds:

1. On April 6, 2011, the Protestant wrote Check# XXX for $328.00 on the account of PROTESTANT d/b/a BUSINESS to the Tax Commission (through Tag Agent# XXXX) for the registration of a 2011 Chevrolet Impala, VIN# XXXXXXXXXXXXXXXxX. The title issued to "TITLE HOLDER." Tag Agent# XXXX presented Check# XXX for payment, but the bank returned it as "CLOSED ACCOUNT."[7]

2. On June 14, 2011, Tag Agent# XXXX notified the Division. Until the Protestant and/or TITLE HOLDER pays Check# XXX in full, the Division cancelled the vehicle's registration and put a stop flag on the title.[8]

3. The balance due resulting from the return of Check# XXX is calculated as follows,[9] to- wit:

Returned Check:	$328.00
MV Penalty:	75.00[10]
Collection Fee:	18.99
SCF Fee:	50.00
Total:	$471.99

4. On January 19, 2012, the Tax Commission intercepted TITLE HOLDER'S refund of $215.00, reducing the balance due to $256.99.[11]

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[7] Testimony of Deputy Director. Division's Exhibit A.

[8] *Id.* Division's Exhibit B.

[9] *Id.* Division's Exhibit C.

[10] *Id.* The motor vehicle penalty for late registration is $1.00 per day. *See* OKLA. ADMIN. CODE § 710:60-3-30(a) (July 11, 2010):

> **General provisions.** Delinquent registration penalty begins to apply on the thirty-first (31st) day following assignment of ownership. For most vehicle types, penalty accrues at $1.00 per day, to a maximum penalty assessment of $100.00 (100 days).

[11] *Id.* The court file contains an audit packet 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).

5. On or about February 8, 2012, Protestant filed an Oklahoma Resident Income Tax Return (Form 511) for the 2011 Tax Year reflecting a refund of $161.00. The Tax Commission adjusted the return and the $80.00 refund of sales tax (Form 538-S) was paid. The refund at issue is $122.00.[12]

6. On June 13, 2012, the Division notified the Protestant by letter of its intent to intercept his refund due to the return of Check# XXX with a balance of $256.99.[13]

7. On June 20, 2012, the Division received, by facsimile, the written protest to the proposed intercept of the Protestant's refund for the 2011 Tax Year, which states as follows,[14] to-wit:

> Per our phone conversation, here is the letter you requested. I am formally stating that I did not write the check (at the very least I have no memory of writing that check and was under the impression all the checks associated with that account had been destroyed). As far as COMPANY NAME is concerned, I have not worked for them since 2010. I did not then, nor do I now own a 2001 Chevrolet Impala. I do not know the title holder associated with this issue and vehicle. If you have any questions, do not hesitate to call me at (###) ###-####.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action.[15]

2. The certificate of registration and other such instruments issued at the time of registration of such vehicle shall be invalid, when payment is made by check for fees and taxes and the check is not paid by the bank on which drawn for any reason (after said check has been presented for payment a second time).[16]

3. The Oklahoma Tax Commission is authorized to deduct from any state tax refund due a taxpayer the amount of delinquent state tax, and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of the refund.[17]

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[12] Division's Exhibit D. Line 20 reflects $41.00 in Use Tax due, but the Division's adjustment does not consider the Use Tax, so the refund adjusted to $202.00 minus $80.00 (sales tax credit) equals $122.00. OTC ATTORNEY'S understanding is that the Division will not make any further adjustments to the Protestant's return for the 2011 Tax Year.

[13] *Id.* Division's Exhibit E.

[14] Division's Exhibit F.

[15] OKLA. STAT. ANN. tit. 68, § 205.2(B) (West Supp. 2012).

[16] OKLA. STAT. ANN. tit. 47, § 1121(A) (West Supp. 2012).

[17] OKLA. STAT. ANN. tit. 68, § 205.2(E) (West Supp. 2012).

4. In the event of a protest to the application to deduct the delinquent taxes from the refund due the taxpayer, the only issues subject to determination are whether the claimed sum is correct or whether an adjustment to the claim shall be made. No action shall be taken in furtherance of the collection of the debt pending final determination of the validity of the debt.[18]

5. A challenge to the validity of the debt requires a determination that the notice of assessment, which gave rise to the debt, was provided in a manner that satisfies due process requirements.[19]

6. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[20] The Division's action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[21]

7. The Protestant has failed to meet his burden of proof. The Protestant has not presented any evidence that the Division's claim of $122.00 to his income tax refund for the 2011 Tax Year is incorrect, or that the Division should make any adjustment.

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.

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[18] *Id.*

[19] *Id.*

[20] 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.

[21] *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

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."