

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2014-12-02-07 / NON-PRECEDENTIAL  
**ID:** CR-14-006-H  
**DATE:** DECEMBER 2, 2014  
**DISPOSITION:** SUSTAINED  
**TAX TYPE:** MOTOR VEHICLE  
**APPEAL:** NO APPEAL TAKEN

### ORDER

COMPANY (“Claimant”) appears through Attorney, ATTORNEY. The Motor Vehicle Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY 1, First Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

### PROCEDURAL HISTORY

On May 23, 2014, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>1</sup> and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>2</sup> On May 28, 2014, the Court Clerk (“Clerk”)<sup>3</sup> mailed the Introductory Letter to the Claimant that this matter had been assigned to ALJ, Administrative Law Judge (“ALJ”), and docketed as Case Number CR-14-006-H. The letter also advised the Claimant that a Notice of Prehearing Teleconference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.<sup>4</sup> On May 29, 2014, OTC ATTORNEY 3, Assistant General Counsel, filed an Entry of Appearance, as the Division’s Counsel of record. On May 29, 2014, the Clerk mailed the “Notice of Hearing” to the last-known address of the Claimant’s Counsel,<sup>5</sup> setting the hearing for July 29, 2014, at 9:30 a.m., with position letters and/or memorandum briefs due on or before July 22, 2014.<sup>6</sup>

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<sup>1</sup> OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

<sup>2</sup> OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

<sup>3</sup> OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

<sup>4</sup> *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

<sup>5</sup> OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the notice to Mr. ATTORNEY at ADDRESS.

<sup>6</sup> See OKLA. ADMIN. CODE § 710:1-5-24.

On June 2, 2014, ATTORNEY filed an Entry of Appearance as Claimant's Counsel of record. On June 20, 2014, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed a Notice of Substitution of Attorney and Entry of Appearance, as the Division's Co-Counsel of record.<sup>7</sup>

On July 11, 2014, the Claimant filed a Request to Submit the Case on Briefs ("Request"). The Division did not have any objection to the Request. On July 14, 2014, the parties filed Joint Stipulation of Facts, with Exhibits A through H, attached thereto. On July 16, 2014, the ALJ issued an Order Granting [Claimant's] Request to Submit Case on Briefs, striking the hearing set for July 29, 2014, at 9:30 a.m., with the parties' Briefs due on or before July 22, 2014. On July 21, 2014, the Claimant filed its Request for Refund and Brief in Support, with Exhibits A through E, attached thereto.<sup>8</sup> On July 22, 2014, the Division filed its Memorandum Brief. On July 22, 2014, the ALJ acknowledged receipt of the parties' briefs, closed the record, and submitted this matter for decision on July 22, 2014.

### STIPULATION OF FACTS

On July 14, 2014, the parties filed Joint Stipulation of Facts and Exhibits,<sup>9</sup> as follows, to-wit:

1. On September 7, 2013, Claimant purchased a Chevrolet automobile, vehicle identification number 124379N55789 ("the vehicle"). **See Exhibit A attached.**
2. The vehicle was purchased by Claimant for \$55,000.00. **See Exhibit B attached.**
3. On September 25, 2013, Claimant submitted an Application for Oklahoma Certificate of Title for the vehicle. **See Exhibit C attached.** Claimant paid \$1,776.50 to the Commission to title the vehicle. **See Exhibit D attached.** Claimant paid \$31.00 to the Commission to register the vehicle (tag - \$21.00 and tire waste fee - \$10.00). **See Exhibit E attached.**
4. On or about February 18, 2014, the Commission received Claimant's request for refund of the \$1,807.50 Claimant paid to Broadway Tag Agency to register the vehicle. **See Exhibit F attached.**
5. On April 1, 2014, the Division responded to Claimant's request for refund denying same and stating, in essence, that the excise tax was property assessed under Oklahoma law. **See Exhibit G attached.**
6. On April 25, 2014, Claimant requested a hearing before the Commission. **See Exhibit H. attached.**

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<sup>7</sup> The ALJ deems the filing as a "Withdrawal of Counsel" for OTC ATTORNEY 3.

<sup>8</sup> The Division did not file an objection(s) to the Claimant's Exhibits.

<sup>9</sup> The text of the stipulated facts is set out *in haec verba*. "***in haec vega***" (in heek v<<schwa>>r-b<<schwa>>). [Latin] In these same words; verbatim. BLACK'S LAW DICTIONARY (9<sup>TH</sup> ed. 2009), available at <http://westlaw.com>.



**ADDITIONAL  
FINDINGS OF FACT**

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence and the briefs, the undersigned finds:

7. On September 7, 2013, the Claimant purchased, what was purported to be, a factory built, original 1969 Camaro Z28 with matching serial numbers. The Claimant purchased the vehicle from Mecum Auction in Dallas, Texas, for \$58,850.00.<sup>10</sup>

8. Post-Registration, the Claimant hired Camaro Hi-Performance, Inc., Consultant, Appraisal and Authentication Services, Specializing in Drive-Train Restoration & Technical Publications (“Consultant”), 5750 Kinsmen Courage Court, Eldersburg, Maryland 21784 to inspect the vehicle.<sup>11</sup> The Consultant’s Certified Appraiser, IAAA<sup>12</sup> ID#XXXXXXXXXX, flew from Maryland to Oklahoma City to conduct the inspection of the vehicle.<sup>13</sup>

9. The Consultant’s Certified Appraiser issued an “IAAA Certified” Appraisal-Certificate of Authenticity, which states in pertinent parts,<sup>14</sup> as follows, to-wit:

This Camaro was represented at auction as a factory built Z28 but all evidence during my inspection leads me to believe it’s a made

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<sup>10</sup> Claimant’s Exhibits A through B. The ALJ is taking judicial notice of the Mecum Auctions website at <http://www.mecum.com> to complete the background and facts in this matter. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 2013). The Mecum Auctions website states in pertinent part, as follows, to-wit:

Nobody sells more than Mecum. Nobody. The Mecum Auction Company is the world leader of collector car, vintage and antique motorcycle, and Road Art sales, hosting auctions throughout the United States. The company has been specializing in the sale of collector cars for 27 years, now offering more than 15,000 vehicles per year and averaging more than one auction each month.”

The purchase price of \$58,850.00 includes a seven percent (7%) buyer’s premium of \$3,850.00.

<sup>11</sup> *Id.*

<sup>12</sup> International Automobile Appraisers Association.

<sup>13</sup> See Note 10, *supra*.

<sup>14</sup> Claimant’s Exhibit D. The Consultant conducted the inspection at the Claimant’s garage office.

up clone car and not an original Z28 Camaro. Production numbers for the 1969 Z28 are 20,302. Page two of this report lists options and serious component issues that I found during my inspection.

...

Due to the many serious issues and reproduction parts used on this car, it is my recommendation that the car be returned to the seller for a full refund. ...

...

It is my professional opinion that this car is not a real Z28 Camaro. My opinion comes from the thousands of Camaro inspections that I have performed over the past 25 years. ...

10. On December 5, 2013, Mecum Auctions, Inc. refunded the vehicle's purchase price of \$58,850.00.<sup>15</sup>

### CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.<sup>16</sup>
2. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, make an application for the registration of such vehicle.<sup>17</sup>
3. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in the State of Oklahoma.<sup>18</sup>
4. "Legal Ownership" and "Legally Owned" mean the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner.<sup>19</sup>

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<sup>15</sup> Claimant's Exhibit E. Mecum Auctions refunded the purchase price of the vehicle to MEMBER, a managing member of the Claimant.

<sup>16</sup> OKLA. STAT. ANN. tit. 68, § 227 (West 2014). See OKLA. STAT. ANN. tit. 47, § 1106 (West 2008).

<sup>17</sup> OKLA. STAT. ANN. tit. 47, § 1112 (West 2008).

<sup>18</sup> OKLA. STAT. ANN. tit. 68, § 2103(A)(3) (West 2014).

<sup>19</sup> OKLA. STAT. ANN. tit. 68, § 2101(14) (West Supp. 2014).

5. The “[t]ransfer of bare legal title is not the same as transfer of legal ownership.” The change of legal ownership contemplated by the statute involves a change of ownership and possession.<sup>20</sup>

6. “Any taxpayer who has paid..., through error of fact, or computation, or misinterpretation of law, any tax... may..., be refunded the amount of such tax so erroneously paid, without interest.”<sup>21</sup>

7. The provisions of Section 227 of Title 68 apply to vehicle excise tax and registration fees.<sup>22</sup>

8. The Tax Commission Rules for Motor Vehicle License Agents/Agencies provide as follows,<sup>23</sup> to-wit:

All possible vehicle/boat/outboard motor related refund situations are to be referred to the Motor Vehicle Division of the Oklahoma Tax Commission. To initiate a refund under the noted circumstances the taxpayer must make a refund request, submitting the appropriate documentation and/or information. The following is normally required to initiate a refund, under the noted circumstances:

...

(3) Registration of a vehicle no longer owned. A refund request with appropriate documentation confirming the registration remittance, as well as the registration decal and/or license plate issued and proper evidence of the disposition of the vehicle. Such evidence may be a copy of a sales or trade-in contract, a photocopy of the assigned certificate of title, or a notarized affidavit signed by the refund applicant, stating that the vehicle has been sold and identifying the vehicle by serial number and listing the date sold and to whom.

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<sup>20</sup> See *Imaging Services, Inc. v. Oklahoma Tax Com’n, Excise Tax Div.*, 1993 OK 164, 866 P.2d 1204.

<sup>21</sup> See Note 16, *supra*.

<sup>22</sup> *Id.* See Okla. A.G. Opin. 84-42.

<sup>23</sup> OKLA. ADMIN. CODE § 710:60-9-95 (July 1, 2008).

(d) Refunds payable to taxpayer. Refund vouchers will be issued payable to the taxpayer for whom the payment was remitted, not payable to the remitter of the payment, if different.

9. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.<sup>24</sup> A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.<sup>25</sup>

10. Where taxpayer controls all material facts, there can be no error of fact to support a claim for refund; fact is material when it, alone or in part, causes tax to be statutorily due and payable.<sup>26</sup>

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<sup>24</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>25</sup> See *Enterprise Management Consultants, Inc. v. State ex rel Oklahoma Tax Com’n*, 1988 OK 91, 768 P.2d 359.

<sup>26</sup> See Note 16, *supra*. See also *Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma Tax Com’n*, 1989 OK

**DISCUSSION**

The Claimant's states its position as follows,<sup>27</sup> to-wit:

[Managing Member], who is a car collector, but not a Camaro expert, purchased the vehicle at a reputable auction in Dallas, Texas, after personally inspecting the car, getting the assurances from the owner that the car was factory built, and relying on Mecum Auction, Inc.'s listing of the car as an original 1969 Camaro Z28 with matching numbers. Other than having an expert, like [Consultant], conduct a thorough inspection at the auction, which is neither possible nor practical, there is nothing else that Claimant could have done to prevent this error of fact on his part.

There are several aspects of this error of fact. The seller misrepresented that he owned a Z28, when, in fact, he did not. As a result, he could not sell a Z28 because he did not own one. Unfortunately, neither Mecum Auctions, Inc., nor Claimant knew of the misrepresentation. Therefore, Claimant paid a premium of \$58,850.00 to purchase a car that did not exist in the possession of the seller. Only after contacting one of the top Camaro experts in the entire country, paying his travel from Maryland to Oklahoma, and having him opine on the authenticity of the car, did Claimant learn that it was not a Z28.

The Division's position is that excise tax and fees were due upon the first registration of the vehicle and are not subject to a refund<sup>28</sup> in this matter under Section 227 of Title 68,<sup>29</sup> because "...excise tax is measured by the value of the vehicle as of the date of sale or other transfer of ownership, and assignment of title," and in this matter "Claimant believes that it is entitled to a refund of said excise tax due to the fact that a second appraisal of the vehicle valued it \$20,000 less than what Claimant paid for the vehicle two months earlier."<sup>30</sup>

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67, 773 P.2d 736.

<sup>27</sup> Claimant's Brief at 3-4.

<sup>28</sup> The Vehicle Excise Tax Act does not contain a provision providing for a refund of vehicle excise tax.

<sup>29</sup> See Note 16, *supra*.

<sup>30</sup> Division's Brief at 3.

The Division's characterization of the Claimant's position as a "value" issue fails to address the "error of fact" language contained in Section 227 of Title 68.<sup>31</sup>

The Supreme Court of Oklahoma held in *Budget Rent-A-Car*, "Our characterization of the payment as one made through error of fact is consistent with those cases which hold, where a material fact is within the sole possession of a third party with peculiar knowledge, an erroneous representation with regard to such fact constitutes a fact not a mere expression of opinion."<sup>32</sup>

The Claimant did not control the facts in this matter. Mecum Auction, Inc. listed the vehicle at auction as an original 1969 Camaro Z28 with matching numbers.<sup>33</sup> The Claimant was not able to discover the error of fact, until it hired a Consultant, who found "This Camaro was represented at auction as a factory built Z28 but all evidence during my inspection leads me to believe it's a made up clone car and not an original Z28 Camaro. ..."<sup>34</sup>

The Consultant, a Certified Appraiser issued an "IAAA Certified" Appraisal-Certificate of Authenticity, discovering a laundry list of material facts, which were within the sole possession of a third party, not the Claimant. The vehicle is not a factory built, original 1969 Camaro Z28 with matching serial numbers.

### CONCLUSION

The Claimant has met its burden of proof, by preponderance of the evidence, that the Division's actions were incorrect and in what respects.

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<sup>31</sup> See Note 16, *supra*. See also Division's Brief at 3.

<sup>32</sup> *Id.*

<sup>33</sup> See Note 27, *supra*.

<sup>34</sup> See Notes 13-14, *supra*.

**ORDER**

The OKLAHOMA TAX COMMISSION ORDERS granting the protest, based upon the facts and circumstances of this case.

## 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. 2014) 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.”