JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2016-03-03-10 / NON-PRECEDENTIAL**
ID: **CR-15-016-H**
DATE: **MARCH 3, 2016**
DISPOSITION: **SUSTAINED**
TAX TYPE: **MOTOR VEHICLE EXCISE**
APPEAL: **NONE**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 12th day of February, 2016, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 12TH day of February 2016, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to Jay L. Harrington, Administrative Law Judge. CLAIMANT ("Claimant") appears pro se.[1] The Accounting Section, Motor Vehicle Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY 1, Interim General Counsel and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On October 15, 2015, 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 October 15, 2015, the Court Clerk ("Clerk")[4] mailed the Introductory Letter to the Claimant that this matter had been assigned to ALJ, Administrative Law Judge ("ALJ"), and docketed as Case Number

[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), available at http://web2.westlaw.com.

[2] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (August 27, 2015).

CR-15-016-H. The letter also advised the Claimant would be notified by mail of a hearing date, and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[5] On October 22, 2015, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Division's Counsel. On October 22, 2015, the Clerk mailed the "Notice of Hearing," setting the hearing for December 15, 2015, at 9:30 a.m., with position letters and/or memorandum briefs due on or before December 8, 2015.

On December 7, 2015, the Division filed its Memorandum Brief.[6] The Claimant did not file a Position Letter or Memorandum Brief. On December 15, 2015, at 9:30 a.m. the ALJ convened an open hearing.[7] The Claimant made an Opening Statement. The Division waived its Opening Statement. At the ALJ's request, the Division presented its case first to streamline the hearing. The Division called ADMINISTRATOR, Administrator, Accounting Section, Motor Vehicle Division of the Oklahoma Tax Commission, who testified regarding the audit of the Claimant's request for refund of motor vehicle excise tax, and as custodian of the Division's records. The Division identified and offered Exhibit 1, which the ALJ admitted into evidence without objection. The Claimant testified on his own behalf about the purchase of the Vehicle, the Manufacturer's Suggested Retail Price ("MSRP"), and the Division's audit. The Claimant identified and offered Exhibit 1, which the ALJ admitted into evidence without objection.[8] The parties waived Closing Statements. At the conclusion of the hearing, the record remained open for the Division to submit a Fee Estimator from Motor Vehicle OneLink generated December 15, 2015, identified, and admitted as Division's Exhibit 2. On December 15, 2015, the Division filed Exhibit 2. The ALJ closed the record and this case submitted for decision on December 15, 2015. On January 29, 2016, the ALJ opened the record for the sole purpose of admitting a copy of the Vehicle's "Original" Window Sticker, identified as Claimant Exhibit 2. The ALJ reclosed the record and this matter submitted for decision as of December 15, 2015.

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 Memorandum Brief, the undersigned finds:

1. On May 15, 2015, the Claimant purchased a new 2014 Ford C-Max ("Vehicle") (VIN OMITTED) for $22,965.00, excluding fees and taxes, from a dealership in Houston.[9]

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[5] *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

[6] The Division did not attach any exhibits to its Memorandum Brief.

[7] The Claimant waived confidentiality. *See* OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2015).

[8] The Claimant identified and offered Claimant's Exhibits Two (2) and (3), but the ALJ sustained the Division's objection.

[9] Administrator Testimony. Division Exhibit 1.

2. On June 22, 2015,[10] TAG AGENCY ("Motor License Agent")[11] registered the Vehicle, charging the Claimant, as follows,[12] to-wit:

Description	Fee	Amount Paid
Lien	$10.00	$10.00
Title	$11.00	$11.00
Excise Tax	$857.00	$857.00
Excise Tax Penalty	$8.00	$8.00
Registration	$91.00	$91.00
Registration Penalty B	$8.00	$8.00
Insurance	$1.50	$1.50
Tire Recycling – Small	$12.50	$12.50
	$999.00	$999.00

3. On July 27, 2015, the Claimant filed a "Request for Refund" of $[3]4.00 in Vehicle Excise Tax and Late Fees of $10.00 charged by Motor License Agent.[13]

4. On September 16, 2015, the Division denied the refund of $34.00 in Vehicle Excise Tax.[14]

5. On September 28, 2015, the Claimant filed a protest to the denial of the $[3]4.00 in Vehicle Excise Tax, as more fully set forth therein.[15]

6. The Vehicle's VIN specific "Original" Window Sticker dated June 13, 2014, in pertinent part, reflects the following,[16] to-wit:

	(MSRP)
PRICE INFORMATION	
BASE PRICE	$32,950.00

[10] *Id.* On June 16, 2015, the Dealership mailed the Title to Motor License Agent.

[11] OKLA. STAT. ANN. tit. 47, § 1102(20) (West Supp. 2015).

[12] *Id.*

[13] *Id.* Claimant Testimony. On September 9, 2015, the Division refunded the $10.00 late fee to Claimant.

[14] *Id.*

[15] *Id.*

[16] Claimant's Exhibit 2. *See* Procedural History herein.

7. The Vehicle's VIN specific "Adjusted" Window Sticker dated July 10, 2014, in pertinent part, reflects the following,[17] to-wit:

	(MSRP)
PRICE INFORMATION	
BASE PRICE	$31,635.00

8. The Houston Dealership provided an "Adjustment Invoice," which also reflects the Vehicle's MSRP was adjusted from $32,950.00 to $31,635.00.[18]

9. On December 14, 2015, the Claimant ran an NADA Guides Price Report for a 2014 Ford C-Max Energi, which reflects the following,[19] to-wit:

2014 Ford C-Max Energi
5dr HB SEL

Pricing	Invoice	MSRP
Base Price	$29,499	$31,635
Destination	$825	$825
Total Base Price	$30,324	$32,460
Options		
Price with Options	$30,324	$32,460
Options		
Price with Options	$30,324	$32,460

MSRP – MSRP is the base Manufacturer's Suggested Retail Price at the time of introduction, including standard equipment only and excludes taxes, transportation and destination.

Invoice – Invoice Price – The dealership's cost for a vehicle from the manufacturer including holdback and advertising costs. Invoice price does not include dealer installed equipment and destination charges.

10. On December 15, 2015, the Division ran a "Fee Estimator" on the Motor Vehicle OneLink System for the Vehicle, which reflects in pertinent parts, as follows,[20] to-wit:

PURCHASE ENTRY INFO

…

Asgmt Date	Date First Sold			
15-Dec-2015	15-Dec-2015			
Purchase Price	Taxable	Average Retail	Low Range	High Range
22,965.00	26,360.00	32,950.00	26,360.00	39,640.00

[17] *See* Note 9, *supra.*

[18] *Id.*

[19] Claimant Exhibit 1. The Claimant obtained the 2014 Ford C-Max Energi NADA Guides Price Report from the NADA website at http://nadaguides.com. At the time of introduction, the MSRP was $32,950.00. *See* Note 16, *supra*.

[20] Division Exhibit 2.

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DETAILS

Provisional VIN	Verified	Registration Class	
1FADP5CUOEL503659		Automobile	
Year	Make	Model	Body Type
2014	FORD	C-MAX	HB
Purchase & Entry		Assignment 15-DEC-2015	
		Purchase Price $22,965.00	Taxable Price $26,360.00
Total	858.00	Fee Tax Breakdown	

FEE ESTIMATOR

What do you want to estimate?	Register New Vehicle
How will you be registering your vehicle?	Automobile
What is the vehicle's VIN?	OMITTED
What year is the vehicle?	2014
What type of plate will the vehicle have?	Non-Commercial

…

What is the purchase price of the vehicle?	22,965.00
Taxable Value	26,360.00

…

Estimate

You also may incur the following fees when retitling your vehicle:

Fee Description	Amount($)	Fee Description
Excise Tax	857.00	Lien Fee
Registration Fee	91.00	Tire Recycling-Over 19.5 inches Per Tire
Title Fee	11.00	Tire Recycling-Under 19.5 inches Per Tire
3 Rows	959.00	Mail Fee
		Insurance Fee

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[21]

2. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement, and collection of excise taxes pursuant to the Vehicle Excise Tax Code.[22]

[21] OKLA. STAT. ANN. tit. 68, § 207 (West 2014).

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

3. The rules promulgated pursuant to the Administrative Procedures Act[23] are presumed to be valid and binding on the persons they affect and have the force of law.[24]

4. An excise tax is due at the time of transfer of legal ownership or first registration of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state shall be collected at the time of the issuance of a certificate of title.[25]

5. 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.[26]

6. The value of any motor vehicle, except a manufactured home, for the purposes of the excise tax levied by Section 2103 of the Vehicle Excise Tax Act, shall be determined as of the time the person applying for a certificate of title thereto obtained either ownership or possession of the vehicle, which shall be presumed to be the actual date of the sale or other transfer of ownership, and assignment of the certificate of title.[27]

7. The value of any vehicle, for purposes of the excise tax levied by Section 2103 of the Vehicle Excise Tax Act, shall be the actual sales price of such a vehicle before any discounts or credits are given for a trade-in. However, the value of the vehicle prior to the subtraction of such discounts or credits for a trade-in shall be required to be within twenty percent (20%) of the average retail price value of such vehicle as listed in the automotive reference material prescribed by the Oklahoma Tax Commission. The actual sales price of the vehicle, which total shall be the basis of the motor vehicle excise tax, as well as the number of tires on the vehicle and the tire rim diameters, shall be entered on the bill of sale furnished by the seller to the purchaser, or on such other form as may be prescribed by the Tax Commission.[28]

8. By Tax Commission Rule, the Division incorporates by reference,[29] the following, to-wit:

> (a) Reference to automotive reference material. When reference is made to "book value" or "sales value", it shall mean, unless the context clearly indicates otherwise, the automotive reference material prescribed by the Oklahoma Tax Commission for use in determining the average retail price value for purposes of registering and titling motor vehicles in this state, set out in the contract between

[23] OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002).

[24] *Id. See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

[25] OKLA. STAT. ANN. tit. 68, § 2104(A) (West 2008).

[26] OKLA. STAT. ANN. tit. 68, § 2103(A) (West Supp. 2016).

[27] OKLA. STAT. ANN. tit. 68, § 2104(A) (West 2008).

[28] OKLA. STAT. ANN. tit. 68, § 2104(B) (West 2008).

[29] OKLA. ADMIN. CODE § 710:60-5-50 (June 27, 2002).

the Commission and N.A.D.A. Official Use Car Guide Company, Inc. and delineated in the terms of P.O. Y052341, issued January 16, 2002.

(b) Incorporation. The following publications are, unless otherwise specifically provided, incorporated by reference in their entirety:

(1) N.A.D.A. Official Used Car Guide;
(2) N.A.D.A. Official Older Used Car Guide;
(3) N.A.D.A./ATD Official Commercial Truck Guide;
(4) N.A.D.A. Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide; and,
(5) N.A.D.A. Recreation Vehicle Appraisal Guide.

(c) Inclusion of citations and definitions. When a provision of the prescribed automotive reference material is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) Inconsistencies or duplication. In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Chapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular. The provisions incorporated by reference are subject to any limitations provided by Oklahoma law.

(e) Effective dates. The provisions of this Section shall be operative beginning February 1, 2002.

9. Excise tax is due at the time of transfer of legal ownership or possession of a vehicle and must be paid within thirty (30) days of such date. After the thirtieth (30th) day, a penalty is to be collected in addition to the tax due. The daily penalty will accrue until the tax is paid. However, the penalty is not to exceed the amount of the tax due.[30]

10. On vehicles, other than manufactured homes and certain commercial vehicles, excise tax is based upon the actual sales or purchase price. The actual sales price, commonly referred to as "purchase price," is the actual sales price of a vehicle excluding any consideration given for a trade-in. For the purpose of vehicle taxable value computation, actual sales price is to include the cost of the vehicle, including any equipment or product affixed to, or applied upon, the vehicle. It is not to include any fee included in the sale transaction that is related to a service provided by the seller, or an outside party (i.e. documentary fee; financing fee; insurance coverage fee; maintenance agreement fee). No consideration for a vehicle trade-in, either debit or credit, is to be included in the actual sales price utilized for establishing the taxable value for the purpose of excise tax assessment. The actual sales price must be within twenty percent (20%) of the average retail price value of the vehicle, as listed in the automotive reference material prescribed by the Oklahoma Tax Commission. [See: 710:60-5-50] If the actual sales

[30] OKLA. ADMIN. CODE § 710:60-7-1(a) (July 1, 2008). *See* Note 13, *supra.*

price is not within that value range, the Tax Commission shall establish a taxable value as close to the actual sales price as possible while still within the prescribed value range.[31]

11. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[32]

12. A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[33]

DISCUSSION

The Claimant claims his refund of $34.00[34] in Vehicle Excise Tax because the Manufacturer adjusted the MSRP/Average Retail Price ("ARP")[35] for the Vehicle from $32,950.00 to $31,635.00. In support of his position, the Claimant provided copies of the "Original" Window Sticker, the "Adjusted" Window Sticker, both of which are VIN specific,[36] a

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[31] OKLA. ADMIN. CODE § 710:60-7-1(b) (July 1, 2008).

[32] 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.

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

[34] Claimant's calculation of the refund is as follows, to-wit:

Division's MSRP	$32,950.00 times 80% equals $26,360.00 times 3.25 equals $857.00
	minus
Claimant's MSRP	$31,635.00 times 80% equals $25,308.00 times 3.25 equals $823.00
	Total $ 34.00

[35] *See* Notes 28 through 29, and 31, *supra.*

[36] *See* Notes 16 through 17, *supra.*

copy of the dealer "Adjustment Invoice,"[37] which is also VIN specific, and a screen print out from NADA for a 2014 Ford C-Max Energi, which also reflects the MSRP/ARP at $31,635.00.[38]

To ensure the Division used the most up-to-date NADA pricing, the ALJ directed the Division to run a Fee Estimator on the Motor Vehicle OneLink System, post-hearing, on December 15, 2015. According to the Fee Estimator Screen, the MSRP/ARP for this VIN specific 2014 Ford C-Max is still $32,950.00.

However, the Claimant has provided convincing evidence that the Manufacturer adjusted the Vehicle's MSRP/ARP from $32,950.00 to $31,635.00. The Division's calculation complies with statutory requirements and Tax Commission Rules.[39] However, in this matter, the NADA database, on which the Division relies, does not reflect the adjustment to the MSRP/ARP of the Vehicle.

CONCLUSION

The Claimant has met his burden of proof, by preponderance of the evidence, that the Division's denial of the refund of $34.00 in Vehicle Excise Tax was incorrect and in what respects.

RECOMMENDATIONS

The ALJ recommends granting the protest, as more fully set forth herein.

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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).

[37] *See* Note 18, *supra*.

[38] *See* Note 19, *supra*.

[39] *See* Note 35, *supra*.