

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2020-05-05-04 / NON-PRECEDENTIAL  
**ID:** CR-19-029-K  
**DATE:** MAY 5, 2020  
**DISPOSITION:** DENIED  
**TAX TYPE:** MOTOR VEHICLE  
**APPEAL:** NONE TAKEN

### **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 11<sup>th</sup> day of March, 2020, appended hereto, together herewith shall constitute the Order of the Commission.

### **SO ORDERED**

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

NOW on this 11<sup>th</sup> day of March, 2020, the above styled and numbered cause comes on for decision under assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Claimants, SPOUSE 1 and SPOUSE 2 appears pro se. The Motor Vehicle Division (“Division”), Oklahoma Tax Commission is represented by AGC 1 and AGC 2, Assistant General Counsels, Office of General Counsel, Oklahoma Tax Commission.

### **STATEMENT OF THE CASE**

On November 5, 2018, Claimants registered a 2015 Mazda CX5 in their names and paid registration fees to the State of Oklahoma. On March 5, 2019, Claimants titled and registered a 2019 Toyota Camry in their names and paid motor vehicle excise tax and registration fees, and sales tax to the State of Oklahoma. On or around July 15, 2019, the Division received Claimants’ request for a refund of the excise taxes, registration fees and sales tax remitted on the registrations of the Mazda and Toyota. By letters dated August 29, 2019, the Division denied Claimants’ request. On November 4, 2019, the Division received Claimants’ protest to the denial.

On November 22, 2019, the Division referred the protest and its records to the Office of the Administrative Law Judges to initiate 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>. The case was docketed as Case No. CR-19-029-K and assigned to the undersigned.

A hearing was scheduled for December 11, 2019, by *Notice of Hearing* issued November 27, 2019.<sup>3</sup> On December 5, 2019, an order granting the parties' joint motion to strike hearing and submit the protest on briefs issued. A *Joint Stipulation of Issue and Facts* ("*Stipulation*") with Joint Exhibits 1 through 8 filed December 19, 2019. On January 9, 2020, the Court received Claimants' brief in chief. The *Motor Vehicle Division's Response Brief* filed January 27, 2020. Claimants filed no reply brief. On February 10, 2020, the record closed and the protest to the denial of the claim for refund submitted for decision.<sup>4</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the *Stipulation*, joint exhibits and pleadings of the parties, the undersigned finds:

A. The parties stipulate to the following:<sup>5</sup>

1. On November 5, 2018, Claimants registered a 2015 Mazda CX5, VIN JM3KE4DY2F0515809 ("Mazda") in Oklahoma.

2. On March 5, 2019, Claimants titled and registered a 2019 Toyota Camry, VIN 4T1B11HK8KU731316 ("Toyota") in Oklahoma.

3. On July 12, 2019, Claimants registered the Mazda in Arizona, and paid registration fees and vehicle license tax on the vehicle.

4. On July 12, 2019, Claimants registered the Toyota in Arizona, and paid registration fees and vehicle license tax on the vehicle.

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<sup>1</sup> 68 O.S.2011, § 201 et seq., as amended.

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* ("*OAC*").

<sup>3</sup> 68 O.S.2011, § 227(e); *OAC* 710:1-5-24.

<sup>4</sup> *OAC* 710:1-5-39(a).

<sup>5</sup> The references to the exhibits are omitted.

5. On or around July 15, 2019, Claimants submitted an Oklahoma Tax Commission Application for Refund of Motor Vehicle Payment, along with the Oklahoma license plates for both vehicles.

6. On or around August 29, 2019, Oklahoma Tax Commission sent a letter denying the Claimants' claim for refund for the Mazda due to the request not meeting the statutorily authorized reasons for refund of fees/penalties.

7. On or around August 29, 2019, Oklahoma Tax Commission sent a letter denying the Claimants' claim for refund for the Toyota due to the request not meeting the statutorily authorized reasons for refund of fees/penalties.

8. On or around November 4, 2019, Claimants protested the Oklahoma Tax Commission's denial.

9. This protest is properly before the Administrative Law Judge.

B. Additional findings of fact:

1. Claimants remitted \$99.00 in registration fees to the State of Oklahoma on the Mazda. Joint Exhibit 1.

2. Claimants remitted \$1,139.69 in motor vehicle excise tax and registration fees, and sales tax to the State of Oklahoma on the Toyota. Joint Exhibit 2.

3. Claimants purchased the Toyota on February 22, 2019 while living in Oklahoma. They applied for an Oklahoma title and registered the Toyota on March 5, 2019. After moving to Arizona, they had to register both vehicles with the State of Arizona to obtain insurance. Joint Exhibits 2, 5 and 8.

4. The amount in controversy is the motor vehicle excise tax and sales tax remitted on the Toyota and the balance of the registration fees remitted to Oklahoma on the vehicles from the time Claimants registered the vehicles in Arizona. Joint Exhibits 5 and 8.

### ISSUES AND CONTENTIONS

The stipulated issue is: “[w]hether Claimants are due a refund of the motor vehicle registration [fees], excise tax, and sales tax paid to Oklahoma for the months that the Claimants lived in Arizona.”

Claimants contend they are due a refund of the unused portion of the registration fees paid on the vehicles they transferred to the State of Arizona during the active registration period. They argue that they are paying twice for the same registration period, that the remainder of the Oklahoma

registration is not being used and this portion of the fees should be refunded. Claimant further contend that they are due a refund of the motor vehicle excise and sales taxes remitted on the Toyota because they paid both Oklahoma and Arizona for this vehicle.

The Division contends it properly denied Claimant's registration fees claim for refunds because the Oklahoma Vehicle License and Registration Act, 47 O.S., § 1001 et seq.; does not provide for a refund of registration fees when a taxpayer moves out of state before the expiration of the registration period. The Division further contends that Claimants have failed to show the motor vehicle excise and sales taxes were paid in error.

### 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 cause is vested in the Oklahoma Tax Commission. 68 O.S.2011, § 227. *See*, Att'y Gen. Op. 84-042.<sup>6</sup>

2. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in this state, the use of any vehicle registered in this state and the use of any vehicle registered for the first time in this state. 68 O.S.2011, § 2103(A)(1). The excise tax is due upon the transfer of legal ownership or first registration of such vehicle in this state, and is to be collected when the certificate of title for such vehicle is issued. 68 O.S.2011, § 2103(A)(3). The excise tax is delinquent if the vehicle is not titled and registered within thirty (30) days of obtaining legal ownership or possession. *Id.*

3. The phrases "Legal ownership" and "legally owned" for purposes of the Oklahoma Motor Vehicle Excise Tax Code ("Code") mean "the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner[.]" 68 O.S.2011, § 2101(14).

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<sup>6</sup> 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.

4. A credit of the motor vehicle excise tax paid on a new original vehicle, but not a refund, 68 O.S.2011, § 2103(D)(2); is allowed in certain explicit circumstances enumerated in § 2103(D)(1)(a) and (b). The situations enumerated in § 2103(D)(1)(a) and (b) are not applicable in this case.

5. The registration of motor vehicles in the State of Oklahoma is governed by the Oklahoma Vehicle License and Registration Act (“Act”)<sup>7</sup>. Section 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.

6. Every owner of a vehicle possessing a certificate of title shall, before using the same in this state, apply for the registration of such vehicle. 47 O.S.2011, § 1112. A registration fee is assessed during initial registration. 47 O.S.2011, § 1132(A). Upon filing a registration application and the payment of the fees provided, the Tax Commission shall assign to the vehicle a distinctive number and issue to the owner a certificate of registration, one license plate and a yearly decal. 47 O.S.2011, § 1113(A)(1).

7. As of July 1, 2017, sales tax is due at the rate of one and twenty-five-hundredths percent (1.25%) of the gross receipts of a sale of a motor vehicle or any optional equipment or accessories attached to motor vehicles. 68 O.S.Supp.2017, § 1355(2). A “sale” for purposes of the Oklahoma Sales Tax Code is defined to mean: “the transfer of either title or possession of tangible person property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplish in this state[.]” 68 O.S.2011, § 1352(22).

8. “The state cannot be sued for the recovery of taxes paid in absence of legislative consent to such suit, and hence the right to recover taxes so paid must be found in a statute.” *Sullivan v. Oklahoma Tax Commission*, 1954 OK 266, 283 P.2d 521, head note 1. “When

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<sup>7</sup> 47 O.S.2011, § 1101 et seq., as amended.

examining a statutory remedy to recover tax payments, [the court has] said that “[g]enerally, when a statute creates both a right and a remedy for its enforcement the statutory remedy is exclusive.” *Apache Corp. v. Oklahoma Tax Commission*, 2004 OK 48 at ¶ 10, 98 P.3d 1061, 1064, *citing R.R. Tway, Inc. v. Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972, 978.

### ANALYSIS

1. Title to and legal ownership of the Toyota was transferred to Claimants in the State of Oklahoma. Oklahoma Motor vehicle excise tax and sales tax were statutorily due. The Division’s denial of the claim for refund of the same was correct and proper.

2. No provision of the Oklahoma Vehicle License and Registration Act grants the relief requested by Claimants for the registration fees remitted on the vehicles.

### RECOMMENDATION

The protest to the denial of the motor vehicle excise tax, registration fees and sales tax claim for refund of Claimants, SPOUSE 1 . and SPOUSE 2 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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).