

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2020-05-05-05 / NON-PRECEDENTIAL
ID: CR-19-031-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 6th day of March, 2020. The same, together with the following correction, shall constitute the Order of the Commission.

As written, "...the hearing was rescheduled for February 4, 2019." Consultation with the ALJ confirms that the hearing date was rescheduled for February 4, 2020. See FCR at 2:4.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 6th 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. Claimant, CLAIMANT 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 July 23, 2019, Claimant registered a 2016 Chevrolet Impala, VIN 2G1145S31G9119553 ("Vehicle") in her name and paid motor vehicle excise tax and registration fees, and sales tax. On July 29, 2019, the vehicle was destroyed by fire. On September 3, 2019, the Division received Claimant's request for a refund of the excise tax, registration fees and sales tax remitted on the registration of the Vehicle. On October 3, 2019, the Division denied Claimant's request. On October 30, 2019, the Division received Claimant's 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 Code¹ and the Rules of Practice and Procedure before the Office of Administrative Law Judges². The case was docketed as Case No. CR-19-031-K and assigned to the undersigned.

A hearing was scheduled for December 11, 2019, by a *Notice of Hearing* issued November 27, 2019.³ On December 10, 2019, Claimant requested a thirty (30) day continuance of the hearing which request was granted and the hearing was rescheduled for February 4, 2019, by *Notice of Hearing* issued December 11, 2019. A closed hearing⁴ was held as scheduled. Claimant did not appear. ADMINISTRATOR, Division Administrator testified regarding the records of the Division and the reason for the denial of the refund. Exhibits 1 through 5 were identified and admitted into evidence. Upon conclusion of the hearing, the record closed and the protest to the denial of the claim for refund submitted for decision.⁵

FINDINGS OF FACT

Upon review of the file and records, including the digital recording of the hearing and the exhibits received into evidence, the undersigned finds:

1. On July 23, 2019, Claimant registered a 2016 Chevrolet Impala, VIN 2G1145S31G9119553 (“Vehicle”) in her name and paid motor vehicle excise tax and registration fees, and sales tax in the amount of \$687.75. Exhibit 1.

2. At the time of registration, insurance on the Vehicle was electronically verified. Exhibit 2.

¹ 68 O.S.2011, § 201 et seq., as amended.

² Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* (“OAC”).

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

⁴ Confidentiality of the proceeding was invoked by the Court. 68 O.S.2011, § 205.

⁵ *OAC* 710:1-5-39(a).

3. On September 3, 2019, the Division received Claimant's *Application for Refund of Motor Vehicle Payment* ("Application"). Exhibit 3. The reason given for the *Application* was that the Vehicle was destroyed by fire within days of getting the tag and she no longer had the Vehicle due to it being a total loss. *Id.* The *Incident Report* from the City of Oklahoma City Police Department shows the fire to the Vehicle occurred on July 29, 2019. *Id.*

4. By letter dated October 3, 2019, the Division denied the *Application* because: "[y]our request does not meet statutorily authorized reasons for refund of fee/penalties." Exhibit 4.

5. On October 30, 2019, the Division received Claimant's protest to the denial and request for hearing. Exhibit 5.

ISSUES AND CONTENTIONS

The issue presented for decision is whether Claimant has demonstrated a legal basis entitling her to a refund of the motor vehicle excise tax and registration fees, and sales tax remitted on the registration of the Vehicle.

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. 84-042.⁶

2. An excise tax is levied upon the transfer of legal ownership of any vehicle registered in this state, using any vehicle registered in this state and using any vehicle registered for the first time in this state. 68 O.S.2011, § 2103(A)(1). The excise tax is due at the time of transferring legal ownership or first registration in this state of such vehicle, and shall be collected during the issuance of a certificate of title for such vehicle. 68 O.S.2011, § 2103(A)(3). The excise tax is delinquent after the thirtieth day after the legal ownership or possession of any vehicle is obtained. *Id.*

⁶ 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.

3. “Legal ownership” and “legally owned” for purposes of the Oklahoma Motor Vehicle Excise Tax Code (“Code”) are defined to 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).

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). A “new vehicle” for purposes of § 2103 includes “any vehicle of the latest manufactured model which is owned or acquired by a licensed used motor vehicle dealer which has not previously been registered in this state and upon which the motor vehicle excise tax * * * * has not been paid.” 68 O.S.2011, § 2103(E).

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

⁷ 47 O.S.2011, § 1101 et seq., as amended.

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).

ANALYSIS

Claimant has the burden of proof. *OAC 710:1-5-47*. Claimant has not shown the excise tax, registration fees and sales tax were remitted through error of fact, computation or misinterpretation of law. No provision of the Uniform Tax Procedure Code, the Vehicle Excise Tax Act, the Oklahoma Vehicle License and Registration Act or the Oklahoma Sales Tax Code grants the relief requested.

RECOMMENDATION

The protest to the denial of the motor vehicle excise tax, registration fees and sales tax claim for refund of Claimant, CLAIMANT 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).