JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**2008-09-30-02 / NON-PRECEDENTIAL**
ID:	**CR-08-009-H**
DATE:	**SEPTEMBER 30, 2008**
DISPOSITION:	**DISMISSED**
TAX TYPE:	**MOTOR VEHICLE EXCISE**
APPEAL:	**NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled and numbered cause comes on for consideration of the *Motion to Dismiss Claim for Refund*, pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. HUSBAND AND WIFE ("Claimants") appears pro se.[1] The Accounting Section of the Motor Vehicle Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On July 9, 2008, the protest file was received by this office for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Oklahoma Tax Commission*.[3] On July 17, 2008, the Division filed a *Motion to Dismiss Claim for Refund*. On July 21, 2008, the *Notice to Appear or Respond in Writing* was mailed to the Claimants setting the hearing on August 12, 2008, at 9:30 a.m. to "…show cause why the above-styled and numbered protest should not be dismissed."[4]

On August 12, 2008, at 9:30 a.m., the hearing was held as scheduled. The Claimants failed to appear, contact the Division, or respond in writing. The Division called one (1) witness, SUPERVISOR, Supervisor, Accounting Section, Motor Vehicle Division, Oklahoma Tax Commission, who testified regarding the claim for refund and as custodian of the Division's records. The Division's Exhibits A through D were identified, offered, and admitted into evidence. The hearing was concluded, the record closed and this matter was submitted for decision on August 12, 2008.

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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 (8th ed. 2004), available at *http://westlaw.com*. (March 16, 2006).

[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] The notice was mailed to the last known address of the Claimants at ADDRESS.

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 *Motion to Dismiss Claim for Refund* and *Notice to Appear or Respond in Writing*, the undersigned finds:

1. On March 4, 2008, the Claimants paid to TAG AGENCY ("Tag Agency")[5] Seventeen Dollars ($17.00) in registration fees, Eight-five Dollars ($85.00) in excise tax, an Eleven Dollar ($11.00) title fee, Two Dollars ($2.00) for notary fees, and Two Dollars and Fifty Cents ($2.50) in service fees, totaling One Hundred Seventeen Dollars and Fifty Cents ($117.50) for the transfer of title on a 1994 Acura automobile.

2. The Claimants filed a request for refund[6] of the Eighty-five Dollars ($85.00) in excise tax, which they assert was overcharged by the Tag Agency. The Claimants state the basis for the refund of excise tax as follows, to-wit:

> I recently purchased a car and when I transferred the title I was told that even though I only paid $700.00 for the car I still had to pay tax on a value of $3500. I have enclosed a copy of the tag agent receipt as well as a copy of the receipt the seller provided me and pictures of the car. As you can see from the pictures this car is not worth $3500. It has no engine, no transmission, no interior, terrible paid, body damage, and worthless tires. It is simply a chassis and body. We are going to have to buy and install an engine and transmission, tires, interior and paint job.
>
> I am requesting a reimbursement for the taxes I was overcharged.

3. On May 6, 2008, the Division mailed a letter to the Claimants denying their request for refund of excise tax,[7] which states in pertinent part as follows, to-wit:

> …
>
> O.S. Title 68 § 2104 states that excise tax is based on the purchase price, as long as that purchase price is within 20% of average retail as listed in the automotive reference manual prescribed by the Tax Commission. The reference manual the Oklahoma Tax Commission uses is the National Automobile Dealers Association (NADA) manual. That manual reflects a price of $4375.00, and the 20% adjusted value is $3500.00.
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> …

[5] Division's Exhibit A.

[6] Division's Exhibit B. The refund request was undated and was not date stamped by the Division when it was received.

[7] Division's Exhibit C.

> If you feel that this refund denial is in error, you may file a written request for a hearing before the Oklahoma Tax Commission *within (30) days of the date of this letter*. (Emphasis added.)

…

4. On July 1, 2008, the Claimants mailed a protest to the denial of the refund, which was received by the Tax Commission on July 3, 2008.[8]

5. The Claimants' protest was not filed on or before the thirtieth day (30th) after the notice of denial was mailed.[9]

CONCLUSIONS

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[10]

2. If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth (30th) day after the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.[11]

3. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[12]

4. The Tax Commission is without jurisdiction to consider a protest that is not filed within the time provided by statute.[13] The question of the Commission's jurisdiction to consider a protest may be raised at any time, by a party, the Administrative Law Judge, or the Commission itself.[14]

5. A motion filed by a party to dismiss a protest for lack of jurisdiction, or a notice by the Administrative Law Judge or the Commission of intent to dismiss a protest on jurisdictional grounds, shall state the reasons therefore, shall be filed in the case, and shall be mailed to all parties or their authorized representatives. The motion or notice of intent to dismiss shall be set for hearing, which shall not be less than fifteen (15) days after the filing of such motion or notice of intent, at which time any party opposing such motion or notice of intent may appear and show cause why the protest should not be dismissed. Notice of the date, time, and place of the hearing

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[8] Exhibit D.

[9] Division's Exhibits C and D.

[10] OKLA. STAT. ANN. tit. 68, § 227(d) (West Supp. 2008).

[11] OKLA. STAT. ANN. tit. 68, § 227(d) (West Supp. 2008).

[12] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

[13] OKLA. ADMIN. CODE § 710:1-5-10(b) (July 11, 2003).

[14] OKLA. ADMIN. CODE § 710:1-5-46(c) (June 11, 2005).

shall be mailed to the parties or their representatives along with the motion or notice of intent to dismiss.[15]

The Division's *Motion to Dismiss Claim for Refund* and *Notice to Appear or Respond in Writing* comply with the provisions of OAC 710:1-5-46(d).

The Claimants' protest was post-marked July 1, 2008, after the thirty (30) day period provided by Section 227(d) of Title 68 had run.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case, that the Division's *Motion to Dismiss Claim for Refund* for "lack of jurisdiction" should be granted.

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.

[15] OKLA. ADMIN. CODE § 710:1-5-46(d) (June 11, 2005).