

Before the
Administrative Hearing Commission
State of Missouri



CAROLINE KLEMPKE,)	
)	
Petitioner,)	
)	
vs.)	No. 12-1349 RV
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

Caroline Klempe is liable for an additional \$210.60 in local sales tax on her purchase of a motor vehicle.

Procedure

On July 27, 2012, Klempe filed a complaint appealing a final decision by the Director of Revenue (“the Director”) assessing additional local sales tax on her purchase of a motor vehicle. We held a hearing on January 24, 2013. Klempe appeared by telephone and *pro se*. Legal Counsel Thomas A. Houdek represented the Director. The matter became ready for our decision on April 8, 2013, the date Klempe’s written argument was due.

Findings of Fact

1. Klempe resided within the city limits of Columbia, Missouri, at all times relevant to these findings.

2. On May 8, 2010, Klempke purchased a motor vehicle, a 2007 Acura, for a net price of \$8,500.00 from a motor vehicle dealer in Missouri.¹

3. On June 4, 2010, Klempke registered the Acura at a license office (“the license office”).

4. Although Klempke provided her correct address to the license office when she registered the Acura, the license office determined that she owed Boone County local sales tax -- 1.125 % -- on her purchase of the Acura instead of City of Columbia local sales tax, which is 3.125 %.

5. Thus, Klempke paid Missouri state sales tax on the net purchase price of the Acura in the amount of \$444.89, reflecting the State’s sales tax rate of 4.225%, and Boone County sales tax on the net purchase price of the Acura in the amount of \$118.46.

6. The City of Columbia audited the license office. The audit determined that Klempke had paid local sales tax at the lower rate imposed by Boone County, instead of the higher rate applicable in the City of Columbia, on her vehicle purchase.

7. On June 22, 2012, the Director issued a separate final decision assessing Klempke additional local sales tax in the amount of \$210.60 for the Acura. This was the difference between local sales tax in Columbia and local sales tax in Boone County on her purchase.

8. Klempke timely appealed the Director’s final decision.

Conclusions of Law

We have jurisdiction to hear Klempke’s complaint.² Klempke has the burden to prove she is not liable for the amount that the Director assessed.³ Our duty in a tax case is not merely

¹ There is no evidence in the record where the dealer was located. With no evidence to the contrary, and because Klempke has the burden of proof in this proceeding, we infer that the dealer was located in Missouri.

² Section 621.050.1. Statutory references, unless otherwise noted, are to RSMo 2000.

³ Sections 621.050.2 and 136.300.2.

to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.⁴ We may do whatever the law permits the Director to do, and we must do what the Director must do.⁵

Section 144.070.1, RSMo Supp. 2012, provides:

At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

Section 144.069 provides:

All sales of motor vehicles, trailers, boats and outboard motors shall be deemed to be consummated at the address of the owner thereof, and all leases of over sixty-day duration of motor vehicles, trailers, boats and outboard motors subject to sales taxes under this chapter shall be deemed to be consummated unless the vehicle, trailer, boat or motor has been registered and sales taxes have been paid prior to the consummation of the lease agreement at the address of the lessee thereof on the date the lease is consummated, **and all applicable sales taxes levied by any**

⁴ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁵ *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

political subdivision shall be collected on such sales by the state department of revenue on that basis.

(Emphasis added). Thus, when the purchaser of a motor vehicle registers that vehicle, he or she must pay all applicable taxes, including all sales taxes levied by a political subdivision. The local sales taxes are determined by the owner's address because § 144.069 deems any such sale to be consummated there.

Finally, § 32.087.13, RSMo Supp. 2012, provides:

Local sales taxes imposed pursuant to the local sales tax law on the purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the seller, but **shall be collected by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a taxing entity imposing a local sales tax under the local sales tax law.**

(Emphasis added). Klempe lived within the City of Columbia when she registered the Acura. The City of Columbia imposed a higher local sales tax than Boone County on the purchase of motor vehicles. Klempe paid local sales tax at Boone County's lower rate because that is what the license office instructed her to pay.

Klempe registered her vehicle and paid the tax, believing she had discharged her duty. Two years later, she received a notice telling her she owed additional tax. This was, undoubtedly, an unpleasant surprise. Although the notice of assessment failed to state it, her underpayment of local sales tax was due to a mistake made by the license office. Given that, Klempe believes the license office should be responsible for paying the additional taxes, which is a position with which we empathize.

Unfortunately, we are unable to exempt Klempe's liability for the additional tax. Because this Commission was created by state statutes, we have only such authority as the

statutes give us.⁶ Neither the Director, his employees, nor this Commission has the power to change the law.⁷ The law provides that all applicable sales taxes, including all local sales taxes, must be paid when a vehicle is registered. Klempe did not pay the Columbia local sales tax when she registered her vehicle. She must do so now. She is entitled to a credit against this amount of \$118.46, the amount she paid for Boone County's local sales tax.

Summary

Klempe is liable for an additional \$210.60 in local sales tax on her purchase of a motor vehicle.

SO ORDERED on May 14, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁶ *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

⁷ *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).