

Before the  
Administrative Hearing Commission  
State of Missouri



CLABE DOUGHERTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 14-0296 RV
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

We grant the Director of Revenue’s motion for decision on the pleadings.

**Procedure**

On March 3, 2014, Clabe Dougherty filed a complaint seeking a refund of fees paid for license plates and tabs. The Director of Revenue (“Director”) filed an answer and motion for decision on the pleadings on March 25, 2014. We notified Dougherty that he could respond to the Director’s motion on or before April 9, 2014, but he did not respond.

Regulation 1 CSR 15-3.446(4)<sup>1</sup> provides:

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party’s pleading, taken as true, entitles another party to a favorable decision.

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<sup>1</sup> All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

### **Facts Taken as True for Purposes of Ruling on the Motion**

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. On January 18, 2014, Dougherty and his wife sold two vehicles<sup>2</sup> to an individual. One had license tabs that expire sometime in 2014, and the other had tabs that expire sometime in 2015.
2. At the time Dougherty purchased the tags, the vehicles were for sale and the Doughertys were not driving them.
3. Dougherty applied for a refund of the unused portion of the plates and tags.
4. By letter dated February 13, 2014, the Director denied Dougherty's refund request.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050, RSMo 2000.<sup>3</sup> Dougherty has the burden to prove that he is entitled to a refund. *Id.* Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute. *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990). "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit." *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

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<sup>2</sup> We infer from the photos of the plates submitted by Dougherty that the vehicles in question were a motor vehicle and a trailer.

<sup>3</sup> Statutory references are to RSMo Supp. 2013, unless otherwise noted.

Missouri statutes provide for refunds or credits against unused license plates and tabs from motor vehicles only in limited circumstances. Section 301.121, for example, provides for a refund of certain amounts paid when a license plate is surrendered, but only for commercial vehicles registered in excess of 54,000 pounds. By contrast, § 301.140.7, which applies to other motor vehicles, provides:

Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, **the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle.** Such credit shall be granted based upon the date the license plates are surrendered. **No refunds shall be made on the unused portion of any license plates surrendered for such credit.**

Section 301.140.7 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, Dougherty is not eligible for a credit under this subsection at this time, and this subsection expressly does not allow a refund for the unused portion of plates and tabs. Nor does § 301.140.3, which allows a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles, apply to Dougherty.

Dougherty states in his complaint that, at the time the tags were purchased, he was not driving the vehicles, and the purchase was only to “make the units legal.” But we may do only what the law allows us to do, and neither the Director nor this Commission may change the law. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). When we consider the general principles of law governing refunds, and examine the pertinent statutes, we find no law

authorizing a refund to Dougherty under these circumstances.<sup>4</sup> We conclude that none exists. Therefore, we must deny Dougherty's request for a refund.

### Summary

Dougherty is not entitled to a refund of the fees he paid for the license plates and tabs.

SO ORDERED on April 16, 2014.

*/s/ Karen A. Winn*

KAREN A. WINN

Commissioner

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<sup>4</sup> We note that we have included a considerably more detailed rationale in our decision than did the Director in his motion. We again caution the Director that a dispositive motion should inform both this Commission and the opposing party of the facts, law, and reasoning on which the Director relies to advocate his position.