

Before the
Administrative Hearing Commission
State of Missouri



CASSANDRA NEER,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1798 RV
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We deny Cassandra Neer’s request for a refund of fees paid for her motor vehicle license plates and tabs.

Procedure

On October 16, 2013, Neer 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 October 24, 2013. We gave Neer until November 8, 2013 to respond to the Director’s motion, but she did not respond.

Regulation 1 CSR 15-3.446(4) 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.

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. Neer paid for a two-year renewal of her license plate tabs. Sometime after that, she moved out of state.
2. Neer surrendered the Missouri license plates and tabs for her motor vehicle. She requested a refund on the unused portion.¹
3. The Director denied her request. The Director's letter denying Neer's request is dated May 29, 2013.
4. Neer filed her appeal with this Commission on October 16, 2013.²

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050, RSMo 2000.³ Neer has the burden to prove that she 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).

¹ No evidence in the record indicates when Neer surrendered her plates, when the plates would have expired, when Neer asked for the refund, or how much the requested refund was.

² Neer's complaint may be untimely, in which case we would lack jurisdiction to hear it. *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893 (1988). The Director's final decision states that Neer's time to appeal her decision was limited to 60 days after the date the decision was mailed or delivered. It is unclear why the appeal period is 60 days instead of the 30 days specified in § 621.050, RSMo 2000, which is also cited in the Director's decision letter. Either way, if the letter was mailed on May 29, 2013, Neer's appeal would be untimely. The Director did not raise the issue of timeliness in his motion, however, or submit any evidence as to when the decision letter was mailed, so we do not address the issue.

³ Statutory references are to RSMo Supp. 2012, unless otherwise noted.

Neer asks for a refund because she has moved out of state and cannot transfer the plates and tabs to another vehicle. The Director argues that neither he nor this Commission has the discretion to issue a refund under these circumstances. The Director is correct.⁴

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).

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, § 301.140.8, 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.**

⁴ Although we find for the Director in this case, we note that he cites no law in his motion advancing his position that no refund may issue for the unused portion of license plates and tabs. Instead, he states only “Respondent knows of no provision of law granting Respondent authority to refund the unused portion of any license plates and/or tabs.” We have granted similar motions upon similar motions in the past, *see, e.g., Dean v. Director of Revenue*, No. 12-1841 RV (December 10, 2012), but a party’s motion on the pleadings should demonstrate that the other party’s “pleading, taken as true, entitles [it] to a favorable decision.” 1 CSR 15-3.440(4). Such demonstration should include citation to relevant laws and appropriate legal argument. The Director is in the best position to cite such laws as well as to keep abreast of any changes in the relevant law.

Section 301.140.8 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, this subsection does not apply to Neer. This subsection expressly does not allow a refund. 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.

Thus, when we consider the general principles of law governing refunds, and examine the pertinent statutes, we find no law authorizing a refund to Neer under these circumstances. We conclude that none exists. 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). Therefore, we must deny Neer's request for a refund.

Summary

Neer is not entitled to a refund of the fees she paid for the license plates and tabs that she surrendered to the Director.

SO ORDERED on November 19, 2013.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner