

Before the
Administrative Hearing Commission
State of Missouri



ROBERT LURIE and LURIE’S HOME)	
SUPPLY CENTER,)	
)	
Petitioners,)	
)	
vs.)	No. 14-0413 RV
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

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

Procedure

On April 1, 2014, Robert Lurie and Lurie’s Home Supply Center (“Lurie”) 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 April 25, 2014. We notified Lurie that he could respond to the Director’s motion on or before May 12, 2014, but he did not respond.

Regulation 1 CSR 15-3.446(4)¹ 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.

¹ 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 November 8, 2013, Lurie purchased license tab fees for a 1995 Ford “Probe” motor vehicle that he owned. He paid \$24.25 for the tabs, \$3.50 for an agent fee, and a \$5.00 late renewal fee, for a total of \$32.75.
2. Lurie sold the motor vehicle on the same day.
3. Lurie applied for a refund of the unused portion of the plates and tags.
4. By letter dated March 21, 2014, the Director issued a final decision denying Lurie’s refund request.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director’s final decisions. Section 621.050.1, RSMo 2000.² Lurie has the burden to prove that he is entitled to a refund. Section 621.050.2. 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).

² 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.**

(Emphasis added).

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, Lurie 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 Lurie.

Lurie states in his complaint that he would not have purchased the tabs, but the vehicle purchaser changed his mind and unexpectedly decided to go through with the purchase. As this occurred on the same day that he purchased the tabs, he never used them, and he believes he has complied with all the requirements for a refund. Lurie did submit the proper forms to claim a refund, but the law does not allow one under these circumstances. 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 Lurie under these circumstances.³ We conclude that none exists. Therefore, we must deny Lurie's request for a refund.

Summary

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

SO ORDERED on August 27, 2014.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner

³ 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.