

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 86-10-21-03 / NON-PRECEDENTIAL  
**ID:** CR-86-006  
**DATE:** OCTOBER 21, 1986  
**DISPOSITION:** DENIED  
**TAX TYPE:** MOTOR VEHICLE EXCISE  
**APPEAL:** AFFIRMED / OK S.CT. 67,729  
1989 OK 67, 773 P.2D 736, 60 OBJ 1121

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission and hearing had, at which hearing Protestant/Claimant appeared by and through NAME, Attorney, and OWNER, owner of PROTESTANT/CLAIMANT. The Motor Vehicle Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, Attorney, of the General Counsel's Office of the Oklahoma Tax Commission.

Opening statements were made and exhibits, not itemized herein, were introduced. OWNER testified in behalf of Protestant/Claimant. Closing arguments were made by the respective parties, and the matter was submitted for a decision.

**STATEMENT OF FACTS**

The Protestant/Claimant's business operation is that of car rental on a short term basis in the city of CITY, Oklahoma. Protestant/Claimant also sells the vehicles after the vehicles have been rented for an undetermined period of time by the Protestant/Claimant in its rental business. The decision as to when the vehicles owned by the Protestant/Claimant are to be sold is a business policy decision and/or business judgement determination of the Protestant/Claimant.

In the operation of the business enterprise of the Protestant/Claimant as to the rental of the vehicles, a motor vehicle rental tax was collected on the gross receipts from the rental of their vehicles based upon § 2110 of Title 68 of the Oklahoma Statutes and the Protestant/Claimant has in fact collected and remitted the motor vehicle rental tax on the gross receipts as required by law from October 1, 1982. Protestant/Claimant, under the statutes, also paid a motor vehicle excise tax upon the purchase of the vehicles used in its rental business pursuant to § 2103, basing this decision to pay the motor vehicle excise tax upon the fact that the Protestant/Claimant was not sure at the time the vehicles were purchased whether or not it was going to hold the vehicles in its rental business for a period of time greater than twelve (12) months from the date of purchase, although Protestant/Claimant could have claimed an exemption pursuant to § 2105(i) of Title 68 of the Oklahoma Statutes.

Therefore, the Protestant/Claimant paid the vehicle excise tax at the time of purchase of the vehicles used in his rental business, as well as the payment of motor vehicle rental tax on the gross receipts from the rental of their vehicles.

On February 27, 1986, PROTESTANT/CLAIMANT, by and through its counsel, NAME OF LAW FIRM, applied for a refund of the motor vehicle rental tax in the amount of One Hundred Forty-Eight Thousand Six Hundred Sixty-One Dollars and No Cents (\$148,661.00) paid under § 2110 of Title 68 of the Oklahoma Statutes. On March 11, 1986, applicant provided additional information and offered to provide documentation for the refund to the Motor Vehicle Division of the Oklahoma Tax Commission. The Motor Vehicle Division of the Oklahoma Tax Commission rejected the request for refund by letter dated April 28, 1986. Protestant/Claimant thereafter on May 2, 1986 requested a hearing on its claim for refund as provided under § 228 of Title 68 of the Oklahoma Statutes.

### **ISSUES AND CONTENTIONS**

It is the contention of the Protestant/Claimant in this matter that, in view of the fact Protestant/Claimant did in fact pay motor vehicle excise tax on certain vehicles at issue, which were held for a greater period than twelve (12) months and later sold, that the payment of the motor vehicle rental tax as to the gross receipts of the vehicles rented was paid improperly at the time that they were rented and should in fact be refunded. Protestant/Claimant asserts that the claim for refund should be honored under the provisions of § 227 of Title 68 which provides for a claim for refund of taxes paid if a taxpayer has paid the tax through an error of fact, computation, or misinterpretation of law.

It is the contention of the Motor Vehicle Division of the Oklahoma Tax Commission that the payment of the vehicle excise tax on the purchase of the vehicles by the Protestant/Claimant at the time they were purchased, as well as the motor vehicle rental tax on gross receipts from the rental of such vehicles, was in fact a business policy decision and/or business judgment by the Protestant/Claimant and that, as such, the refund claimed by the Protestant/Claimant should in fact be denied. Further, the Motor Vehicle Division of the Oklahoma Tax Commission contends that the provisions of § 227 would not be applicable to the facts and circumstances as set forth in this case, thereby entitling the Protestant/Claimant to a refund of the motor vehicle rental tax paid on the gross receipts on the vehicles rented in its business rental operation by the Protestant/Claimant.

The issue to be determined is whether or not the Protestant/Claimant's claim for refund is in fact based upon a mistake of fact or misinterpretation of law under the provisions of § 227 of Title 68 of the Oklahoma Statutes or rather based upon the Protestant/Claimant's business judgment and/or business policy decision, which was made with full knowledge of the facts and law at the time that the Protestant/Claimant paid the vehicle excise tax on the vehicles which were held for greater than a twelve (12) month period, as well as the motor vehicle rental tax on the gross receipts of vehicles rented by Protestant/Claimant in its motor vehicle rental business operation.

### **APPLICABLE LAW**

The Vehicle Excise Tax Act is found in § 2101 et seq. of Title 68 of the Oklahoma Statutes. Under the provisions of § 2103, there is levied an excise tax on the transfer of legal

ownership, use and first registration of vehicles within the State of Oklahoma, wherein that section provides as follows:

(a) There is hereby levied an excise tax of three and one-fourth percent (3¼%) of the value of each vehicle, upon the transfer of legal ownership of any such vehicle registered in this state and upon the use of any such vehicle registered in this state and upon the use of any such vehicle registered for the first time in this state, except as otherwise provided in Sections 2101 through 2108 of this title. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Tax Commission at the time of the issuance of a certificate of title for any such vehicle. In the event an excise tax is collected on the transfer of legal ownership or use of the vehicle during any calendar year, then an additional excise tax must be collected upon all subsequent transfers of legal ownership. The excise tax levied by this section shall be delinquent from and after the twentieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as herein provided on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

The Protestant/Claimant's facts and testimony reflect it did in fact pay the vehicle excise tax on the purchase of the vehicles to be used in its rental business operation in the city of CITY on all vehicles that were purchased by the Protestant/Claimant.

Under the provisions of § 2105, there are certain specified exemptions from the levy of the vehicle excise tax for certain specified instances and in the case at bar, the specific exemption being § 2105(i), which states as follows:

An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by the Oklahoma Tax Code for:

(i) Any such vehicle exempted from the excise tax by this subsection which is later sold or title transferred prior to the expiration of twelve (12) months shall cause to become due and payable immediately from the seller the amount of excise tax which would have been due had this exemption not been granted plus a penalty of twenty percent (20%). (Emphasis Added)

In the instant case, we find that the Protestant/Claimant, at the time that the vehicles were purchased, did in fact pay the vehicle excise tax pursuant to the provisions of § 2103, making a business judgment and/or policy decision to pay that vehicle excise tax in light of the fact that an exemption existed under the provisions of § 2105(i), because Protestant/Claimant was not sure that the vehicles purchased would in fact be sold or title transferred after the expiration of a twelve (12) month period of time as per the provisions of § 2105(i) and therein avoid the twenty percent (20%) penalty provision contained within the exemption.

Section 2110 provides for a rental tax on motor vehicles rented in lieu of the motor vehicle tax levy of § 2103, providing as follows, to-wit:

A. There is hereby levied a rental tax of three and one-fourth percent (3¼%) on the gross receipts of all motor vehicle rental agreements as provided in this section. This tax shall be levied on any rental agreement of ninety (90) days or less duration on any vehicle that is rented to a person by a business engaged in renting motor vehicles without a driver. This rental tax shall not apply to any lease agreements. For purposes of this section, “vehicle” and “person” shall have the same meanings as defined in Section 2101 of this title.

B. This rental tax is in lieu of the motor vehicle excise tax and shall be apportioned in the manner as provided in Section 2102 of this title.

C. The tax hereby levied shall be collected at the time of the payment of the rental agreement and shall be due and payable to the Tax Commission by the business engaged in renting these vehicles on the first day of each month. The Tax Commission shall implement such rules and regulations and devise such forms as it deems necessary for the orderly collection of this tax and the excise tax and penalty provided for in subsection (i) of Section 2105 of this title. (Emphasis Added)

The testimony and facts reflect that the Protestant/Claimant did in fact pay the motor vehicle rental tax on the gross receipts of all motor vehicles rented in its business operations for the years in question and concedes that this tax was collected and remitted under the provisions of the foregoing section. This motor vehicle rental tax on the gross receipts constitutes the Protestant/Claimant’s refund request.

The Protestant/Claimant stated, as the evidence reflects, that they were not sure at the time the vehicles were purchased and the vehicle excise tax paid at the time of purchase, how long in fact the vehicles would be held for rental and therefore did not claim the exemption under the provisions of § 2105(i). The testimony reflects that vehicles were held on an average from nine (9) months to eighteen (18) months, there being no standard period set by the Protestant/Claimant as to when the vehicles would be withdrawn from the rental inventory and disposed of by sale and/or title transferred, the decision to withdraw from the rental operation and to sell the vehicles being an obvious business policy decision and/or business judgment by the Protestant/Claimant.

The Protestant/Claimant attempts to buttress its argument for a refund by relying on the statutory provisions contained within § 227 of Title 68, which provides for refunds of taxes paid in certain circumstances. Section 227 states specifically in regard to erroneous payments and/or claims for refunds as follows:

(a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or mistake of law, any tax collected by the Tax

Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof if such payment was made through error of fact or computation, or within one (1) year from the date of payment thereof if such payment was made through misinterpretation of law, file with the Tax Commission a verified claim for refund of such tax so erroneously paid.

A mistake of fact under Oklahoma law is not distinguished from error of fact as used in § 227. Sun Oil Company v. Oklahoma Tax Commission, 620 P.2d 896,897 (Okla. 1980). A mistake of fact is defined as a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting of, (1) an unconscious ignorance or forgetfulness of a fact, past or present; or (2) belief in the present existence of a thing which does not exist or in the past existence of such a thing which has not existed. Black's Law Dictionary 903 (Rev. 5th Ed. 1979).

A mistake of fact has been judicially defined as a situation in which a person understands the facts to be other than they actually are as where some fact which really exists is unknown, or some fact is supposed to exist which really does not or did not exist. Baratti v. Baratti, 109 Cal. App.2d 917, 242 P.2d 22; Kowalke v. Milwaukee Electric R. and Light Co., 103 Wis. 472, 79 N.W. 762.

In the case at bar, the facts and testimony reflect that the Protestant/Claimant had in fact been in the business of car rental for a period of twenty (20) years. Prior to opening the rental business in the city of CITY in 1981, the Protestant/Claimant's owner/operator had conducted a car rental business in the State of Texas, which had similar laws to that of the State of Oklahoma.

Therefore, the Protestant/Claimant, based upon the facts and testimony presented at the hearing, reflect that all the facts were at the disposal of the Protestant/Claimant when the business judgement and/or policy decision was made to pay the motor vehicle rental tax on the gross receipts of cars rented now claimed as a refund. The fact that the Protestant/Claimant's business policy decision or business judgment was inaccurate and/or inexact is neither grounds for a refund nor contemplated by the Legislature in the enactment of the provisions of § 227.

### **CONCLUSIONS OF LAW**

In view of the above and foregoing factual situation and applicable law thereto, the Administrative Law Judge concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) This is a case of first impression before the Oklahoma Tax Commission.
- (3) The Protestant/Claimant's business policy decision and/or business judgment to pay the motor vehicle rental tax pursuant to the provisions of § 2110 and the fact that the

Protestant/Claimant did not avail itself of the exemption contained within § 2105(i) is not a ground for a refund based on mistake of fact or mistake of law under the provisions of § 227.

(4) The Protestant/Claimant's claim for refund in the amount of One Hundred Forty-Eight Thousand Six Hundred Sixty-One Dollars (\$148,661.00) should in fact be denied.

**DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the claim for refund of motor vehicle rental tax of PROTESTANT/CLAIMANT be denied.

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.