JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-03-22-005 / NOT PRECEDENTIAL**
ID: **P9600397**
DATE: **03-22-01**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE RENTAL TAX**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulate to the following:

1. PROTESTANT is a Delaware corporation domesticated in the State of Oklahoma with the principal place of business at 0000 N. ANONYMOUS, BIGCITY, Oklahoma.

2. PROTESTANT is a franchised automobile dealer of ANONYMOUS Motor Company.

3. PROTESTANT is a participant in the ANONYMOUS Service Loaner Program ("SLP") which is a program established by ANONYMOUS to encourage ANONYMOUS dealership customers to become lifetime purchasers and is designed to increase customer satisfaction for ANONYMOUS products and ANONYMOUS service.

4. ANONYMOUS dealers must qualify and be accepted by ANONYMOUS for the SLP by meeting certain rigorous customer-oriented service standards.

5. Under the SLP, the dealer provides alternative transportation to a service customer (i.e. Loaner Vehicle) in SLP specified situations:

(a) Customers primarily with warranty repairs;
(b) Customers whose vehicles are kept overnight with no other loaner options;
(c) Customers who live outside the dealership shuttle service area; and
(d) Customers with special needs.

6. The loaner vehicle provided by the dealer to the service customer must be an ANONYMOUS manufactured vehicle and the service must be provided upon ANONYMOUS vehicles only. Customers with non-ANONYMOUS automobiles in for service are not eligible for the program.

7. ANONYMOUS requires as a part of the SLP that any service customer who receives the use of a loaner vehicle must sign a Rental Agreement (the "Agreement) (pages 4-3 through 4-7 of the SLP Operating Guide describes the requirement of the Agreement), a Legal Contract containing the same information and qualifications as if the customer were paying for the use of the loaner vehicle.

8. Only the dealer and the customer are parties to the Agreement.

9. ANONYMOUS is not a party to the Agreement.

10. Liability and Comprehensive Insurance on the loaned vehicle is paid by PROTESTANT. The customer may elect insurance coverage or utilize his own for liability insurance purposes.

11. The Agreement is required to be signed by the service customer to establish that appropriate insurance coverage is in place to protect the dealer and the customer and, in the event of damage or destruction of the vehicle to establish financial responsibility for the vehicle.

12. The procedure for qualifying the service customer and executing the Agreement is identical to that of renting a vehicle for compensation. The major difference is that no payment is required from the customer under the SLP.

13. Each dealer participating in the SLP must, based on a formula determined by ANONYMOUS, maintain a minimum number of loaner vehicles available for the SLP, all at dealer expense.

14. The SLP vehicles may be owned by the dealership, an in-house rental agency (sometimes a subsidiary of the dealership) or, with the approval of ANONYMOUS, an outside or independent rental agency may be utilized.

15. PROTESTANT maintains an in-house rental agency (not separately incorporated) which rents automobiles to the public on a commercial basis and also provides the loaner vehicles to service customers under the SLP.

16. The rental tax on motor vehicles (68 O.S. § 2110) is paid by PROTESTANT on automobiles rented to the public and is not a question in this case.

17. Under the SLP, ANONYMOUS, during the taxable periods in question, paid PROTESTANT $7.14 per day for each loaner vehicle provided at no cost to the service customer under the SLP to assist in defraying the actual vehicle expense to the dealer, which expense substantially exceeds the payment by ANONYMOUS under the SLP.

18. For internal accounting purposes, the expense reimbursement by ANONYMOUS under the SLP program is credited by PROTESTANT to the service department to defray service department expenses as the cost of the loaner vehicles to service customers is a service department cost. In addition, for internal accounting purposes only in order to appropriately determine employer compensation, the service department was charged, during the taxable periods in question, a per diem for loaner vehicles under the SLP by the in-house rental agency of $21.00 to $25.00 per day.

19. To receive payment from ANONYMOUS under the SLP, Form XXX 9999 must be filed with ANONYMOUS.

20. Under the SLP, a dealer may only claim reimbursement for a certain maximum number of days, which number is determined by a formula set out in the SLP program guide. All loaner vehicles provided by the dealer under the SLP may not qualify for reimbursement.

21. By letter dated March 26, 1996, the Business Tax Division included payments by ANONYMOUS, pursuant to the SLP program for the taxable periods 5/1/92 through 4/30/95 in the amount of $97,011.69 as gross receipts of a motor vehicle agreement under the *Rental Tax On Motor Vehicle Rentals* (68 O.S. § 2110) and proposed assessment of tax pursuant to such statute at $5,918.53 plus interest and penalty.

22. PROTESTANT received an extension of time to file its protest to June 24, 1996, by Oklahoma Tax Commission letter dated April 23, 1996.

23. PROTESTANT timely filed its Protest of the proposed assessment of tax by letter dated June 24, 1996, and stamped "Filed" June 24, 1996, by the Oklahoma Tax Commission.

ISSUE AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the payments by ANONYMOUS Motor Company to Protestant pursuant to the ANONYMOUS Service Loaner Program constitute gross receipts of a motor vehicle rental agreement. The second issue is whether the service loaner vehicle is rented to a person.

Protestant contends that the payments from ANONYMOUS Motor Company should not be considered to be gross receipts of a motor vehicle rental agreement. In support of this contention, Protestant argues that the payments by ANONYMOUS are made pursuant to the ANONYMOUS Service Loaner Program and are intended to encourage the dealer to provide a loaner program and to defray the expenses of maintaining a minimum number of available vehicles and the cost of administering the program. Protestant further argues that the rental agreement is executed merely to establish the legal relationship between the customer and Protestant for insurance purposes, that the customer pays nothing pursuant to the rental agreement and that ANONYMOUS is not a party to the rental agreement.

Protestant further contends that the service loaner vehicle is not rented. In support of this contention, Protestant argues that no rent is paid for the use of the vehicle by the person who receives the use and who is the only party to the rental agreement with Protestant.

The Division contends that the assessment should be sustained. In support of this contention, the Division argues that regardless of the source of the payment, the payment constitutes consideration for providing vehicles to Protestant's customers and is therefore taxable as gross receipts of a motor vehicle rental agreement.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. A rental tax is levied on the gross receipts of all motor vehicle rental agreements. 68 O.S. 1991, § 2110(A). The motor vehicle rental agreements subject to the tax are "any rental agreements 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 in Oklahoma, irrespective of the state in which the vehicle is registered." Id.

3. In determining the scope of a statute the court must begin with the statutory language itself. ***Wilson v. Stocker***, 819 F.2d 943 (10th Cir. 1987). Absent contrary definition, words of a statute are to be given same meaning as that attributed to them by ordinary and common definitions. ***Anson Corp. v. Hill***, 841 P.2d 583, (Okl. 1992). Where the language of a statute is plain and unambiguous, and the meaning is clear and unmistakable, no occasion exists for the operation of rules of construction and the statute must be accorded the meaning as expressed by the language employed therein. ***Cavett v. Geary Board of Education***, 587 P.2d 991 (Okl. 1978).

4. "Gross receipts" is defined as "the total amount of money or the value of other considerations received from selling property or from performing services." Black's Law Dictionary 633 (5th ed. 1979).

5. Here, Protestant participates in a program to provide loaner vehicles to its customers while performing warranty repairs on the customers' vehicles. Protestant used its rental vehicles as loaner vehicles and the customers executed rental agreements on those vehicles. There is no dispute that Protestant is engaged in the business of renting motor vehicles without a driver in Oklahoma or that the warranty customers' use of the vehicles is for ninety (90) days or less duration.

Protestant did not charge the warranty customer a fee or rent for the use of the loaner vehicles. However, ANONYMOUS Motor Company reimbursed Protestant for the use of the loaner vehicles by the warranty customers on a per vehicle per day basis.

The rental tax under Section 2110(A) is imposed on "the gross receipts of all motor vehicle rental agreements". The statutory language is not limited to charges imposed on the motor vehicle's user. The reimbursement by ANONYMOUS Motor Company constitutes consideration for the warranty customers' use of the loaner vehicle. Further, the warranty customer is provided use of the vehicle based on said consideration. Accordingly, the reimbursement constitutes gross receipts to Protestant for the customers' use of the vehicle and is taxable under Section 2110(A).

6. Protestant's protest should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is DETERMINED that the protest of Protestant be denied. It is further DETERMINED that the amount in controversy be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.