

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2002-04-30-007 / NOT PRECEDENTIAL  
**ID:** CR000005  
**DATE:** 04-30-02  
**DISPOSITION:** DENIED  
**TAX TYPE:** SALES  
**APPEAL:** OK SUP CT 97,659 / DISMISSED

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant was notified by letter dated February 13, 1996, that pursuant to an examination of its records by the Audit Division for the period January 1, 1993, through December 30, 1995, it did not owe any additional sales, use or withholding tax.

2. By letter dated June 20, 1997, the Motor Vehicle Division assessed registration fees and excise taxes on vehicles that Claimant had registered as rental vehicles. The Division, based on information obtained from Claimant which indicated that its rentals were usually twelve (12) months and never less than ninety (90) days, concluded that these vehicles did not constitute rental vehicles and, therefore, registration fees and excise taxes were due on the vehicles. In that matter, Claimant conceded that it owed registration fees and excise tax on forty (40) of the vehicles still in its possession; however, Claimant objected to any registration fees or excise tax being due on the remaining thirty-one (31) vehicles for the reason that the vehicles were no longer in its ownership. In response to a directive of the Administrative Law Judge, the Division admitted that the portion of the registration fee and excise tax assessment relating to seventeen (17) of the vehicles was barred by the applicable statutes of limitation. The Commission found that the registration fee and excise tax assessment was correct as to the remaining vehicles.

3. On November 7, 1997, Claimant filed amended sales tax reports for the months of October 1994 through June 1997. Claimant deducted on Line 2, "Non-taxable sales", all sales previously reported for the referenced periods.

4. The amount of the refund claimed by Claimant pursuant to the amended returns is \$16,894.80.

5. By letter dated July 29, 1998, the Account Maintenance Division acknowledged receipt of Claimant's refund request. This letter also advised the Claimant that the records of the Tax Commission indicate that at the time the lease occurred the motor vehicle excise tax had not been paid, as required by Section 1355 of Title 68, and that therefore Claimant's sales tax refund request was denied.

6. By letter dated August 4, 1998, Claimant protested the Division's denial of the refund request.

7. Mr. X, one of Claimant's representatives and a witness on Claimant's behalf, testified that upon the advice and with the assistance of a Division representative, he completed approximately thirty-eight (38) or forty (40) amended sales tax returns to zero out the sales taxes previously reported and that he reviewed company checks and verified that the sales tax amounts reflected on the original sales tax reports had been paid. Around the time the amended reports were filed, Mr. X stated that arrangements had been made to pay the outstanding excise tax in three payments. Additionally, he stated that he reviewed a number of the leases for 1992 through 1995; that the leases for the last part of 1996 have not been located; and that on, at most, 20% of the cases, the worksheets used to determine a person's lease payment showed sales tax was calculated, but on the remaining worksheets, it was not.

Mr. X admitted that it was impossible from a review of the Claimant's records to determine how Claimant arrived at the amount of sales tax that was paid.

8. The Master Rental Contract and the Rental Rate and Term Addendum to the Master Rental Contract both indicate that the monthly rental payment includes sales tax. The Master Rental Contracts and the attached Addenda submitted were dated in either 1996 or 1997.

9. At the time the sales tax at issue accrued and was remitted to the Commission in regard to the vehicle leases, the excise tax had not been paid on any of these vehicles.

### **ISSUE AND CONTENTIONS**

The issued presented for decision is whether the Division's denial of the claim for refund of the sales taxes is erroneous.

Claimant contends that from 1993 to 1997, it was paying sales tax on its vehicle leases; that it was audited in 1996 by the Tax Commission and that the audit correspondence received from the Division seemed to indicate that "all was being done properly."

Claimant further contends that subsequently it was determined that excise tax should have been paid instead of sales tax and that the sales tax mistakenly remitted should be refunded directly to Claimant, because a vast majority of the funds were not collected from its customers but were paid by Claimant.

The Division contends that Claimant's vehicle leases during 1994 through 1997 were not exempt from sales tax because, at the time vehicles were being leased, no excise tax had been paid. The Division also contends that Claimant cannot document how much refund is due. Specifically, the Division cannot determine to which vehicles or leases the sales tax was attributable.

Additionally, Division contends that if a refund is granted that, in those instances where the lease agreement indicates that sales tax was included in the lease payments, the Claimant be required to remit that tax back to its customers.

### CONCLUSIONS OF LAW

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

2. The sale of tangible personal property in the State of Oklahoma, unless otherwise exempted by the provisions of the Oklahoma Sales Tax Code<sup>1</sup>, is subject to sales tax. 68 O.S. 1991, Section 1354(1)(A).<sup>2</sup>

3. "Sale" is defined by the Oklahoma Sales Tax Code to mean "the transfer of either title or possession of tangible personal property for a valuable consideration ... including the exchange, barter, lease or rental of tangible personal property ...." 68 O.S. Supp. 1992, Section 1352(M).

4. Section 1355(6)<sup>3</sup> of Title 68 specifically exempts from the levy of sales tax "[l]eases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103" of Title 68.

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<sup>1</sup> 68 O.S. 1991, 1350 et seq.

<sup>2</sup> This section provides :

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property, except newspapers and periodicals;

\* \* \*

<sup>3</sup> This section was previously codified as 68 O.S. Supp. 1994, § 1355(F).

5. As a general rule, statutes exempting property from taxation are to be applied circumspectly and are to be strictly construed against the allowance of an exemption. *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 563 P.2d 641 (Okl. 1977); *Phillips Petroleum Co. v. Oklahoma Tax Commission*, 542 P.2d 1303 (Okl. 1975). The language of an exemption statute may not be construed so as to give it an effect which is not intended. *Protest of Hyde*, 188 Okl. 413, 110 P.2d 292 (1941).

6. Sales tax is due on the sale of tangible personal property, i.e., the lease of vehicles, unless otherwise exempted. In this case, at the time the sales tax became due there was not an applicable exemption because the excise tax had not been paid. Therefore, the Claimant's sales tax refund claim should be denied. Even if the transactions at issue could qualify for exemption under Section 1355(6) of Title 68, Claimant has failed to provide sufficient documentation to tie the sales tax claimed to a specific lease and/or vehicle, or to demonstrate who paid the sales tax on the vehicle leases, Claimant or its customers.

### DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the sales tax claim for refund of CLAIMANT be denied.

### 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.