

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2011-01-18-02 / NON-PRECEDENTIAL  
**ID:** CR-10-012-K  
**DATE:** JANUARY 18, 2011  
**DISPOSITION:** SUSTAINED  
**TAX TYPE:** SALES  
**APPEAL:** NO APPEAL TAKEN

### ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 15th day of December, 2010, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

### STATEMENT OF THE CASE

On or about February 11, 2010, Claimant, a 100% disabled veteran filed a claim for refund of sales tax paid on a vehicle lease. The Account Maintenance Division by letter dated September 1, 2010, notified Claimant that a portion of the refund had been denied. Claimant timely protested the partial denial of the refund by letter dated September 17, 2010.

On September 21, 2010, the Division referred the protest to the Office of the Administrative Law Judges for the institution of proceedings consistent with the Uniform Tax Procedure Code<sup>1</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>2</sup>. The protest was docketed as Case No. CR-10-012-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A hearing was scheduled for November 15, 2010, by *Notice of Hearing* issued September 23, 2010.<sup>4</sup> The Division's Memorandum Brief was filed November 8, 2010. The hearing was held as scheduled. Claimant neither appeared at the hearing nor responded to the *Notice* that was forwarded to his last known address<sup>5</sup>. The Division called one witness: AUDITOR, Auditor who testified with respect to the records of the Division and the reasons for the partial denial of Claimant's refund claim. Exhibits A through D were identified, offered and admitted into

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<sup>1</sup> 68 O.S. 2001, § 201 et seq., as amended.

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

<sup>3</sup> OAC, 710:1-5-22(a) and (b).

<sup>4</sup> See, 68 O.S. 2001, § 227(e) and OAC, 710:1-5-24.

<sup>5</sup> 68 O.S. Supp. 2009, § 208 which provides in pertinent part:

As used in this article or any other state tax law 'last-known address' shall mean the last address given for such person as it appears on the records of the division of the Tax Commission giving such notice, or if no address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission.

evidence. On November 16, 2010, the record was closed and Claimant's protest to the partial refund denial was submitted for decision.<sup>6</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the hearing and the exhibits received into evidence, the undersigned finds:

1. Claimant is a 100% disabled veteran. Exhibit B-1.
2. Claimant's spouse leased a vehicle from a Hertz Corporation location in CITY, Oklahoma from January 8, 2010 to January 28, 2010. Exhibits A and B-2.
3. Hertz charged a base rental rate of \$25.99 per day for a total of \$545.79 for the 21 day lease period. Exhibits A and B-2.
4. Hertz also charged a fuel/service fee of approximately \$47.10 and tax of \$75.30, inclusive of the rental tax at 6% (\$32.74) and state and local sales tax at 7.8% (\$42.56) on the total rental charge of \$545.79 for a grand total of \$668.20. Exhibits A and B-2.
5. Claimant's insurance (Farmer's) paid \$500.00 of the total charges for the lease of the vehicle and Claimant paid \$168.20. Exhibits A and B-2.
6. On or about February 11, 2010, Claimant filed a claim for refund of the sales tax paid to Hertz on the vehicle lease. Exhibit B-1.
7. By letter dated September 1, 2010, Claimant was notified that \$12.17, inclusive of state sales tax of \$7.02 and local sales tax of \$5.15 of the refund claim had been approved and the remainder (\$30.39) denied because a portion of the total tax charged on the vehicle lease was rental tax (\$32.74) and the remainder of the sales tax charged was attributed to the payment by Claimant's insurance company based on a percentage (74.83%) calculated by dividing the insurance payment (\$500.00) by the grand total charged for the vehicle lease (\$668.20). Exhibit C.
8. Claimant timely protested the partial denial of the refund claim by letter dated September 17, 2010, asserting that he is entitled to "the sales taxes the company paid." Exhibit D.
9. The amount in controversy is \$30.39.

### CONCLUSIONS OF LAW

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2001, § 227.

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<sup>6</sup> OAC, 710:1-5-39(a).

2. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code (“Code”).<sup>7</sup> An excise tax is levied upon the gross receipts or gross proceeds of all sales, not otherwise exempted by the Code. 68 O.S. 2001, § 1354(A). The gross receipts or gross proceeds from the rental or lease of “tangible personal property”<sup>8</sup> are expressly made subject to sales tax. 68 O.S. Supp 2007, § 1354(A)(18). The phrase “tangible personal property” is all inclusive, and is not limited except by specific exemption. *Magnolia Petroleum Co. v. Oklahoma Tax Commission*, 1958 OK 124, 326 P.2d 821.

3. “Sales<sup>9</sup> of tangible personal property or services to persons who are residents of Oklahoma and have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability [is] permanent and [was] sustained through military action or accident or resulting from disease contracted while in such active service; provided, sales for the benefit of the person to a spouse of the eligible person or to a member of the household in which the eligible person resides and who is authorized to make purchases on the person’s behalf, when such eligible person is not present at the sale” are exempt from the levy of sales tax. 68 O.S. Supp. 2009, § 1357(34)<sup>10</sup>. See 68 O.S. Supp. 2006, § 1361.2 and *OAC*, 710:65-13-336.

4. A rental tax of six percent (6%) is levied on the gross receipts of all motor vehicle rental agreements of ninety (90) days or less duration where the motor vehicle 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. 68 O.S. Supp. 2009, § 2110(A). See *OAC*, 710:60-8-3. The rental tax on motor vehicle rentals does not apply to “those agreements made with agencies of the United States Government and with those federal instrumentalities upon which the states are prohibited from levying a tax by specific provision of the United States Code, such as federally-chartered credit unions.” *OAC*, 710:60-8-3(a). The rental tax is not in lieu of sales tax or tourism tax, and is due on all rental agreements not otherwise exempted, “even if the consumer entering into the rental agreement is exempt from sales tax.” *OAC*, 710:60-8-3(c).

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<sup>7</sup> 68 O.S. 2001, § 1350 et seq., as amended.

<sup>8</sup> Defined by the Code to mean “personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses”. 68 O.S. 2001, § 1352(17). Amended and renumbered by Laws 2003, c. 413, § 1, eff. Nov. 1, 2003, to include within the meaning “electricity, water, gas, steam and prewritten computer software” and to provided that “[t]his definition shall be applicable only for purposes of the Oklahoma Sales Tax Code”. See 68 O.S. Supp. 2004, § 1352(23). See also *OAC*, 710:65-1-2. Amended at 21 Ok Reg 2581, eff 6-25-04.

<sup>9</sup> “Sale” is defined to mean “the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:

(a) the exchange, barter, lease or rental of tangible personal property resulting in the transfer of the title to or possession of the property.

<sup>10</sup> Added by Laws 2006, c. 16, § 58.

5. “Insurance companies subject to 36 O.S. § 624 do not qualify as exempt purchasers for purposes of state, county, or municipal sales tax or state or municipal use tax and, therefore, should pay sales or use tax to the vendor when making a taxable purchase of tangible personal property or service.” *OAC*, 710:65-19-161.

6. *OAC*, 710:65-11-1 in general applies to a “vendor” of tangible personal property or services, but is specifically applicable to claims for refund of sales taxes erroneously remitted. See, *McMillan v. State ex rel. Oklahoma Tax Commission*, 1995 OK 3, 894 P.2d 1060; *First National Bank of Stillwater v. State ex rel. Oklahoma Tax Commission*, 1970 OK 33, 466 P.2d 644. *OAC*, 710:65-11-1(a) provides that “[t]he burden of establishing the right to, and the validity of a credit or refund is on the vendor claiming the credit or refund.” Refund requests should be documented with among other information, if applicable: (1) a written detailed explanation of why the refund is due; (2) copies of cancelled checks used to remit the tax paid; (3) copies of the original invoices on which the tax was originally charged; (4) copies of the credit invoices or checks showing the tax collected or charged in error has been refunded to your customer; and (5) other documentation which may be pertinent to the requested refund. *OAC*, 710:65-11-1(b).

7. Rules promulgated pursuant to the Administrative Procedures Act<sup>11</sup>, are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 1991, § 308.2(C).

8. In all administrative proceedings the burden of proof is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC*, 710:1-5-47. See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359.

9. “Consumer” or “user” is defined by statute to mean “a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished.”<sup>12</sup>

10. “Taxpayer” is defined by statute to mean “any person liable to pay a tax imposed by the Oklahoma Sales Tax Code.”<sup>13</sup>

11. The Oklahoma Statutes require sales tax to be paid by the consumer or user.<sup>14</sup>

## DISCUSSION

In this case the “sale” at issue is the transfer of possession of the car for a valuable consideration. There is nothing in the record and no reason to believe that possession of the car was

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<sup>11</sup> 75 O.S. 2001, § 250 et seq., § 301 et seq.

<sup>12</sup> 68 O.S. 2001, § 1352(6)

<sup>13</sup> 68 O.S. 2001, § 1352(25)

<sup>14</sup> 68 O.S. 2001, § 1361; See also *McMillin v. State ex rel. Oklahoma Tax Comm.*, 1995 OK 3, 894 P.2d 1060.

ever transferred to the insurance company. The “sale” in this matter is a sale from the car rental company to the Claimant. Sales tax is levied on an amount variously described in statute as the “gross proceeds”, “gross receipts” or “sales price”. The Five Hundred Dollars (\$500.00) paid by the insurance company and reflected on the Statement of Charges as “company charge” is a third party price reduction and is required by Section 1352(12)(c) of Title 68 of the Oklahoma Statutes to be included in the gross receipts.

### ORDER

The Oklahoma Tax Commission orders that the protest be sustained as to the sales tax imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes and denied as to the tax imposed pursuant to Section 2110 of title 68 of the Oklahoma Statutes. The amount of \$30.39 is ordered to be refunded to Claimant.

### 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.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”