

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00640 COA**

LAMAR LIFE INSURANCE COMPANY

APPELLANT

v.

**ED BUELOW JR., COMMISSIONER, MISSISSIPPI
STATE TAX COMMISSION**

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	06/11/96
TRIAL JUDGE:	HON. DENISE OWENS
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	HARRIS H. BARNES
ATTORNEYS FOR APPELLEE:	GARY WOOD STRINGER BOBBY R. LONG
NATURE OF THE CASE:	CIVIL - INSURANCE
TRIAL COURT DISPOSITION:	AFFIRMED THE ASSESSMENT OF INSURANCE PREMIUM TAXES AND INTEREST AGAINST LAMAR LIFE
DISPOSITION:	AFFIRMED - 11/18/97
MOTION FOR REHEARING FILED:	12/3/97
CERTIORARI FILED:	2/11/98
MANDATE ISSUED:	4/30/98

BEFORE McMILLIN, P.J., COLEMAN, AND HINKEBEIN, JJ.

HINKEBEIN, J., FOR THE COURT:

This case involves an appeal by Lamar Life Insurance Company [hereinafter Lamar Life] from a decision of the Chancery Court of Hinds County upholding the Mississippi Tax Commission's [hereinafter Tax Commission] finding that Lamar Life was liable to the State of Mississippi for \$483,080 in insurance premium taxes. Aggrieved by the holding of the chancery court, Lamar Life appeals with the following assignments of error:

I. WHETHER THE CHANCELLOR ERRED IN FAILING TO CONSIDER THE LAW

AND FACTS DE NOVO OF LAMAR LIFE'S APPEAL FROM THE STATE TAX COMMISSION BY GIVING TOTAL DEFERENCE TO THE STATE TAX COMMISSION'S DECISION?

II. WHETHER THE CHANCELLOR ERRED IN FINDING THAT THE PREMIUM TAX, IF ANY, WAS DUE AT SUCH TIME AS THE FUNDS WERE DEPOSITED WITH LAMAR LIFE INSURANCE COMPANY EVEN THOUGH LAMAR LIFE BORE NO RISK BASED ON A LIFE EXPECTANCY WITH RESPECT TO THE DEPOSITS?

III. WHETHER THE CHANCELLOR ERRED IN FAILING TO CONSIDER ALL REPERCUSSIONS AND CONSEQUENCES IN CONSTRUING MISS. CODE ANN. § 27-15-119 (1972)?

IV. WHETHER THE CHANCELLOR ERRED BY DISREGARDING THE LEGISLATURE'S PREVIOUS REPEAL OF MISS. CODE ANN. § 27-15-119 (1972) IN DETERMINING WHETHER OR NOT THE PREMIUM TAX WAS DUE AT SUCH TIME AS THE FUNDS WERE DEPOSITED WITH LAMAR LIFE INSURANCE COMPANY?

After hearing oral argument on Lamar Life's assignments of error and a thorough analysis of the issues, we affirm the judgment of the chancery court.

FACTS

As a result of its audit of Lamar Life, the Tax Commission determined that Lamar Life was liable to the State of Mississippi for \$1,338,752 in insurance premium taxes for the period of January 1, 1989 to December 31, 1992. These taxes were assessed pursuant to Section 27-15-119 of the Mississippi Code, which imposed⁽¹⁾ a tax on premiums received from the sale of annuity contracts. Lamar Life promptly lodged a protest to this assessment with the Board of Review of the Tax Commission [hereinafter Board]. The Board concluded that because a portion of the assessment was improperly based upon funds received from sources other than annuity premiums, the assessment should be reduced to \$468,880. Still dissatisfied, Lamar Life appealed this order to the Tax Commission. The Tax Commission affirmed the Board's decision, concluding that Lamar Life was liable for the \$468,880, plus interest that had accrued in the period since the Board's decision, making Lamar Life liable for a total of \$483,080. Dissatisfied with the Tax Commission's ruling, Lamar Life paid the tax under protest and appealed to the Chancery Court of Hinds County. The chancery court granted summary judgment in favor of the Tax Commission. It is from this summary judgment that the instant appeal is taken.

ANALYSIS

I. WHETHER THE CHANCELLOR ERRED IN FAILING TO CONSIDER THE LAW AND FACTS DE NOVO OF LAMAR LIFE'S APPEAL FROM THE STATE TAX COMMISSION BY GIVING TOTAL DEFERENCE TO THE STATE TAX COMMISSION'S DECISION?

Lamar Life argues that the chancery court applied the wrong standard of review to the Tax Commission's ruling. According to Lamar Life the Tax Commission's ruling should have been subjected to de novo review, rather than the arbitrary and capricious standard the chancellor employed. Lamar Life argues that de novo review of Tax Commission decisions is mandated by Sections 27-15-113 and 27-65-47 of the Mississippi Code, which vest the Chancery Court of Hinds County with "original jurisdiction" over appeals from tax assessments made by the Tax Commission. Lamar Life argues that because these statutes "grant[] the [c]hancery [c]ourt original jurisdiction, as opposed to appellate jurisdiction . . . the [c]hancellor had a duty to pass judgment upon de novo review of the law and facts of Lamar Life's appeal." It is Lamar Life's contention that the chancellor erred when he "simply affirmed the decision of the State Tax Commission without adequately reviewing the law and facts properly submitted by Lamar Life to the [c]hancery [c]ourt." Lamar Life concedes that although "in certain situations deference should be given to administrative agency decisions, such deference should only be given with respect to appellate jurisdiction."

The Tax Commission, not unexpectedly, argues that the chancery court was correct in applying the arbitrary and capricious standard of review to this matter. The Tax Commission contends that because it is an administrative agency, its decisions should be reviewed with the same deference afforded to other agency determinations under the arbitrary and capricious standard. The Tax Commission describes Lamar Life's reliance upon the "original jurisdiction" language of the previously cited statutes as being "clearly erroneous." It is the Tax Commission's position that the sole purpose of the "original jurisdiction" language "was to place jurisdiction in the [c]hancery [c]ourt and insure that there would be a full evidentiary judicial hearing, but not to change the standard by which this Court and the lower court would judge the action of the commission." The Tax Commission states that to apply de novo review to its administrative decisions, while at the same time applying a standard of arbitrary and capricious to the decisions of other agencies, would amount to a "double standard of review of decisions of administrative agencies in this state."

In the case of *State Tax Comm'n v. Earnest*, a 1993 case cited by neither of the parties to this appeal, our supreme court discussed the standard of review applicable to agency decisions in the context of reviewing the Tax Commission's interpretation of a taxation statute. The court held that "[o]rdinarily the scope of judicial review of the actions of an administrative agency is limited by the familiar arbitrary and capricious standard. The State Tax Commission is such an agency and, accordingly, both the [c]hancery [c]ourt and this Court were and are limited in appellate authority." ***Miss. State Tax Comm'n v. Earnest*, 627 So. 2d 313, 320 (Miss. 1993)** (citing *Tenneco, Inc. v. Miss. State Tax Comm'n*, 224 So. 2d 208, 214-15 (Miss. 1969)). The court went on to hold that "[t]he test to be applied by an appellate court to a decision of a commission or administrative agency is whether such decision is supported by substantial evidence or whether such action is arbitrary, capricious, unreasonable, or an abuse of discretion." ***Earnest*, 627 So. 2d at 319** (citing *Miss. State Tax Comm'n v. Package Store, Inc.*, 208 So. 2d 46, 48 (Miss. 1968)). The court emphasized that the Mississippi Constitution "does not permit the judiciary of this state to retry de novo matters on appeal from administrative agencies." ***Earnest*, 627 So. 2d at 319** (citing *Miss. State Tax Comm'n v. Vicksburg Terminal, Inc.*, 592 So. 2d 959, 961 (Miss. 1991)). The court, however, cautioned that "[w]hile this review is limited, the [c]ourt is not totally bound by the [c]ommission's interpretation of a taxation statute." ***Earnest*, 627 So. 2d at 320**. The court held that although an agency's administrative determinations are to be afforded deference under the arbitrary and capricious standard of review, "this

[c]ourt will not defer to the [c]ommission's interpretation of a taxation statute when that interpretation is repugnant to the plain meaning thereof." *Earnest*, 627 So. 2d at 320 (citing *Crosby v. Miss. State Tax Comm'n*, 198 So. 2d 571, 573-74 (Miss. 1967)).

Accordingly, this Court concludes that the appropriate standard by which to review decisions of the Tax Commission is the arbitrary and capricious standard traditionally employed in reviewing all other agency administrative decisions. *See Miss. State Tax Comm'n v. Miss.-Ala. State Fair*, 222 So. 2d 664, 665 (Miss. 1969) (holding arbitrary and capricious standard of review applicable to Tax Commission decisions and that "[t]his rule has been thoroughly settled in this state"). The deference afforded to the Tax Commission's interpretation of tax statutes is, however, not absolute, as this Court will not hesitate to reverse where the Tax Commission's interpretation is repugnant to the plain meaning of the statute at issue. *Earnest*, 627 So. 2d at 320. In light of the foregoing authority, the chancellor was correct in subjecting the Tax Commission's ruling to the arbitrary and capricious standard of review.

Lamar Life's reliance upon the Chancery Court of Hinds County being vested with original jurisdiction over certain tax assessment controversies, in support of its argument for a de novo standard of review, is misplaced. When a statute or constitution refers to a court as one of original jurisdiction, the reference is to that court's power or competence to decide particular types of controversies. **Jack H. Friedenthal et al., Civil Procedure § 2.1 (2d ed. 1993)** [hereinafter Friedenthal]. Whether a court has the power or competence to entertain a particular controversy is "most often stated in terms of whether the court has subject matter jurisdiction over the dispute. . . ." **Friedenthal § 2.1**. By designating a court as one of original jurisdiction the statute or constitution is vesting that particular court with the power to try certain types of cases. **Friedenthal § 2.1**. Restated, the phrase "original jurisdiction" is used to denote which trial court will hear the controversy. **Friedenthal § 2.1**. In contrast to appellate jurisdiction, original jurisdiction is the power to try a case, while appellate jurisdiction is the power to review the decision of the trial tribunal. **Friedenthal § 2.1; see also Black's Law Dictionary 1099 (6th ed. 1990)** (stating that original jurisdiction is the "[j]urisdiction of [a] court to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts."). Clearly, a trial court's subject matter jurisdiction over a particular controversy has absolutely nothing to do with what standard an appellate court will utilize when it eventually reviews the trial court's decision. This assignment of error is without merit.

II. WHETHER THE CHANCELLOR ERRED IN FINDING THAT THE PREMIUM TAX, IF ANY, WAS DUE AT SUCH TIME AS THE FUNDS WERE DEPOSITED WITH LAMAR LIFE INSURANCE COMPANY EVEN THOUGH LAMAR LIFE BORE NO RISK BASED ON A LIFE EXPECTANCY WITH RESPECT TO THE DEPOSITS?

At issue in this case is the Tax Commission's interpretation of when the annuity premium tax, mandated under Section 27-15-119 of the Mississippi Code, was due. Section 27-15-119 imposed an "annual license or privilege tax on the gross amount of premium receipts received from and on annuity policies and contracts written in or covering risks located in this state" **Miss. Code Ann. § 27-15-119 (Rev. 1991)**. Applying this statute to the "single premium deferred annuity" contracts at issue, Lamar Life contends that the tax was due only when the contract "annuitized" on

the "annuity date," which varied based upon contractual agreement, but could have been up to ten years after the customer tendered his premium. The Tax Commission argues that the tax was due when Lamar Life first collected the annuity premium from the customer. It is the Tax Commission's position that because an annuity contract was formed at the time the customer tendered funds to Lamar Life, Lamar Life's receipt of the funds constituted a taxable event under Section 27-15-119. Lamar Life responds to the Tax Commission's position by contending that no tax was owed until the contract "annuitized," because until that point in time Lamar Life had incurred no risk "based upon a life expectancy." In referring to a risk "based upon a life expectancy," Lamar Life was apparently referring to the fact that, after the annuity date, it was contractually bound to pay the customer a fixed amount each month for the remainder of the customer's life. As such, Lamar Life was taking on a risk that the customer might outlive his projected life span, costing Lamar Life much more than expected.

In order to understand the issues before this Court it is necessary to conduct a brief review of the financial instrument at the center of this controversy. Under the terms of the single premium deferred annuity sold by Lamar Life, the customer tenders his money to the insurance company in a transaction described by Lamar Life as the payment of a "single premium." Lamar Life then holds the customer's money, adding to it periodic interest at a guaranteed minimum rate, until the "annuity date" is reached (or the customer demands an early return of his money). On the annuity date the customer loses his right to a return of his premium and accrued interest, but begins to receive a monthly payment of a fixed amount, which continues for the life of the customer. This is the so-called risk "based upon a life expectancy" that Lamar Life refers to. If the customer chooses to withdraw his money prior to the annuity date, he receives a full refund of his premium plus any accrued interest, but must pay an early withdrawal penalty and does not receive any further payments.

While the parties agree as to the mechanics of the single premium deferred annuity's operation, they do not agree when the tax is due. As stated previously, the Tax Commission argues that a taxable event occurred at the moment the customer tendered a premium to Lamar Life for the purchase of an annuity contract. The Tax Commission points out that Lamar Life characterized the funds received from the customer as a "premium." Lamar Life contends that the taxable event did not occur until if and when the annuity date was reached because, prior to the annuity date, Lamar Life had incurred no risk "based upon a life expectancy." Lamar Life contends that Section 27-15-119 required that the insurance company have assumed a risk "based upon a life expectancy" in order for the annuity contract tax to be due.

However, notwithstanding Lamar Life's other assertions on this appeal, at oral argument Lamar Life admitted that upon receipt of the customer's "single premium" an annuity contract was formed. Lamar Life stated that once a premium was received, an annuity contract was formed regardless of whether the annuity distributions were deferred, as in this case, or began immediately. Needless to say this admission is critical to the resolution of the instant case because, in this Court's opinion, the clear and unambiguous meaning of Section 27-15-119 was that the annuity tax became due at the moment an annuity contract was formed. Accordingly, it is the holding of this Court that Lamar Life's stipulation effectively resolved any dispute as to when the tax became due. If, as Lamar Life admitted, an annuity contract was formed upon receipt of the customer's funds, then a taxable event has occurred under the plain language of Section 27-15-119. Lamar Life's admission is supported by our reading of the sample annuity contracts contained in the record. The samples clearly indicate that

an annuity contract was formed when the premium was paid, even though annuity distributions did not begin until a later date and the customer had a right to terminate the contract prior to receiving annuity distributions. Because of Lamar Life's stipulations and our limited scope of review in administrative agency decisions, we cannot say that the Tax Commission's decision was arbitrary and capricious, or was repugnant to the plain meaning of Section 27-15-119. This assignment of error is without merit.

III. WHETHER THE CHANCELLOR ERRED IN FAILING TO CONSIDER ALL REPERCUSSIONS AND CONSEQUENCES IN CONSTRUING MISS. CODE ANN. § 27-15-119 (1972)?

Lamar Life argues that the chancery court committed reversible error in failing to "[c]onsider all [r]epercussions and [c]onsequences" that might flow from its affirmance of the Tax Commission's decision. Lamar Life asserts that if the Tax Commission's interpretation of a now-repealed statute is upheld, other states will invoke "retaliatory" taxes on Mississippi insurance companies doing business in their states. The Tax Commission responds that because the statute is clear and unambiguous the chancery court did not "need to resort to other aids in statutory construction."

Although Lamar Life has failed to direct this Court to any authority holding that possible repercussions and consequences flowing from a particular interpretation of a statute are proper factors to consider when construing that statute, Lamar Life's assertion is nonetheless a correct statement of the law. The Mississippi Supreme Court has held that when construing an ambiguous statute "all possible repercussions and consequences of the construction should be considered." *Chandler v. City of Jackson Civil Serv. Comm'n*, 687 So. 2d 142, 144-45 (Miss. 1996) (citing *Allred v. Webb*, 641 So. 2d 1218, 1222 (Miss. 1994)). Although possible repercussions and consequences are valid factors to consider when construing a statute, it must be remembered that statutes are only in need of judicial construction when they are ambiguous. *Marx v. Broom*, 632 So. 2d 1315, 1318 (Miss. 1994). In *Marx* our supreme court repeated its long-standing rule that "[w]hen the language used by the legislature is plain and unambiguous . . . and where the statute conveys a clear and definite meaning . . . the Court will have no occasion to resort to the rules of statutory interpretation." *Marx*, 632 So. 2d at 1318. The court further held that "courts cannot restrict or enlarge the meaning of an unambiguous statute." *Id.*

As stated earlier in this opinion, this Court holds that Section 27-15-119 was clear and unambiguous. Even a cursory reading of the statute clearly reveals that premiums collected from the sale of annuity contracts were subject to taxation; therefore, there was no ambiguity necessitating a resort to the principles of statutory construction. Because principles of statutory construction were not needed, any repercussions or consequences flowing from this statute were irrelevant to the trial court's disposition of this case. The seminal question in this case was that of determining when Lamar Life received the annuity premium, as a matter of contract, rather than that of construing an ambiguous statute. This assignment of error is without merit.

IV. WHETHER THE CHANCELLOR ERRED BY DISREGARDING THE LEGISLATURE'S PREVIOUS REPEAL OF MISS. CODE ANN. § 27-15-119 (1972) IN DETERMINING WHETHER OR NOT THE PREMIUM TAX WAS DUE AT SUCH TIME AS THE FUNDS WERE DEPOSITED WITH LAMAR LIFE INSURANCE

COMPANY?

Lamar Life argues that Section 27-15-119 of the Mississippi Code was ambiguous; therefore, the chancery court should have utilized principles of statutory construction to interpret it. In particular, Lamar Life argues that the chancery court should have explored the legislative intent behind its enactment. Lamar Life contends that "[t]he [c]hancellor's unilateral expansion of the tax is diametrically opposed to the will of the [l]egislature as evidenced by the repeal of the premium tax on annuities." The Tax Commission responds that "there is no need to look at other aids in construction, including subsequent legislative action, if the statute is plain and unambiguous" It is the Tax Commission's position that the repeal of this statute, subsequent to the time period for which the taxes at issue were imposed, "should have no effect on the determination of this case." We agree with the Tax Commission.

As correctly stated by Lamar Life, in the only authority it cited in support of its assignment of error,

[w]here the statute is plain and unambiguous there is no room for construction but where it is ambiguous the court in determining the [l]egislative intent may look not only to the language used but also to its historical background, its subject matter, and the purposes and objects to be accomplished.

Clark v. Miss. State Med. Ass'n, 381 So. 2d 1046, 1048 (Miss. 1980). Because we believe that Section 27-15-119 was unambiguous, we will not now hold the chancellor in error for not having employed the principles of statutory construction to seek out the legislative intent behind the enactment of this statute. Simply stated, because the statute is clear and unambiguous, the legislature's intent in enacting it was irrelevant. Furthermore, even were the principles of statutory construction applicable to this case, we feel that legislative activity occurring subsequent to the passage of the statute would not be relevant to what the legislature intended when it enacted the statute. Accordingly, under the principles of statutory construction, the legislature's subsequent repeal of Section 27-15-119 would not be an appropriate factor to consider in determining legislative intent. This assignment of error is without merit.

THE JUDGMENT OF THE CHANCERY COURT OF HINDS COUNTY AFFIRMING THE DECISION OF THE MISSISSIPPI TAX COMMISSION ASSESSING LAMAR LIFE INSURANCE COMPANY WITH FOUR HUNDRED EIGHTY-THREE THOUSAND AND EIGHTY DOLLARS (\$483,080) IN INSURANCE PREMIUM TAXES IS AFFIRMED. COSTS ARE ASSESSED TO LAMAR LIFE INSURANCE COMPANY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

1. Although Section 27-15-119 was repealed effective July 1, 1994, it is uncontested that the statute was applicable during the time frame at issue in this case.