



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

**January 12, 1954**

**Hon. C. H. Cavness  
State Auditor  
Austin, Texas**

**Letter Opinion No. MS-114**

**Re: Refund of taxes erroneously  
paid Texas Citrus Commis-  
sion.**

**Dear Mr. Cavness:**

By your recent letter you ask this office for an opinion concerning the following question which has arisen under Section 6 of Chapter 282, Acts, 53rd Legislature:

**"Is the base on which the prorations are to be made (a) the taxes amounts listed in the sworn statements filed by the taxpayers, or (b) the correct amounts of such taxes that had actually been paid by the taxpayers who had filed the sworn statements within the 90 day time limit specified (in any instance where the two amounts were not the same)?"**

An error in the affidavit as to an amount which can otherwise be clearly established by official records should not impair the effectiveness of the affidavit as a timely request for pro-rata refund based on the true amount of taxes paid by the taxpayer.

In 14 C.J.S., 1202, the term "clerical error" is defined as "An error committed in the performance of clerical work, no matter by whom committed; more specifically, a mistake in copying or writing; a mistake which naturally excludes any idea that its insertion was made in the exercise of any judgment or discretion, or in pursuance of any determination; an error made by a clerk in transcribing, or otherwise, which must be apparent on the face of the record, and capable of being corrected by reference to the record only."

It is the opinion of this office that the official record of tax payments prevail over an erroneous affidavit, and that the Legislative intent was and is that the amount actually paid be the basis for pro-rata refund.

Hon. C. H. Cavness, page 2 (MS-114)

If we can give you any further assistance in this matter, please let us know.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General of Texas

By Horace Wimberly  
Horace Wimberly  
Assistant

HW:rt:da