

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-06-24-02
/NON-PRECEDENTIAL
ID: P-85-169 / P-85-267
DATE: JUNE 24, 1986
DISPOSITION: DENIED
TAX TYPE: GROSS PRODUCTION / PETROLEUM EXCISE
APPEAL: AFFIRMED / S.CT. 66,943
DECISION NOT PUBLISHED

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made to ADMINISTRATIVE LAW JUDGE, and hearings had on September 11, 1985, at which hearing Protestant appeared by attorney, ATTORNEY ONE, and on April 16 and 17, 1986, at which hearing Protestant appeared by attorneys, ATTORNEY TWO and ATTORNEY THREE. The Division was represented in all three hearings by attorney, ASSISTANT GENERAL COUNSEL. At the September 11th hearing, a stipulation of the factual situation in this case along with other exhibits which are not herein itemized were received into evidence.

Thereafter, and on October 3, 1985, the undersigned filed Findings, Conclusions and Recommendations with the Commission for its consideration.

Shortly thereafter, the attorneys for both sides requested that the Commission not enter its final order at that time but allow them to consolidate Case No. P-85-169 with Case No. P-85-267 for the purpose of further hearing with regard to both cases. The Commission granted the request of both parties and has not written its order in Case No. P-85-169.

At the hearings in April, 1986, the undersigned granted the request of the parties to consolidate, and Cases No. P-85-169 and P-85-267 were consolidated for the purposes of further hearing and proposed decision. The hearings were thereafter held in April, 1986, at which time witnesses testified on behalf of the Protestant and the Division and further exhibits were received in evidence. Additional time was then granted for the preparation and reading of the transcript of hearings and submission of the Proposed Findings, Conclusions and Recommendations by each party, which were received on June 2, 1986.

STATEMENT OF FACTS

PROTESTANT, taxpayer, is a producer of oil in Oklahoma and also acts as agent for REFINING AND MARKETING COMPANY, a crude oil purchaser, for reporting and paying Oklahoma Gross Production and Petroleum Excise taxes. REFINING AND MARKETING COMPANY periodically issues crude oil price bulletins which state the price it is paying for oil in various areas. The Gross Production Division of the Oklahoma Tax Commission determined from an examination of the relevant price bulletins and other related records that PROTESTANT was not reporting and paying gross production taxes on the gross value of oil in accordance with the Commission's long-standing interpretation of "gross value" or within the meaning of that

term as defined in Atlantic Refining Company v. Oklahoma Tax Commission, 360 P.2d 826 (Okl. 1961).

On May 30, 1985, the Commission issued its assessment totaling One Hundred Ninety-Six Thousand Thirteen Dollars and Thirty-Two Cents (\$196,013.32) against PROTESTANT on the basis that taxpayer had under-reported the gross value of oil purchased by REFINING AND MARKETING COMPANY during the period from August, 1984 through December, 1984, by Two Million Three Hundred Forty-Two Thousand Three Hundred Ninety-Seven Dollars and Forty-Three Cents (\$2,342,397.43). This assessment was timely protested by PROTESTANT.

The Commission issued a second proposed assessment of gross production and petroleum excise taxes to PROTESTANT on September 5, 1985, for failure to report and pay taxes on the gross value of oil pursuant to Title 68 O.S. Section 1001(b) for the months of January through July, 1985. The Commission assessed additional estimated gross production tax of Three Hundred Forty-Four Thousand Four Hundred Ninety-Eight Dollars and Ninety-Seven Cents (\$344,498.97), plus penalty and interest, and petroleum excise tax of Four Thousand One Hundred Eighty-Three Dollars and Twenty Cents (\$4,183.20), plus penalty and interest. In its assessment letter, the Commission requested that the taxpayer provide the actual amount of transportation deductions by lease within thirty (30) days of the date of the assessment letter. On September 16, 1985, the Tax Commission issued a proposed assessment for the production month of July, 1984, for gross production and petroleum excise taxes, penalties and interest in the total amount of Two Thousand Eight Hundred Thirty-Five Dollars and Sixty-Eight Cents (\$2,835.68).

On October 4, 1985, PROTESTANT timely filed its Protest (Case No. P-85-267) to the two September assessments. On October 30, 1985, upon receipt from the taxpayer of the actual transportation deductions for the periods of July, 1984 and January, 1985 through July, 1985, the Commission revised its September 5, 1985 and September 16, 1985 assessments as follows; Gross Production Tax of Three Hundred Ninety-Nine Thousand Nine Hundred Seventy-One Dollars and Sixty-Five Cents (\$399,971.65), with penalty of Thirty-Nine Thousand Nine Hundred Ninety-Seven Dollars and Seventeen Cents (\$39,997.17) and interest to November 30, 1985 of Thirty-Five Thousand Sixty-Three Dollars and Eighty-Four Cents (\$35,063.84); and Petroleum Excise Tax of Four Thousand Eight Hundred Fifty-Six Dollars and Eighty Cents (\$4,856.80), penalty of Four Hundred Eighty-Five Dollars and Sixty-Eight Cents (\$485.68) and interest of Four Hundred Twenty-Five Dollars and Seventy-Seven Cents (\$425.77).

On November 5, 1985, PROTESTANT filed its Motion to Consolidate Protests Nos. P-85-169 and P-85-267, both of which involve the transportation deduction issue. Hearings on P-85-267 were held on April 16 and 17, 1986 before the undersigned, who consolidated P-85-169 and P-85-267 for the purpose of allowing the Commission to issue one order in disposition of both Protests. The April, 1986 hearings on P-85-267 were limited to the facts of the September 6 and 16, 1985 assessments, which were subsequently revised by the October 30, 1985 assessment.

The following facts were stipulated to by the parties in the September 11, 1985 hearing on Protest No. P-85-169 involving the May 30, 1985 assessment:

(1) PROTESTANT is a purchaser of oil, produced in Oklahoma as an agent for REFINING AND MARKETING COMPANY and is also a producer of oil in Oklahoma, and as such, is responsible for reporting and paying gross production and petroleum excise tax on the gross value of oil pursuant to 68 O.S. Section 1001.

(2) In its gross production tax reports for August, 1984 through December, 1984, PROTESTANT reported and paid taxes on the posted field price of, the oil with the transportation deductions set forth in the field price bulletins for the months in question.

(3) The Oklahoma Tax Commission, after auditing the books and records of PROTESTANT, issued its assessment totaling One Hundred Ninety-Six Thousand Thirteen Dollars and Thirty-Two Cents (\$196,013.32) on May 30, 1985, on the basis that PROTESTANT had under-reported the gross value of the oil by Two Million Three Hundred Forty-Two Thousand Three Hundred Ninety-Seven Dollars and Forty-Three Cents (\$2,342,397.43).

(4) The Two Million Three Hundred Forty-Two Thousand Three Hundred Ninety-Seven Dollars and Forty-Three Cents (\$2,342,397.43) represents the total amount of transportation adjustments that PROTESTANT deducted from the posted field price during the assessment period.

(5) The Gross Production Division of the Oklahoma Tax Commission has consistently and uniformly interpreted "gross value" of oil as the posted field price based on the gravity of the oil without deductions of any costs, including transportation charges.

(6) Purchases of oil are consummated at the lease and title to the oil passes to purchaser when the oil is delivered into purchaser's pipeline or truck. All transportation of oil takes place in purchaser's facilities or facilities contracted for by purchaser, whether transportation is by truck or pipeline.

(7) Except for gross production tax, petroleum excise tax and windfall profit tax withheld, the posted field price with the transportation adjustment is the amount of cash received by producers, both royalty and working interest owners.

(8) PROTESTANT calculated the gross production tax and petroleum excise tax based on the net cash received by each producer from the first sale of oil production, plus taxes withheld therefrom.

(9) PROTESTANT first began posting its transportation charge adjustments in its Crude Oil Price Bulletins in July, 1984.

At the April 16 and 17, 1986 hearings on Protest No. P-85-267, Protestant presented the following evidence:

REFINING AND MARKETING COMPANY price bulletins state the price REFINING AND MARKETING COMPANY is willing to pay to all sellers of crude oil at like location and quality and at any given time. The purchase of the oil takes place at the well-head. In July, 1984, REFINING AND MARKETING COMPANY initiated the 75¢/barrel deduction for oil produced in specified Western Oklahoma Counties in response to competition.

In August, 1984, the transportation deduction on the field price bulletin was expanded to include all trucked purchases throughout the State of Oklahoma. In November, 1984, REFINING AND MARKETING COMPANY added a 35¢/barrel deduction for pipeline connected purchases in Oklahoma, Texas, Louisiana and New Mexico.

The transportation deduction was employed as a method to selectively reduce the price REFINING AND MARKETING COMPANY was willing to pay for crude oil. The transportation deduction is not equivalent to the costs associated with transportation. The posted field price is the base price, less adjustments for gravity and transportation.

The Gross Production Division's evidence at the hearing was as follows:

The Gross Production Division assessed PROTESTANT for additional gross production and petroleum excise taxes after the Division determined that PROTESTANT was deducting, prior to the computation of gross production taxes, transportation charges from their posted field price as shown on their bulletins.

Gross production tax was computed and assessed on the value of the transportation charges that were deducted from the posted field price, as adjusted for gravity. The Division does not take into consideration any transportation adjustments listed on the price bulletins because of the Oklahoma Supreme Court decision in Atlantic Refining Company, supra. The Division has consistently and uniformly computed gross value of crude oil on the posted price without allowance of transportation deductions.

In performing the audit, the Division compared PROTESTANT'S posted price with the amount reported on its gross tax reports and determined that the transportation charge was not being reported as part of the gross value. PROTESTANT'S run statements showed a gross value less than the price shown on the price bulletin. Prices reflected on PROTESTANT'S settlement statements for the months in question do not reflect the posted prices of REFINING AND MARKETING COMPANY. The posted field price of crude oil is the "base" price.

ISSUES AND CONTENTIONS

The legal issue for determination is the proper interpretation of "gross value of production" as used in 68 O.S. 1981, § 1001.

The Protestant alleges that the Division erred in its assessments by improperly interpreting the term “gross value” as used in 68 O.S. 1981, Section 1001. Protestant contends that gross value, for purposes of the gross production and petroleum excise tax, is the amount of cash value actually received by producers for their oil, that is, the posted field price, defined as the base price, adjusted for gravity and transportation.

Protestant further claims that purchaser’s transportation adjustment is merely a factor used by the purchaser to arrive at the gross value of oil at the place of production and, as such, these costs are properly excluded in determining gross value.

The Division asserts that gross value is to be determined by the posted field price as adjusted for gravity with no deductions for transportation.

APPLICABLE LAW

Section 1001(b) of Title 68 levies “a tax equal to seven percent (7%) of the gross value of the production of petroleum or other crude or mineral oil.” Section 1101 levies “an excise tax equal to eighty-Five one thousandths of one percent (.085 of 1%) of the gross value on each and every barrel of petroleum oil produced in the State of Oklahoma.” Section 1010(b)(5) provides that taxpayer shall report “the total value” of the mineral oil, gas or casinghead gas, at the time and place of production.”

In its Order No. 42-411, dated November 15, 1957, Re: Protest of Atlantic Refining Company to Proposed Assessment of Gross Production Taxes, the Oklahoma Tax Commission made the following Findings of Fact and Conclusions of Law:

Finding of Fact #6.

“The Commission has uniformly and consistently construed the Gross Production Tax Act in controversy as prohibiting the deduction of the cost of treating oil in flow or settling tanks in order to make the oil marketable; the cost of gathering lines or pipeline from the point of production to the main pipeline; the cost of transporting crude oil by truck from the point of production to the pipeline as well as any other cost of marketing crude oil. The ‘gross value’ of crude oil for gross production tax purposes has been considered to be the posted market price prevailing in the field or area where the crude oil was produced.”

Finding of Fact #8.

“The Commission further finds that during the period in controversy, protestant produced less than one-half of the crude oil that was produced in each of the fields in controversy in which it produced crude oil; that the prevailing price paid for the majority of the crude oil of like kind and quality to that produced by protestant in said fields was the posted market price for said oil; that protestant alone undertook to report and pay gross production

taxes on the posted market price for crude oil in the field where it was produced, less the trucking charge from point of production to the main pipeline.”

Conclusion of Law (E).

“The phrase ‘gross value’ as used in Title 68, Section 821, (1001), should be defined as the value of crude oil at the point of production without allowance for cost of producing or marketing the oil.”

Order No. 42-411 was subsequently appealed to the Oklahoma Supreme Court in Atlantic Refining Company v. Oklahoma Tax Commission, supra. The Court upheld the Commission Order assessing additional gross production tax by defining “gross value” as the posted field price for oil of like kind, character and quality produced in the same field or area, without deduction of transportation charges to pipelines.

The Oklahoma Tax Commission has consistently and uniformly interpreted gross value of oil as the posted field price without any deductions for costs, including transportation costs. Atlantic Refining Company v. Oklahoma Tax Commission, supra; Oklahoma Tax Commission Order No. 42-411.

CONCLUSIONS

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) “Gross value” is defined as the posted field price for oil of like kind, character and quality produced in the same field or area, without deduction of transportation charges to pipelines. Atlantic Refining Company v. Oklahoma Tax Commission, 360 P.2d 826 (1961).
- (3) The holding in Atlantic Refining Company, supra, may not be circumvented by incorporating the transportation deduction into the field price bulletins.
- (4) Transportation deductions attributable to pipeline connected purchases must be treated in the same manner as deductions for trucked purchases, as both relate to transporting the oil, and under the holding in Atlantic Refining Company, supra, are not deductible in computing the gross value of oil.
- (5) PROTESTANT, by deducting transportation charges from the posted field price, for the period from July, 1984 through July, 1985, understated the gross value of its oil.
- (6) That the assessments of additional gross production taxes in the total amount of Five Hundred Sixty-Three Thousand Nine Hundred Forty Dollars and Fifty-Six Cents (\$563,940.56), plus penalties and interest, and of additional petroleum excise taxes of Six Thousand Eight Hundred Forty-Seven Dollars and Twenty-Three Cents (\$6,847.23), plus penalties and interest made by the Gross Production Division against PROTESTANT were proper and should be upheld by the Commission.

(7) That the protests of PROTESTANT to such assessments should be denied.

DISPOSITION

In view of the above and foregoing Findings of Fact and Conclusions of Law, the OKLAHOMA TAX COMMISSION ORDERS:

(1) That the protests of PROTESTANT be denied and that Protestant be required to pay the assessments of additional gross production and petroleum excise taxes stated above, plus penalties and interest, from the due date until paid.

(2) That the Findings, Conclusions and Recommendations entered herein in Case No. P-85-169 be vacated because all determinations required to be made in that case and Case No. P-85-267 are included herein.

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.