

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 86-10-09-08 / NON-PRECEDENTIAL
ID: P-85-081
DATE: OCTOBER 9, 1986
DISPOSITION: DENIED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

The Protestant is a corporation organized and existing under the laws of the State of Louisiana, having its principal place of business in CITY, Louisiana. The Protestant began business in the State of Oklahoma in 1975 and continued doing business in Oklahoma until 1983, conducting its only business at the Fort Sill Military Reservation, Lawton, Oklahoma. The Protestant has not engaged in business in Oklahoma since 1983.

The Protestant's business activity, as listed on its Federal Income Tax Return, consisted of ground maintenance and refuse collection. The Protestant's main business activity at the Fort Sill Military Reservation was that of refuse collection.

Protestant's method of accounting for business purposes is maintained on an accrual basis with its tax years ending on April 30. As such, on August 30, 1980, and in the succeeding year on August 18, 1981, the Protestant filed its 1979 and 1980 State of Oklahoma Corporate Income Tax Returns, respectively, signed by PRESIDENT of the Corporation. The returns were filed using Schedule A of the Oklahoma Corporate Income Tax Return, non-unitary schedule, and indicated that the method used to allocate expenses to Oklahoma was an actual allocation related to business conducted in Oklahoma which resulted in the Protestant reporting only those items of income and expenses pertaining to its Oklahoma business enterprise. Separate business records are maintained for each of its respective enterprises.

On August 22, 1983 and on August 23, 1983, as a result of an audit, the Income Tax Division of the Oklahoma Tax Commission issued an assessment to the Protestant for its tax years 1979 and 1980, respectively. The assessments advised the Protestant that the returns should have been filed on a unitary basis, using the average of sales, payroll and property factors pursuant to § 2358(A)(5). The amounts of the assessments, representing additional corporate income tax and interest assessed to the date of the assessment for the tax years 1979 and 1980, are as follows:

Tax year 1979, Two Thousand Seven Hundred Sixty-One Dollars and No Cents (\$2,761.00), and tax year 1980, Three Thousand One Hundred Ninety Dollars and No Cents (\$3,190.00).

On September 1, 1983, the Income Tax Division of the Oklahoma Tax Commission received a verified written protest to the assessments of additional corporate income tax and

interest for the tax years ended April 30, 1980 and April 30, 1981. The Protestant's Certified Public Accountant advised that the Protestant kept actual records for business conducted within the State of Oklahoma and therefore, its Oklahoma corporate income tax returns for 1979 and 1980 were properly filed, it being unnecessary to apply the procedure using the factors of sales, payroll and property for a unitary business as the assessment directed.

ISSUE

Whether the Protestant's business activity in the State of Oklahoma was a part of the Protestant's business carried on within or without the state of a unitary character and therefore required the Protestant to file its Oklahoma corporate income tax return on a unitary basis using the factors of sales, payroll and property.

CONTENTIONS OF PROTESTANT

It is the Protestant's contention that the provisions of § 2358(A)(5) are inapplicable when actual records of income and loss are maintained for each state and that notwithstanding the fact that actual records are maintained for each state, the business activity conducted in Oklahoma was not a part of the Protestant's overall business activities.

CONTENTIONS OF THE DIVISION

The Income Tax Division of the Oklahoma Tax Commission takes the position that the mere fact the Protestant, for internal accounting purposes, maintains separate business accounting for the business activities within the State of Oklahoma does not alleviate the fact that the statutes provide that where the Protestant's business activity is of a unitary character, the corporate income tax returns must be filed on a unitary basis, therein applying the three factor formula in accordance with the law.

APPLICABLE LAW

The Oklahoma Income Tax Act is contained in § 2351 et seq. of Title 68 of the Oklahoma Statutes and in the case at bar, is found more particularly in the 1979 and 1980 Supplement, where it devises a method of determining the Oklahoma taxable income of a corporate taxpayer doing business within the State of Oklahoma.

For the purpose of clarity and consistency, citations of specific sections shall be referred to the 1980 Supplement of the Oklahoma Statutes.

Section 2358(A)(1), (2), and (3) provide that certain items, which are not relevant to this protest, are to be added to and/or deducted from the taxable income reported by the corporate taxpayer to the Federal government based upon its Federal income tax return. Subsequent to these items being added to and/or deducted from, as reported on their Federal income tax return, the statutes provide that a corporate taxpayer, regardless of whether it is characterized as a non-unitary or unitary business enterprise, must separately allocate specific items of income or loss as delineated in § 2358(A)(4)(a) and (b).

Section 2358(A)(4)(c) then mandates that a corporation must allocate the net income or loss from a business activity to the state in which such activity is conducted, when such business activity is not a part of business carried on within or without the state of a unitary character. This subsection therefore allows a non-unitary or a unitary business which has affiliates, subsidiaries or branches which are separate and distinct from the business carried on by the corporate taxpayer either within or without the state of a unitary character to therein separately allocate the net income or loss of such affiliate, subsidiary or branch to the state in which the activity is conducted. If in fact the business activities of a corporate taxpayer are conducted as a single unitary business enterprise, the net income or loss remaining after the separate allocation in § 2358(A)(4) is apportioned to the State of Oklahoma under the direct mandate of § 2358(A)(5).

To determine if in fact the business activities of a corporate taxpayer are conducted as a single unitary business enterprise, there are certain factors which must be viewed and taken into consideration in each case, those being: the Protestant has one corporate headquarters out of which the overall day-to-day management of its separate divisions or branches are controlled; a centralized Board of Directors; a headquarters where equipment is procured; where the accounting services are performed; where the supervisory role of setting policy is performed; where the proposals for bids on new jobs and/or contracts are prepared and submitted; a centralized legal staff; and, where payroll for all employees is determined and met. These factors, taken together, show functional integration, centralization of management and economies of scale and establish that the business activities of a corporate taxpayer are not separate and distinct but are in fact conducted as a single unitary business enterprise.

It is the contention of the Income Tax Division of the Oklahoma Tax Commission, by and through the General Counsel's Office, that these factors, when applied to the Protestant's business activities, show that there is functional integration, centralization of management and economies of scale and therefore prove that the business activity conducted by the Protestant in the State of Oklahoma was not separate and distinct, but was a part of the Protestant's overall business activities and as such constitute a single unitary business enterprise. Therefore, there would be no allocable income pursuant to § 2358(A)(4). The directives of § 2358(A)(5) are as follows:

§ 2358. Adjustments to arrive at Oklahoma taxable income and Oklahoma adjusted gross income.

A. Taxable income and, where use of adjusted gross income is necessary, i.e., required by this act, adjusted gross income shall be adjusted as follows to arrive at Oklahoma taxable income and Oklahoma adjusted gross income:

...

5. The net income or loss remaining after the separate allocation in paragraph 4 above, being that which is derived from a unitary business enterprise, shall be apportioned to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated below as a, b and c. Net income or loss as used in this paragraph includes that

derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned under this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income.

The Protestant had the burden of showing that the assessment was incorrect. However, the record reflects the Protestant failed to show that its business activity in the State of Oklahoma was not part of a business carried on within or without the State of a unitary character and that it was not required to file on a unitary basis using the average of sales, payroll and property factors in accordance with the directives of § 2358(A)(5), and the record is silent and void of any facts or evidence that could demonstrate to the contrary.

The United State[s] Supreme Court in Mobil Oil Corporation v. Commissioner of Taxes of Vermont, 445 U.S. 425, 100 S. Ct. 1223, 63 L.Ed2d 510 (1980), set down a three part test to determine whether a business activity conducted by a corporate taxpayer in one state is a part of the corporate taxpayer's overall business activities and therefore form a single unitary business enterprise, being (1) whether the business activity is functionally integrated with the overall unitary business, (2) whether there is centralized management and (3) whether there are economies of scale.

The United States Supreme Court has expressed the principle that the application of the unitary business principle requires a case by case examination of the particular facts and circumstances attributable to the business under scrutiny. The unitary business cases must be decided upon and limited to their own facts and circumstances. See, Asarco, Inc. v. Idaho, 458 U.S. 307, 102 S. Ct. 3103, 73 L.Ed2d 787 (1983) and F. W. Woolworth Company v. New Mexico, 458 U.S. 354, 102 S. Ct. 3128, L.Ed2d 819 (1983).

The facts as they appear in the record support that the Income Tax Division of the Oklahoma Tax Commission's assessment was in fact correct and based upon the statutory scheme, carried forward the intent of the Oklahoma Legislature in its enactment of the Oklahoma Income Tax Act and complied with the United States Supreme Court's directives as to the sovereign state's ability to levy corporate income tax.

CONCLUSIONS OF LAW

In view of the above and foregoing factual situation and applicable law thereto, the Administrative Law Judge concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) The assessment for tax year 1979 in the amount of Two Thousand Seven Hundred Sixty-One Dollars and No Cents (\$2,761.00) and for tax year 1980 in the amount of Three Thousand One Hundred Ninety Dollars and No Cents (\$3,190.00) was correct and proper in view of the directives contained within § 2358(A)(5).

(3) The protest of PROTESTANT should be denied.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied, and that the assessment for additional Oklahoma corporate income tax for tax year 1979 in the amount of Two Thousand Seven Hundred Sixty-One Dollars and No Cents (\$2,761.00) and for tax year 1980 in the amount of Three Thousand One Hundred Ninety Dollars and No Cents (\$3,190.00) be deemed correct and proper and that interest continue to accrue thereon from the date of assessment until paid in full.

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.