

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-01-22-48 / NON-PRECEDENTIAL
ID: P-86-155
DATE: JANUARY 22, 1987
DISPOSITION: DENIED
TAX TYPE: BANK TAX
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration, pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was had, at which hearing Protestant, PROTESTANT, appeared not, and the Income Tax Division of the Oklahoma Tax Commission appeared by and through its attorney, OTC ATTORNEY, of the General Counsel's Office of the Oklahoma Tax Commission.

The record is clear that proper notice of the hearing was served upon the Protestant by certified mail. Again, notwithstanding the proper notice, Protestant appeared not.

The Income Tax Division of the Oklahoma Tax Commission, by and through its attorney, OTC ATTORNEY, made an opening statement, introduced exhibits, not itemized herein, and proceeded to make its case. Upon the completion of such, the case was submitted for a decision.

STATEMENT OF FACTS

The Protestant filed its 1982 tax return on April 14, 1983. In calculating its 1982 taxable income, the Protestant excluded One Hundred Six Thousand Five Hundred Ninety-Two Dollars and Seven Cents (\$106,592.07) as interest on United States obligations.

On March 7, 1986, pursuant to office audit, the Income Tax Division of the Oklahoma Tax Commission issued a proposed assessment of additional tax and interest in the total amount of Six Thousand Five Hundred Thirty-Six Dollars and Sixty-Three Cents (\$6,536.63). The basis of the assessment was the inclusion in the tax calculation of the interest income from federal obligations excluded by Protestant.

By letter dated April 12, 1986, the Protestant paid the assessment under protest.

CONTENTIONS OF PROTESTANT

Presumably, the Protestant relied on Memphis Bank and Trust Company v. Riley C. Garner, Shelby County Trustee, et al., 459 U.S. 342, 103 S.Ct. 692 (1983).

CONTENTIONS OF THE DIVISION

The Income Tax Division of the Oklahoma Tax Commission contends that the substantive issue has been decided by First of McAlester Corporation v. Oklahoma Tax

Commission and First State Bank and Trust Company of Shawnee v. Oklahoma Tax Commission, 709 P.2d 1026 (Okl. 1985), and that by reason of stare decisis, this protest should be denied.

ISSUE

Whether the merits of this case have been decided by First of McAlester Corporation v. Oklahoma Tax Commission and First State Bank and Trust Company of Shawnee v. Oklahoma Tax Commission, 709 P.2d 1026 (Okl. 1985).

APPLICABLE LAW

Since the Protestant did not appear at the hearing, nor file any pleading other than the brief protest letter, it is difficult to ascertain the basis of the protest. Presumably, the Protestant relied on the Memphis Bank case, which struck down a Tennessee statute similar to the Oklahoma statutes in question. If such is the case, such reliance on Memphis Bank is misguided.

The Oklahoma Supreme Court did eventually hold that Sections 2370 and 2371 of Title 68 of the Oklahoma Statutes were unconstitutional based on Memphis Bank, however, said holding was to be applied prospectively. (See First of McAlester Corporation v. Oklahoma Tax Commission and First State Bank and Trust Company of Shawnee v. Oklahoma Tax Commission, 709 P.2d 1026 (Okl. 1985)). In First of McAlester, the Oklahoma Supreme Court held:

Upon consideration of all the foregoing, we conclude that the application to this appeal of the Memphis Bank decision shall operate prospectively from January 24, 1983, and not retroactively.

First of McAlester Corporation v. Oklahoma Tax Commission, 709 P.2d at 1036.

Therefore, the First of McAlester decision should properly be read as affecting all tax years prior to January 24, 1983. That is, all arguments for the exclusion of interest income on federal obligations for tax years prior to January 24, 1983, should be denied.

CONCLUSIONS OF LAW

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

- (1) The Oklahoma Tax Commission has jurisdiction in this matter.
- (2) That the issue raised in this protest has been decided in First of McAlester Corporation v. Oklahoma Tax Commission and First State Bank and Trust Company of Shawnee v. Oklahoma Tax Commission, 709 P.2d 1026 (Okl. 1985), and, by reason of stare decisis, this protest should be denied.

(3) That the assessment by the Income Tax Division of the Oklahoma Tax Commission, dated March 7, 1986, in the amount of Six Thousand Five Hundred Thirty-Six Dollars and Sixty-Three Cents (\$6,536.63) is, in fact, correct and proper and that the Protestant is not entitled to a refund of said amount paid under protest.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT, be denied and that the assessment, dated March 7, 1986, in the amount of Six Thousand Five Hundred Thirty-Six Dollars and Sixty-Three Cents (\$6,536.63) is correct and that the Protestant, PROTESTANT, is not entitled to a refund of the assessment paid under protest.

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.