

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 87-03-17-03 / NON-PRECEDENTIAL  
**ID:** P-86-029  
**DATE:** MARCH 17, 1987  
**DISPOSITION:** DENIED  
**TAX TYPE:** FRANCHISE  
**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 not held in this case since the Franchise Tax Division of the Oklahoma Tax Commission and Protestant have agreed to submit the case on briefs.

The Protestant is represented by NAME, C.P.A., CITY, Oklahoma. The Franchise Tax Division is represented by OTC ATTORNEY, Attorney for the General Counsel's Office of the Oklahoma Tax Commission.

**STATEMENT OF FACTS**

Protestant timely filed and paid its franchise taxes for the tax years 1983-84, 1984-85 and 1985-86. The franchise tax returns excluded from the computation of capital the amount of some installment payments made on a five-year note entered into in 1982 and maturing in 1986. Protestant also excluded from the computation of capital some or all of the payments made on the following mortgages:

Fed. Land Bank #0860405-8-0 -- issued on February 5, 1981 and maturing in the year 2011

Fed. Land Bank #0860301-3-0 -- issued on April 1, 1980 and maturing on April 1, 1984

Fed. Land Bank #0860672-4-0 -- issued on June 23, 1982 and maturing in the year 2007

Fed. Land Bank #0324636-1-0 -- issued on May 27, 1965 and maturing in the year 1998

The information furnished indicated that some or all of each of the mortgages was treated as short-term debt, thus not reported as capital employed in Oklahoma for the tax years in question. Based on the information submitted by Taxpayer, additional franchise tax, interest and penalty were assessed on November 12, 1985 as follows:

|                   | <u>1983-84</u>    | <u>1984-85</u>              | <u>1985-86</u>    |
|-------------------|-------------------|-----------------------------|-------------------|
| Line-Three        | \$1,992,165.17    | \$2,043,427.83              | \$2,651,399.95    |
| Mortgages         | 124,311.42        | 131,219.13                  | 93,563.01         |
| Notes Payable     | <u>32,487.69</u>  | <u>                    </u> | <u>12,552.04</u>  |
| Capital Employed  | \$2,148,964.28    | \$2,174,646.96              | \$2,757,515.00    |
| Franchise Tax     | \$ 2,686.25       | \$ 2,718.75                 | \$ 3,447.50       |
| Less Amount Paid  | <u>(2,491.25)</u> | <u>(2,555.00)</u>           | <u>(3,315.00)</u> |
|                   | \$ 195.00         | \$ 163.75                   | \$ 132.50         |
| Plus Penalty Due  | 19.50             | 16.38                       | 13.25             |
| Plus Interest Due | <u>78.98</u>      | <u>36.84</u>                | <u>5.96</u>       |
| Additional Due    | \$ 293.48         | \$ 216.97                   | \$ 151.71         |

Protestant timely filed its protest to the assessment of additional franchise tax, interest and penalty on December 9, 1985.

**CONTENTIONS OF PROTESTANT**

Protestant contends that the amount of the note and mortgages in question paid within three (3) years of the date of issuance should not be considered capital employed and that only the amount which is due after three (3) years from issuance should be included as capital employed. Protestant further contends that the Oklahoma Tax Commission cannot reverse its long standing interpretation of the statute in question.

**CONTENTIONS OF THE DIVISION**

The Franchise Tax Division contends that Franchise Tax Law does not provide a current debt treatment of payments to be made on long-term debt during the first three (3) years. Therefore, the entire outstanding portion of the five-year note and the mortgages in question should be included as capital employed in Oklahoma.

**ISSUE PRESENTED**

Whether the Oklahoma Franchise Tax Code provides an exemption for installment payments made in the first three (3) years of a note payable and maturing in more than three (3) years?

**APPLICABLE LAW**

Section 1203 of Title 68 of the Oklahoma Statutes provides as follows:

§ 1203. Tax on domestic corporations and business organizations

There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company, common law or statutory trust, and other business organizations, as defined in Section 1201 of this Code, organized under the laws of this state, equal to One Dollar and twenty-five

cents (\$1.25) for each One Thousand Dollars (\$1,000.00) or fraction thereof of the amount of capital used, invested or employed in the exercise of any power, privilege or right inuring to such organization, within this state; it being the purpose of this section to require the payment to the State of Oklahoma this tax for the right granted by the laws of this state to exist as such organization and enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by reason of the form of such existence.

Section 1209 of Title 68 of the Oklahoma Statutes provides direction as to how evidences of indebtedness are to be treated for purposes of computing the amount of capital employed in the state. Section 1209 states that, for purposes of computing the franchise tax, capital shall include, inter alia, notes or other evidence of indebtedness maturing and payable more than three (3) years after issuance.

On its face, this provision plainly includes installment notes maturing and payable at a date more than three (3) years after issuance. Moreover, there is no exemption provided in Section 1209 or in other sections of the Franchise Tax Code for installment payments made during the first three (3) years of a note which matures beyond that period of time. The Oklahoma Supreme Court has also interpreted Section 1209, and has held that installment payments made within the first three (3) years on a note maturing and payable more than three (3) years after issuance is within the definition of "capital". C & Z, Inc. v. Oklahoma Tax Commission, 459 P.2d 601, 602 (Okla. 1969).

That the above interpretation of Section 1209(a) is the correct interpretation is supported by its legislative history. In 1984-85, Senate Bill 206 proposed an amendment to § 1209(a) which would have made that section read as follows:

(1) Outstanding capital stock, surplus and undivided profits, which shall include any amounts designated for the payment of dividends until such amounts are defined and irrevocably placed to the credit of stockholders subject to withdrawal on demand, plus the amount of bonds, notes, debentures or other evidences of indebtedness maturing and payable more than three (3) years after issuance but not any total or installment amount maturing and payable three (3) years or less after issuance. [proposed amendment underlined.]

This additional statement, which would have supported Protestant's position regarding the proper interpretation of § 1209(a) was considered by the Legislature. The final version, however, excluded the provision underlined above, affirming the Franchise Tax Division's position that the Legislature did not intend an exemption from "capital" for installment payments made during the first three (3) years of a note which matures beyond that period of time.

Protestant makes an additional argument in its Brief (Brief of Protestant, page 4), which was not addressed by the Franchise Tax Division's attorney, but which affects the outcome of this case.

On page 4 of its Brief, Protestant states:

My firm has filed Franchise Tax Returns with the Oklahoma Tax Commission every year for the past 24 years, always claiming installment note payments maturing and payable within three (3) years from date of issuance as an exclusion from “Capital”. Never in all those years has the Oklahoma Tax Commission adjusted these items or attempted to include them as part of the franchise tax base until the Franchise Tax Returns for 1985-86 year were filed at which time they purported (sic) adjustments for the three (3) years immediately passed. I therefore must contend that the long standing policy of the Oklahoma Tax Commission was to exclude installment payments maturing and payable within three (3) years from date of issuance from the franchise tax base and that in the year 1985-86 the Oklahoma Tax Commission reversed this long standing policy.

Protestant relies on the decision in Oral Roberts University v. Oklahoma Tax Commission, 714 P.2d 1013 (Okla. 1985) for the proposition that the Oklahoma Tax Commission may not reverse its long standing interpretation of a statute. In Oral Roberts, the Oklahoma Supreme Court stated the doctrine which applies in this State:

Generally speaking an administrative agency has the flexibility to correct its own erroneous interpretation of the law. However, there is a long line of cases holding that the interpretation or construction of an ambiguous or uncertain statute by the agency charged with its administration is entitled to the highest respect from the courts, specially when the administrative construction is definitely settled and uniformly applied for a number of years. It will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable.

Oral Roberts, 714 P.2d at 1014-15.

The Court developed this approach from the rule stated in an earlier Oklahoma Supreme Court case which was cited in part in Oral Roberts, as follows:

In McCain v. State Election Board, we stated the applicable rule:

It is a well settled rule that the contemporaneous construction of a statute by those charged with its execution and application, especially when it has long prevailed, while not controlling, is entitled to great weight and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. The courts are especially reluctant to overturn a long standing executive or departmental construction where great interests have grown up under it and will be disturbed or destroyed by the announcement of a new rule, or where parties who have contracted with the government upon the faith of such construction will be prejudiced. (Citation omitted)

Oral Roberts, 714 P.2d at 1015.

In summary, the Court has said, in terms relevant to this protest, that administrative construction will not be overturned except for cogent reasons, or where the construction is clearly erroneous or where great interests have grown up around it. Applying the standards prescribed by the Court to the facts of this protest, it may be fairly stated that the Oklahoma Tax Commission had cogent reasons for changing its construction of the statute.

The Oklahoma Supreme Court decision in C & Z, Inc. v. Oklahoma Tax Commission, 459 P.2d 601 (Okl. 1969) support the Franchise Tax Division’s current policy. That case involved a note that was payable “on demand, but if demand is not made, then in 240 monthly payments.” C & Z, Inc., 459 P.2d at 602. The plaintiff in error had begun making monthly payments. In deciding that the note was capital within the meaning of Section 1209, the Court stated:

The note here is payable, at the convenience of the holder, either on demand or in installments for twenty years. The note is not definitely payable in the full amount within less than three years, § 12-1209, supra, and the holder had been accepting installment payments for approximately two years at the time of the hearing before the Oklahoma Tax Commission. Under these circumstances, the note is within the definition of “capital” as construed by the language of § 1209, supra.

C & Z, Inc., 459 P.2d at 602.

Additionally, the statute plainly does not provide an exemption for installment payments made within the first three (3) years of a note. In this respect, the construction originally given the exemption provision of Section 1209(a)(1) was not correct, and since the exemption provision is not ambiguous, the Franchise Tax Division was clearly without authority to grant an exemption where none existed. C & Z, Inc., 459 P.2d 602 (Okl. 1969). As to the other relevant requirement stated in Oral Roberts, that an administrative construction will not be overturned where great interests have grown up under it, and will be disturbed or destroyed by a new approach, Protestant has asserted no such interest or resulting harm.

**CONCLUSIONS OF LAW**

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

(1) The Oklahoma Tax Commission has jurisdiction in this matter under 68 O.S. 1981, § 207.

(2) This Protest is governed by the following provisions of the Oklahoma Franchise Tax Code:

68 O.S. 1981, § 1203 and 1209(a)

(3) The Oklahoma Tax Commission has authority to enforce the provisions of the Oklahoma Tax Code and to promulgate and enforce reasonable rules and regulations consistent with the intent of the Legislature as expressed in the relevant statutes. 68 O.S., 1981 § 203.

(4) Section 1209 does not provide an exemption for installment amounts made during the first three (3) years of a note which matures beyond that period of time.

(5) The Oklahoma Tax Commission is not estopped from changing its interpretation of a taxing statute where the former interpretation was clearly erroneous, and where it should be changed for cogent reasons. Oral Roberts v. Oklahoma Tax Commission, 714 P.2d 1013 (Okla. 1985).

(6) No great interest of Protestant has grown up around the Oklahoma Tax Commission's former interpretation of §§ 1203 and 1209(a) of the Oklahoma Franchise Tax Code.

(7) The assessment by the Franchise Tax Division of the Oklahoma Tax Commission, dated November 12, 1985, in the amount of Six Hundred Sixty-Two Dollars and Sixteen Cents (\$662.16), including interest and penalty, is correct and proper and said amount, with any additional interest accruing thereon, should be deemed due and owing until paid.

### **DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied.

### **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.