

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-03-31-06 / NON-PRECEDENTIAL
ID: P-86-051
DATE: MARCH 31, 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. This protest was consolidated with the claim for refund of franchise tax of PROTESTANT (Case No. CR-86-O11) and both cases were submitted for a decision without a hearing. Separate Findings, Conclusions and Recommendations are made for each case.

STATEMENT OF FACTS

Protestant is an Oklahoma corporation, and is the parent corporation of SUBSIDIARY. On August 24, 1983, Protestant filed and paid 1983-84 franchise tax. On August 31, 1984, Protestant filed and paid 1984-85 franchise tax. On August 30, 1985, Protestant filed and paid 1985-86 franchise tax.

Pursuant to an office audit, the Franchise Tax Division requested information on certain intercompany accounts and debt information from the Protestant. The Protestant furnished information regarding a ten (10) year note maturing in September, 1991, whereby some of the note was treated as short-term debt and thus not included in capital employed on the franchise tax returns for the years in issue. The Protestant also furnished information regarding an investment in an acquired corporation, SUBSIDIARY, whereby Protestant, pursuant to Section 338 of the Internal Revenue Code, made an election to treat the purchase price of the stock as the purchase of the assets of the acquired corporation.

Based on the submitted information, the Franchise Tax Division issued assessments on December 12, 1985, as follows:

	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Franchise Tax Due	\$1,738.75	\$1,7272.50[SIC]	\$1,871.25
Less Amount Paid	<u>1,520.00</u>	<u>10.00</u>	<u>10.00</u>
	218.75	1,762.50	1,861.25
Plus Penalty Due	21.88	176.25	186.13
Plus Interest	<u>90.23</u>	<u>409.78</u>	<u>91.71</u>
	\$ 330.86	\$ 2,348.53	\$2,145.09
Plus Additional Interest	<u>3.28</u>	<u>26.43</u>	<u>27.91</u>
AMOUNT DUE	\$ 334.14	\$ 2,374.96	\$2,173.00
		TOTAL	\$4,882.10

The Protestant timely filed a protest to the assessments on December 27, 1985.

ISSUES

(1) 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?

(2) Whether the Oklahoma Franchise Tax Code allows an acquiring corporation to eliminate from its capital base its investment in an acquired corporation.

CONTENTIONS OF PROTESTANT

The Protestant contends that the first three (3) years of principal of the ten (10) year note 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. The Protestant also contends that because it elected, pursuant to Section 338 of the Internal Revenue Code to treat the purchase price of the stock as the purchase price of the assets of the acquired corporation, thereby allocating the purchase price of the stock among the assets of the acquired corporation, that the investment made in the subsidiary should be eliminated from Protestant's capital base.

CONTENTIONS OF THE DIVISION

The Franchise Tax Division contends that the Franchise Tax Code 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 ten (10) year note in question should be included as capital employed. In addition, the Franchise Tax Division contends that the franchise tax is a tax on the privilege of operating as a corporation in the State of Oklahoma and that each corporation's privilege is measured by the book value of its capital used, invested or employed in Oklahoma.

Other than intercompany receivables, and bank holding companies' investment, there are no provisions in the Franchise Tax Code for eliminating assets from a tax base and, as such, the Protestant's investment in an acquired corporation should be included as capital employed in Oklahoma.

APPLICABLE LAW

Section 1203 of Title 68 of the Oklahoma Statutes levies a franchise tax upon every corporation, association, joint stock company and business trust organized under the laws of the State of Oklahoma. The assessment of such tax is based on the amount of capital used, invested or employed in this state.

Section 1209(a) of Title 68 of the Oklahoma Statutes defines the word capital to include the following:

(a) For the purpose of computing the amount of annual franchise tax levied upon and payable by the corporation, associations and organizations enumerated in Sections 1203 and 1204 of this title, the word “capital” shall be construed to include the following:

Outstanding capital stock, surplus and undivided profits, which shall include any amounts designated for the payment of dividends until such amounts are definitely 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. The term “capital” stock where herein used shall include all written evidence of interest or ownership in the control or management of a corporation or other organization. The term “evidence of indebtedness” where herein used shall not include any deposit made in any bank. (Emphasis Added)

The three year provision in Section 1209(a) is used to determine whether a debt is short term or long term. If the debt is long term (i.e. “maturing and payable more than three (3) years after issuance”), it is considered “capital” and thereby part of the franchise tax base for the life of the debt.

In C & Z, Inc. v. Oklahoma Tax Commission, 459 P.2d 601 (Okla. 1969), the Oklahoma Supreme Court addressed a similar issue. In that case, the plaintiff in error alleged that a certain note should not be included within the meaning of the word capital. The note, dated July 31, 1964, provided in pertinent part as follows: “On demand, but if demand is not made, then in two hundred and forty (240) monthly payments of Eight Hundred and Ninety-One Dollars (\$891.00), including principal and interest, and beginning on September 1, 1964...” C & Z, Inc., supra, 459 P.2d at 602. The Court held as follows:

The note here is payable, at the convenience of the holder, either on demand or 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 Section 1209, supra.

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

In the instant case, the Protestant issued a note in June of 1982 which had a maturity date of September of 1991. Clearly, this indebtedness matures and is payable more than three (3) years after the date of issuance, making it long term debt and thus a part of the Protestant’s capital base for franchise tax purposes.

Title 68 O.S., 1981 § 1210(a) provides:

(a) In addition to any other statement required by law, each and every corporation, association or organization, as enumerated in Sections 1201, 1203, and 1204 of this Code, subject to the provisions of this Article, shall, during the period of July 1st to August 31st, inclusive, of each year, file with the Tax Commission a statement under oath of its president, secretary or managing officer, or managing agent in this State, in such form, including balance sheets as at the close of its last preceding taxable year for which an income tax return was required to be filed, as the Tax Commission may prescribe, showing: The amount of its authorized capital stock, interests, certificates, or other evidence of interest or ownership; the amount thereof then paid up; the number of units into which the same is divided; the par value of each unit and the number of such units issued and outstanding; the location of the office or offices; the value of all property owned or used in its business and wherever located; the value of all property owned or used in its business within this State as it existed on the last day of said year; the total amount of business transacted within the State of Oklahoma during such year; the names of its officers and directors and the residence and post office address of each as the same appear of record on June 30th.

The above statute requires that every corporation must file a franchise tax return based on its own balance sheet. There are no provisions for filing a consolidated return with another corporation.

In the instant case, both the Protestant and its subsidiary filed franchise tax returns. The Protestant elected, under Section 338 of the Internal Revenue Code, to treat the purchase price of the stock as the purchase price of the assets of the subsidiary corporation, thereby allocating the purchase price of the stock among the assets of the subsidiary. The subsidiary then properly paid franchise tax based on the new book value of its assets. However, the Protestant eliminated the amount of its investment in the subsidiary from its own capital base, thus improperly considering the balance sheet of another corporation, its subsidiary, in computing its own franchise tax.

The only provisions in the Franchise Tax Code for eliminating assets from the tax base are for intercompany receivables and a bank holding company's investments in its bank. Since neither of these exceptions is present, it is clear that the Protestant improperly eliminated certain assets from its tax base, contrary to the statutes.

CONCLUSIONS

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) That the Oklahoma Tax Commission has jurisdiction in this matter under 68 O.S., 1981 § 207.

(2) Pursuant to 68 O.S., 1981 § 1209(a), the entire outstanding portion of the ten (10) year note in issue is properly includable as capital employed for purposes of Oklahoma franchise tax.

(3) There is no applicable provision in the Franchise Tax Code for the Protestant to eliminate certain assets from its tax base, and as such, the Protestant's investment in the subsidiary can not properly be eliminated from its tax base.

(4) The assessments for the 1983-84, 1984-85, and 1985-86 tax years, issued on December 12, 1985, are proper. Said amounts are now due and owing plus any additional accrued interest.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of PROTESTANT be denied and that the assessments of franchise tax due for tax years 1983-84, 1984-85, 1985-86 be sustained.

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.