

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-03-31-07 / NON-PRECEDENTIAL
ID: CR-86-011
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 NAME, Administrative Law Judge, by the Oklahoma Tax Commission. This claim for refund was consolidated with the Franchise Tax Protest of CLAIMANT (No. P-86-051), and both cases were submitted for decision without a hearing. Separate Findings, Conclusions and Recommendations are made for each case.

STATEMENT OF FACTS

The Claimant in this case is a corporation organized under the laws of the State of Oklahoma. On August 31, 1984, Claimant filed and paid its 1984-85 franchise tax based on the book value of the corporation. On August 30, 1985, the Claimant filed and paid 1985-86 franchise tax based on the book value of the corporation. On July 2, 1986, Claimant filed an amended franchise tax return and a claim for refund for the periods referred to above. By letter dated July 22, 1986, the Franchise Tax Division denied Claimant's request for refund.

CONTENTIONS OF CLAIMANT

The Claimant contends that the value of its capital employed as reflected in its original franchise tax returns for the years in issue is greatly exaggerated due to CLAIMANT'S election under Section 338 of the Internal Revenue Code to treat the purchase price of the capital stock as the price of the assets of the acquired corporation. That is, the transaction involved merely a bookkeeping function allowing CLAIMANT to get a step up in the basis of its assets for purposes of depreciation. Accordingly, the Claimant argues that the figures as originally reported were totally arbitrary and did not reflect the true value of the assets.

CONTENTIONS OF THE DIVISION

The Franchise Tax Division contends that 68 O.S., 1981 § 1209(a) directs the franchise tax be based on the capital employed, which includes capital stock, surplus, undivided profits and long term debt. The law provides for no asset adjustments when computing capital employed other than for eliminating intercompany receivables from the assets. Additionally, the instructions on the franchise tax return itself direct that the franchise tax is to be based on the book values of the corporation as shown by that corporation's books of account. Accordingly, since the original returns filed reflect the book values as shown on the corporation's books of accounts, those are the correct figures and the claim for refund should be denied.

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 provides that the word "capital" shall include capital stock, surplus, undivided profits and long term debt.

The original returns filed by Claimant stated the amount of capital employed as instructed on the franchise tax return. That is, the amount of capital employed was reported as that amount which was reflected on the corporation's books of account. The amended returns do not reflect the values as reflected on the Claimant's books of account.

There appears to be very little judicial authority on point, and as such, it is necessary to interpret the applicable statutes according to the standard prescribed therein. Under Sections 1203 and 1209(a), the amount of capital employed must be that amount as that reflected on the books of account. The general rule to be applied in the construction of tax statutes requires that the primary consideration be to ascertain and to give legal effect to the intention of the Legislature. Affiliated Management Corporation v. Oklahoma Tax Commission, 570 P.2d 335 (Okl. 1977). To interpret the statute as Claimant suggests would create an exception which is not provided for in the franchise tax statutes.

CONCLUSIONS

Based on the above and foregoing findings of fact and applicable law 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) The franchise tax based on the value of capital employed as stated on the books of account of Claimant in the original franchise tax returns filed on August 31, 1984 for the tax year 1984-85, and on August 30, 1985 for the tax year 1985-86, represent the correct values which are subject to franchise tax under 68 O.S. 1981, §§ 1203, 1209(a).

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Claim for Refund of CLAIMANT be denied and that the returns as originally filed be deemed correct.

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.