

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 87-04-30-55 / NON-PRECEDENTIAL  
**ID:** CR-85-008  
**DATE:** APRIL 30, 1987  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** AFFIRMED / S.CT. 68,916  
DECISION NOT PUBLISHED

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**STATEMENT OF FACTS**

Protestant/Claimant is a corporation organized under the laws of the State of Oklahoma with Federal Identification Number XX—XXXXXXX. On December 28, 1983, Protestant/Claimant filed an application for a tentative refund for losses claimed in tax year 1982 attributable to net operating loss carrybacks for the taxable years 1972 through 1980.

For the tax years in question, Protestant/Claimant was allowed a net operating loss deduction from Oklahoma gross taxable income in the same amount as the amount of loss deducted on its federal return. Oklahoma gross taxable income was greater than federal gross taxable income because the Protestant/Claimant’s municipal interest income was excluded from federal gross income. The amount in dispute is that portion of state tax not refunded because the state carryback deduction was limited to the amount of net operating loss allowed on Protestant/Claimant’s federal income tax return. These amounts are illustrated in the following tables:

<u>Tax Year</u>	<u>Taxable Income as per Federal Return</u>	<u>Municipal Interest Income</u>	<u>Taxable Income as per Oklahoma (Taxable Income as per Federal Return in addition to municipal interest income)</u>
1972	\$ 95,709.00	\$106,056.00	\$ 201,765.00
1973	(107,271.00)	158,670.00	51,399.00
1974	190,077.00	192,413.00	382,490.00
1975	55,323.00	300,455.00	355,778.00
1976	50,000.00	344,554.00	394,554.00
1977	176,979.00	147,143.00	324,122.00
1978	546,432.00	290,212.00	836,644.00
1979	1,887,965.00	470,531.00	2,358,496.00
1980	3,838,059.00	603,052.00	4,441,111.00

<u>Tax Year</u>	<u>Taxable Income as per Oklahoma Return</u>	<u>Total Amount of State Tax Refund</u>	<u>Total Amount of State Tax Disputed</u>
1972	\$ 8,071.00	\$ 3,829.00	\$ 4,242.00
1973	2,056.00	0.00	2,056.00
1974	15,300.00	7,603.00	7,697.00
1975	14,231.00	2,213.00	12,018.00
1976	15,782.00	2,000.00	13,782.00
1977	12,965.00	7,079.00	5,886.00
1978	33,466.00	21,858.00	11,608.00
1979	94,340.00	75,519.00	18,821.00
1980	177,644.00	153,522.00	24,122.00
			\$100,232.00

Protestant/Claimant received a partial denial of this claim for refund by a letter dated January 21, 1985 and then filed a timely protest of the denial by a letter dated February 19, 1985. Protestant/Claimant had a loss for the year of 1982 in the amount of Seventy-Six Million Four Hundred Thirty-Two Thousand Seven Hundred Four Dollars (\$76,432,704.00).

### **ISSUES AND CONTENTIONS**

Protestant/Claimant contends that 68 O.S. 1981, § 2358(A)(3)(a) applies to computations of net operating loss where a taxpayer generates income or loss in more than one state and is inapplicable to this case. Protestant/Claimant further contends that 68 O.S. 1981, § 2358(A)(3)(a) should not be construed so as to limit the carryback deduction allowed on its state income tax return to the amount actually utilized on its federal return, because the federal carryback deduction has been necessarily limited by the exclusion of interest on state and political subdivisions from gross taxable income, which taxpayer argues is mandated by the U.S. Constitution.

The Income Tax Division of the Oklahoma Tax Commission contends that, pursuant to § 2358(A)(3)(a), the carryback deduction allowed for Oklahoma income tax purposes for a particular tax year is limited to the amount actually utilized as a carryback deduction on its federal income tax return for the corresponding tax year.

The issue in this matter is whether Oklahoma adjusted gross income may only be reduced by the net operating loss carryback deduction allowed to a taxpayer for federal income tax purposes under 68 O.S. 1981, § 2358(A)(3)(a).

### **APPLICABLE LAW**

The Protestant/Claimant's contentions are not supported by the statutory provisions contained within 68 OS. 1981, § 2358(A)(3)(a), which provides as follows:

(a) For carryovers and carrybacks to taxable years ending before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss from sources within this state, as determined under this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year.

The statute plainly states that the allowable net operating loss carryback which can be claimed on the state income tax return may not exceed the amount claimed on the federal income tax return. The statute provides that only the amount of the reduction of the federal net operating loss to the loss directly attributable to Oklahoma may be permitted.

The Oklahoma Supreme Court in Getty Oil Company v. Oklahoma Tax Commission, 563 P.2d 627, 631 (Okla. 1977) discussed the statutory provision concerning carryover loss deductions as applicable to Oklahoma taxable income wherein the Court stated:

Prior to the 1971 act, Oklahoma allowed no carryover loss deductions. By incorporating "federal taxable income" into its new tax code, Oklahoma now permits carryover loss deductions if such deductions are reflected in the amount shown on the federal return as taxable income applying however the limitation of 68 O.S. 1971 § 2358(A)(3)(d). If the Legislature had intended to allow a carryover deduction in other situations, it could have provided for such an adjustment. It did not do so.

While we recognize the rule that taxing statutes must be construed in favor of the taxpayer, any change in the method of computing deductible losses for income tax purposes is within the province of the Legislature and should not be made by the courts. Deductions depend entirely upon legislative grace.

Title 68 O.S. § 2358(A)(3) sets out the procedure in which federal net operating loss deduction shall be limited for the purpose of claiming the deduction on the Oklahoma state income tax return. The obvious intent of the statute was to limit the allowable amount of the deduction rather than to create a new deduction. This was succinctly stated by the Oklahoma Supreme Court in Getty supra, wherein it was stated that the obvious intent of the Legislature was not to create a deduction by the provisions of § 2358, but rather was solely to limit the deduction already reflected on the federal income tax return to that amount attributable to Oklahoma.

The intent of the Legislature is obvious from reading the provisions of § 2358, as such pertain to tax years after December 31, 1980, wherein § 2358(A)(3)(b) states:

For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal

Revenue Code as modified by the Oklahoma Income Tax Act and shall be allowed without regard to the existence of a federal net operating loss. The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, except that losses which are not actually utilized shall not reduce the carryover.

The Protestant/Claimant's position is not persuasive in view of the intent of the Legislature as propounded by the Oklahoma Supreme Court in Getty supra, the obvious intent being that the net operating loss carryback deduction for taxable years prior to 1981 are limited by the amount of the deduction as claimed on the federal income tax return.

### **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) Title 68 O.S. 1981, § 2358(A)(3)(a) provides that the net operating loss carryback for state income tax purposes shall be limited by the net operating loss as claimed on the federal income tax return.

(3) Protestant/Claimant's claim for refund for net operating loss carrybacks for the taxable years 1972 through 1980 should be denied.

### **DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest and claim for refund of CLAIMANT be denied, with the following modifications:

1. At page 2, the second set of columns of figures, the caption of the second column, which reads "Taxable Income as per Oklahoma Return" is modified to read "Total Amount of State Tax as per Oklahoma Return"; and,

2. At page 5, Conclusion of Law, number 2, is modified to read "Title 68 O.S. 1981, § 2358(A)(3)(a) provides that, for tax year ending before January 1, 1981, the net operating loss carryback for state income tax, or in this protest for state bank excise tax, purposes shall be limited to the amount of net operating loss used in calculating federal income tax for that same tax year, and, further limited to the proportion of that federal net operating loss which is the same portion thereof as the loss from sources within this state."

### **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.