JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**87-11-03-28 / PRECEDENTIAL**
ID:	**P-85-005**
DATE:	**NOVEMBER 3, 1987**
DISPOSITION:	**DENIED**
TAX TYPE:	**INCOME**
APPEAL:	**AFFIRMED IN PART / REVERSED IN PART / S.CT. 70,024 1989 OK 9, 780 P.2D 665**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATEMENT OF FACTS

The respective parties by agreement adopted, prior to the hearing, a Stipulation of Facts, approved and executed by the General Counsel's Office and the PARENT AND SUBS, concerning the procedure leading up to the hearing, the facts regarding the PARENT AND SUBS and the disputed income, and the activities and operations of the PARENT AND SUBS. This Stipulation of Facts, admitted as Joint Exhibit No. 1, with exhibits attached thereto and incorporated therein by reference, will be expounded upon in this discussion of the Statement of Facts from any additional facts presented at the hearing not contained within the Stipulation of Facts submitted by the parties.

The PARENT is a corporation organized under the laws of the State of Oklahoma and domiciled in the State of Oklahoma. During the years 1980 and 1981, the PARENT was primarily a holding company. It owned one hundred percent (100%) of the stock of SUB ONE and investments in certain other companies and in real estate.

SUB ONE is a corporation organized under the laws of the State of Oklahoma and domiciled in the State of Oklahoma. It is a wholly owned subsidiary of the PARENT. It owned one hundred percent (100%) of the stock of SUB TWO, as well as a number of other investments. It earned some income from the purchase and resale of certain parts and equipment.

SUB TWO is a corporation organized under the laws of FOREIGN COUNTRY and domiciled in FOREIGN COUNTRY. SUB TWO is a wholly owned subsidiary of SUB ONE. During the years 1980 and 1981, SUB TWO was a well servicing company engaged in oil well workovers and oil well repairs in FOREIGN COUNTRY. It neither sold nor performed services in the State of Oklahoma and did no business in the State of Oklahoma. The activities of SUB TWO, during the years 1980 and 1981, were directed by employees located in FOREIGN COUNTRY. More than ninety-nine percent (99%) of these employees were FOREIGN COUNTRY nationals.

During the years 1980 and 1981, SUB ONE and SUB TWO did not constitute a unitary business. The only relationship between the two companies was a parent-subsidiary relationship. Further, it would have been virtually impossible for SUB TWO to operate as a branch of SUB ONE.

In 1980 and 1981, SUB TWO paid to FOREIGN COUNTRY Three Million Seven Hundred Ninety-Two Thousand Nine Hundred Fifty-Four Dollars ($3,792,954.00) and Three Million Eight Hundred Thirty-Seven Thousand Nine Hundred Sixty-One Dollars ($3,837,961.00), respectively, in income taxes on pre-tax earnings and profits of Ten Million Nine Hundred Sixty-Two Thousand One Hundred Seven Dollars ($10,962,107.00) and Nine Million Three Hundred Seventy-Five Thousand Three Hundred Ninety-Eight Dollars ($9,375,398.00), respectively.

SUB TWO declared and paid to SUB ONE dividends in the amount of Five Hundred Thousand Dollars ($500,000.00) in 1980 and Two Hundred Seventy-Five Thousand Dollars ($275,000.00) in 1981. Income taxes were withheld and paid to FOREIGN COUNTRY on the 1980 and 1981 dividends paid to SUB ONE. The taxes withheld and paid to FOREIGN COUNTRY were in the amounts of One Hundred Thousand Dollars ($100,000.00) in 1980 and Fifty-Five Thousand Dollars ($55,000.00) in 1981.

PARENT, SUB TWO and SUB THREE, a subsidiary of PARENT, filed consolidated federal and Oklahoma income tax returns for the tax years 1980 and 1981. PARENT elected on its federal tax returns for the tax years 1980 and 1981 to take the foreign tax credit for (i) the taxes withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE and (ii) the amount of the FOREIGN COUNTRY taxes of SUB TWO deemed to have been paid by SUB ONE for purposes of the foreign tax credit.

In 1980, PARENT took a foreign tax credit in the amount of Two Hundred Eighty-Eight Thousand Eight Hundred Twenty-Two Dollars ($288,822.00). The 1980 foreign tax credit was based on (i) the One Hundred Thousand Dollars ($100,000.00) in taxes withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE and (ii) Two Hundred Sixty-Four Thousand Five Hundred Thirty-Three Dollars ($264,533.00) in taxes paid by SUB TWO which were deemed to have been paid by SUB ONE. Because PARENT elected to take the foreign tax credit in 1980, it was not allowed to deduct on its 1980 federal income tax return the One Hundred Thousand Dollars ($100,000.00) in taxes withheld on the dividends paid to SUB ONE. PARENT was also required to add a foreign dividend gross-up in the amount of Two Hundred Sixty-Four Thousand Five Hundred Thirty-Three Dollars ($264,533.00) to its dividend income, reported on its 1980 federal income tax return.

In 1981, PARENT took a foreign tax credit in the amount of One Hundred Seventy-Five Thousand Eight Hundred Eighty-Five Dollars ($175,885.00). The 1981 foreign tax credit was based on (i) the Fifty-Five Thousand Dollars ($55,000.00) in taxes withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE and (ii) One Hundred Ninety Thousand Six Hundred Dollars ($190,600.00) in taxes paid by SUB TWO which were deemed to have been paid by SUB ONE. Because PARENT elected to take the foreign tax credit in 1981, it was not allowed to deduct on its 1981 federal income tax return the Fifty-Five Thousand Dollars ($55,000.00) in taxes withheld on the dividends paid to SUB ONE. PARENT was also required to add a foreign dividend gross-up in the amount of One Hundred Ninety Thousand Six Hundred Dollars ($190,600.00) to its dividend income, reported on its 1981 federal income tax return.

PARENT on its 1980 Oklahoma income tax return reduced the amount of dividend income reported on its 1980 federal income tax return by Two Hundred Sixty-Four Thousand Five Hundred Thirty-Three Dollars ($264,533.00), the amount of the foreign dividend gross-up. PARENT on its 1980 Oklahoma income tax return also increased the amount reported on its 1980 federal income tax return for the deduction for taxes paid by One Hundred Thousand Dollars ($100,000.00), the amount of the taxes withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE.

PARENT on its 1981 Oklahoma income tax return reduced the amount of dividend income reported on its 1981 federal income tax return by One Hundred Ninety Thousand Six Hundred Dollars ($190,600.00), the amount of the foreign dividend gross-up. PARENT on its 1981 Oklahoma income tax return also increased the amount reported on its 1981 federal income tax return for the deduction for taxes paid by Forty-Eight Thousand Seven Hundred Forty Dollars ($48,740.00), a part of the amount of the taxes withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE.

The Income Tax Division of the Oklahoma Tax Commission, on August 3, 1984, proposed the assessment of additional income tax for the tax years 1980 and 1981 against the PARENT and SUBS. The proposed assessment for the tax years 1980 and 1981 (i) included in the PARENT'S Oklahoma taxable income the amounts of the foreign dividend gross-up which amounts were reported by the PARENT as dividend income on its 1980 and 1981 federal income tax returns, and (ii) disallowed those amounts of the deduction for taxes paid which were attributable to the income tax withheld and paid to FOREIGN COUNTRY on the dividends paid to SUB ONE and which were taken as a credit on the PARENT'S 1980 and 1981 federal income tax returns. The proposed assessment would add Fourteen Thousand Five Hundred Eight-One Dollars ($14,581.00) to the amount of Oklahoma income tax owed by the PARENT for the tax year 1980 and Nine Thousand Five Hundred Seventy-Four Dollars ($9,574.00) for the tax year 1981.

On August 30, 1984, the PARENT filed a formal written protest of the assessment of additional income tax. An informal conference was held with the Income Tax Division of the Oklahoma Tax Commission on November 15, 1984. On December 17, 1984, the PARENT filed a supplement to the formal written protest.

CONTENTIONS OF PARENT

A. The Foreign Dividend Gross-up Amount

1. The foreign dividend gross-up amount is not income taxable by the State of Oklahoma because (i) the gross-up amount is fictional income, (ii) the gross-up amount was neither actually nor constructively received by PARENT or SUB ONE, and (iii) the gross-up amount is not properly allocable to the State of Oklahoma.

2. Taxation of the foreign dividend gross-up amount defeats the fundamental federal purpose of equal treatment between domestic corporations with foreign subsidiaries and domestic corporations with foreign branches.

3. Taxation of the foreign dividend gross-up amount violates the Due Process Clause and the Commerce Clause of the United States Constitution.

B. The Foreign Tax Amount

1. Taxation of the foreign tax amount defeats the federal purpose of preventing double taxation of domestic corporations with foreign subsidiaries.

2. The foreign tax amount is not income taxable by the State of Oklahoma because (i) the foreign tax amount was not actually received in Oklahoma, and (ii) the foreign tax amount is not properly allocable to the State of Oklahoma.

3. Taxation of the foreign tax amount violates the Commerce Clause of the United States Constitution.

CONTENTIONS OF DIVISION

A. The Foreign Dividend Gross-up Amount

1. The foreign dividend gross-up amount must be included in income as a dividend on the PARENT'S Oklahoma income tax return since it was reported in income as a dividend on the PARENT'S federal income tax return.

2. The foreign dividend gross-up amount is allocable to the domiciliary situs of the PARENT since it was reported as a dividend on the PARENT'S federal income tax return.

3. Since the PARENT elected to treat the foreign dividend gross-up amount as a dividend on its federal income tax return, by statute, the gross-up amount must be treated as a dividend for Oklahoma income tax purposes.

4. The federal purpose behind the deemed-paid foreign tax credit is just that; a federal purpose, and although the Oklahoma Income Tax Code relies on the Internal Revenue Code to arrive at Oklahoma taxable income, the Oklahoma income tax statutes do not provide for or allow a credit for foreign taxes actually paid or foreign taxes deemed-paid.

5. The inclusion of the foreign dividend gross-up amount in income as a dividend does not violate the Due Process Clause or the Commerce Clause of the United States Constitution.

B. The Foreign Tax Amount

1. The Oklahoma Income Tax Code does not have a provision for and therefore does not allow a deduction for foreign taxes paid.

2. The disallowance of the deduction for the foreign taxes withheld and paid to FOREIGN COUNTRY on the dividends paid SUB ONE does not violate the Commerce Clause of the United States Constitution.

ISSUES

I. Whether the amount of the foreign dividend gross-up which was reported in gross income as a dividend on the PARENT'S 1980 and 1981 consolidated federal income tax returns for the purpose of claiming the credit for foreign taxes deemed-paid should be included in gross income as a dividend on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns.

II. Whether the amount of the foreign taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions to the PARENT from its wholly owned foreign subsidiary which were taken as credits on the PARENT'S 1980 and 1981 consolidated federal income tax returns should be allowed as deductions on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns.

APPLICABLE LAW

Before these issues are addressed, it is with the understanding that the Oklahoma Tax Commission, a creature of the Legislature, pursuant to the provisions of Section 102 of Title 68 of the Oklahoma Statutes, has only such authority and jurisdiction as is authorized by the Legislature in its enactment. Section 203 of Title 68 of the Oklahoma Statutes provides:

> "The Tax Commission is hereby authorized to enforce the provisions of this Code and to promulgate and enforce any reasonable rules and regulations with respect thereto. The Tax Commission may also prescribe, promulgate and enforce all necessary rules and regulations for the purpose of making and filing of all reports required under any State tax law, and such rules and regulations as may be necessary to ascertain and compute the tax payable by any taxpayer subject to taxation under any State tax law; and may, at all times, exercise their authority as may be necessary to administer and enforce each and every provision of any State tax law."

As an administrative agency, the Oklahoma Tax Commission has only the authority and jurisdiction vested in it by the Legislature. That jurisdiction and authority cannot be expanded upon and as such, the Oklahoma Tax Commission, as an administrative agency, is not empowered with the jurisdiction to determine the constitutionality of statutes but must rather interpret the laws as written by the Oklahoma Legislature.

Sections 901 and 902 of the Internal Revenue Code allow certain domestic corporations to claim a credit against their federal income tax owed for certain taxes paid by a foreign corporation to a foreign country if the domestic corporation owns at least ten percent (10%) of the voting stock of the foreign corporation. Section 902(a) provides that when a domestic corporation receives a dividend from a foreign corporation in which the domestic corporation owns at least ten percent (10%) of the stock of the foreign corporation, the domestic corporation is deemed to have paid a part of the foreign corporation's total taxes in proportion to the amount of dividends the domestic corporation received out of the foreign corporation's accumulated profits in excess of taxes.

The domestic corporation may claim the tax it is deemed to have paid as a credit against its federal income tax owed. I.R.C. § 901(a). The amount of the credit is limited to the amount of federal income tax the domestic corporation would have paid had the income been earned in the United States. I.R.C. § 904(a).

Section 78 of the Internal Revenue Code provides that if the domestic corporation elects to claim the Section 902(a) foreign taxes deemed paid credit, the domestic corporation must treat the amount of foreign taxes it is deemed to have paid as a dividend received by the domestic corporation from the foreign corporation. The addition of the amount of foreign taxes deemed-paid in gross income as a dividend received by the domestic corporation from the foreign corporation is commonly called "grossing up"; thus the resulting amount is referred to as "the foreign dividend gross-up."

The facts as stipulated to by the parties indicate that the PARENT are domestic corporations organized under the laws of the State of Oklahoma and domiciled in the State of Oklahoma. It received dividends in the amount of Five Hundred Thousand Dollars ($500,000.00) in 1981 on stock that it held in its wholly owned foreign subsidiary located in FOREIGN COUNTRY. The PARENT, on its consolidated federal income tax returns for the subject years, reported in gross income the dividends received from its wholly owned foreign subsidiary and elected under Sections 901 and 902 of the Internal Revenue Code to claim the federal tax credit for foreign taxes deemed-paid. As required to claim the Section 902 federal foreign tax deemed-paid credit, the PARENT reported in gross income as a dividend on its consolidated federal income tax returns a foreign dividend gross-up amount of Two Hundred Sixty-Four Thousand Five Hundred Thirty-Three Dollars ($264,533.00) in 1980 and One Hundred Ninety Thousand Six Hundred Dollars ($190,600.00) in 1981. I.R.C. § 78. The PARENT, however, excluded the foreign dividend gross-up amounts from gross income as dividends on its consolidated Oklahoma income tax returns for the years in question.

This action arises under the Oklahoma Income Tax Act, Section 2351 et seq. of Title 68 of the Oklahoma Statutes, and more particularly under the 1980 and 1981 versions thereof. For purposes of clarity and consistency, there being no material changes in the relevant statutes, citations of specific sections shall be referred to the 1981 version of the Oklahoma Statutes.

Title 68 O.S. 1981, § 2355(c) of the Oklahoma Income Tax Statutes provides in pertinent part:

> "A tax is hereby imposed upon the <u>Oklahoma Taxable Income</u> of every corporation doing business within this state or deriving income from sources within this state in an amount equal to four percent (4%) thereof." (Emphasis Added)

"Oklahoma taxable income" is defined in Title 68 O.S. 1981, § 2353(12) as follows:

> " 'Oklahoma taxable income' means 'taxable income' as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal

> government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided; …"

Taxable income as reported on the federal income tax return of every corporation doing business within Oklahoma or deriving income from sources within Oklahoma is the base figure upon which Oklahoma income tax is computed. Getty Oil Company v. Oklahoma Tax Commission, 563 P.2d 627 (Okl. 1977), Appeal dismissed, 434 U.S. 804, 98 S.Ct. 33, 54 L.Ed.2d 62. See Continental Federal Savings and Loan Association v. Oklahoma Tax Commission, 601 P.2d 743 (Okl. 1979). Taxable income in the case of a corporate taxpayer for federal income tax purposes is defined as "gross income minus the deductions allowed by the chapter." I.R.C. § 63(a).

The PARENT reported the foreign dividend gross-up amount in gross income as a dividend on its 1980 and 1981 consolidated federal income tax returns. The PARENT, however, excluded the foreign dividend gross-up amounts from gross income as dividends on its 1980 and 1981 consolidated Oklahoma income tax returns.

Pursuant to Section 2353(12) of the Oklahoma Income Tax Act and the above cited authority, the foreign dividend gross-up amounts are required to be included in gross income as dividends on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns. Otherwise, the amount of taxable income as reported on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns would be less than the amount of taxable income as reported on the PARENT'S 1980 and 1981 consolidated federal income tax returns.

Title 68 O.S. 1981, § 2353(3) provides in pertinent part:

> "For all taxable periods covered by this act, the tax status and all elections of all taxpayers covered by this act shall be the same for all purposes material hereto as they are for federal income tax purposes except when this act specifically provides otherwise." (Emphasis Added)

The PARENT'S election to treat the foreign dividend gross-up amounts as dividends pursuant to Section 78 of the Internal Revenue Code for purposes of claiming the deemed-paid foreign tax credits caused the foreign dividend gross-up amount to be included as items of gross income on its 1980 and 1981 consolidated federal income tax returns.

Pursuant to the above statutory authority, the PARENT is required to report the foreign dividend gross-up amount as a dividend on its 1980 and 1981 consolidated Oklahoma income tax returns, although the amount was only reported as an item of gross income for purposes of claiming the deemed-paid foreign tax credit, since the PARENT elected to report the foreign dividend gross-up amount as a dividend on its 1980 and 1981 consolidated federal income tax returns. As a dividend, the foreign dividend gross-up amount is includable as an item of gross income on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax return. 68 O.S. 1981, § 2353(12).

Further, Section 2358(A) of Title 68 of the Oklahoma Statutes provides in pertinent part:

> §2358. Adjustments to arrive at Oklahoma taxable income and Oklahoma adjusted gross income.
>
> A. Taxable income and, where use of adjusted gross income is necessary, i.e., required by this act, adjusted gross income shall be adjusted as follows to arrive at Oklahoma taxable income and Oklahoma adjusted gross income:
>
> …
>
> 4. Items of the following-nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c hereof, whether or not such items of income were actually received, shall be allocated on the same basis as those items:
>
> a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;
>
> b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:
>
> (1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned;
>
> (2) income from such property which is required to be allocated under the provisions of subsection A, paragraph 5, hereof shall be allocated as herein provided;
>
> c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted … (Emphasis Added)

In accordance with the above emphasized language of Section 2358(A)(4), since the PARENT elected to report the foreign dividend gross-up amount as a dividend and include the foreign dividend gross-up amount as an item of gross income on its 1980 and 1981 consolidated federal income tax returns, the PARENT must report the foreign dividend gross-up amount as a dividend and include the foreign dividend gross-up amount in gross income on its 1980 and 1981

consolidated Oklahoma income tax returns, whether the foreign dividend gross-up amount was actually received or not.

Finally, the PARENT, as stipulated to by the parties, are holding companies domiciled in the State of Oklahoma. The stock of the wholly owned foreign subsidiary for which the dividends and the foreign dividend gross-up amounts are attributable was held by the PARENT in the State of Oklahoma. Therefore, since the PARENT elected to report the foreign dividend gross-up amount as a dividend on its 1980 and 1981 consolidated federal income tax returns, the foreign dividend gross-up amounts are properly allocable to the State of Oklahoma. Further, Section 2358(A)(4)(c) is inapplicable to the facts of this protest for the following reasons. The PARENT AND SUBS are not unitary business enterprises since they only do business within the State of Oklahoma, the foreign company is a subsidiary separate and distinct from the PARENT and therefore, it is not a business activity of the PARENT, and the foreign dividend gross-up amount is not "net income or loss" but merely a computational device used to implement the deemed-paid foreign tax credit, although the foreign dividend gross-up amount was reported as an item of gross income by the PARENT.

Title 68 O.S. 1981, § 2353(3) provides in pertinent part:

> "For all taxable periods covered by this act, <u>the tax status and all elections</u> of all taxpayers covered by this act shall be the same for all purposes material hereto as they are for federal income tax purposes except when this act specifically provides otherwise."

The facts as stipulated to by the parties indicate that taxes were withheld and paid to FOREIGN COUNTRY in the amounts of One Hundred Thousand Dollars ($100,000.00) in 1980 and Fifty-Five Thousand Dollars ($55,000.00) in 1981 on the dividend distributions from the PARENT'S wholly owned foreign subsidiary. The PARENT on its 1980 and 1981 consolidated federal income tax returns elected to take the foreign tax credit for the taxes withheld and paid to FOREIGN COUNTRY. Because the PARENT elected to take the foreign tax credit, it was not allowed to deduct on either its 1980 and 1981 consolidated federal income tax returns the amount of the taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions. The PARENT, however, on its 1980 and 1981 consolidated Oklahoma income tax returns increased the deduction for taxes paid from what was reported on its 1980 and 1981 consolidated federal income tax returns by the amounts of the taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions. The PARENT increased the deduction for taxes paid on its 1980 consolidated Oklahoma income tax return by One Hundred Thousand; Dollars ($100,000.00). It increased the deduction for taxes paid on its 1981 consolidated Oklahoma income tax return by Forty-Eight Thousand Seven Hundred Forty Dollars ($48,740.00), a part of the amount of the taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions.

Pursuant to Section 2353(3), since the PARENT elected to take the foreign tax credit on its 1980 and 1981 consolidated federal income tax returns for the amount of taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions, it is precluded from attempting to deduct the amount of taxes withheld and paid to FOREIGN COUNTRY on its 1980 and 1981

consolidated Oklahoma income tax returns. Further, the PARENT is not allowed to deduct the amount of taxes withheld and paid to FOREIGN COUNTRY because of Section 2353(12) of Title 68 of the Oklahoma Statutes. Otherwise, the amount of taxable income as reported by the PARENT on its 1980 and 1981 consolidated Oklahoma income tax returns would be less than the amount of taxable income reported by the PARENT on its 1980 and 1981 consolidated federal income tax returns. See Getty, supra at 630.

In Getty, supra at page 630, the Supreme Court of Oklahoma wrote:

> "We find no statutory provision in Oklahoma tax law that specifically adopts all federally allowed deductions."

In Essley v. Oklahoma Tax Commission, 196 Okl. 473, 168 P.2d 111 (1946), the Supreme Court of Oklahoma held:

> "Deductions in computing income tax depends entirely upon the legislative grace." Home-Stake Royalty Corporation v. Weems, 175 Okl. 340, 52 P.2d 806 (1935).

See, In Re Levy, 185 Okl. 477, 94 P.2d 537 (1939); Green v. Oklahoma Tax Commission, 188 Okl. 168, 107 P.2d 180 (1940).

The Oklahoma Income Tax Code does not provide for the deduction of foreign taxes. 68 O.S. 1981, § 2358. Therefore, even if the PARENT had deducted the taxes withheld and paid to FOREIGN COUNTRY on the dividend distribution on its 1980 and 1981 consolidated federal income tax returns instead of taking the foreign tax credit, the deduction would not have been allowed on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns.

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) The Oklahoma Tax Commission has jurisdiction in this matter.

(2) The Income Tax Division of the Oklahoma Tax Commission properly included the foreign dividend gross-up amount in gross income as a dividend on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns.

(3) The Income Tax Division of the Oklahoma Tax Commission properly disallowed the deduction taken on the PARENT'S 1980 and 1981 consolidated Oklahoma income tax returns for the foreign taxes withheld and paid to FOREIGN COUNTRY on the dividend distributions to the PARENT from its wholly owned foreign subsidiary.

(4) The protest of the assessments of additional income tax and interest for the 1980 and 1981 tax years should be denied.

(5) The assessments as issued should be deemed correct and proper and the additional income tax and interest should be found due and owing by the PARENT to the State of Oklahoma for the years 1980 and 1981 in the following amounts, to-wit:

For tax year 1980, Twenty Thousand Twelve Dollars ($20,012.00), plus interest accruing at Eighteen Percent (18%) per annum until paid.

For tax year 1981, Twelve Thousand Five Hundred Sixty-Six Dollars ($12,566.00), plus interest accruing at Eighteen Percent (18%) per annum until paid.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the income tax protest of PARENT be denied.

OKLAHOMA TAX COMMISSION