

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 87-12-22-49 / NON-PRECEDENTIAL
ID: P-85-347
DATE: DECEMBER 22, 1987
DISPOSITION: DENIED
TAX TYPE: FRANCHISE
APPEAL: NO APPEAL TAKEN

ORDER

This matter comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, having reviewed the facts and authorities presented therein, and being fully advised in the premises, finds and orders that the Findings, Conclusions and Recommendations of the Administrative Law Judge, filed therein on the 4th day of December, 1987, marked as Exhibit "A", attached hereto and hereby incorporated by reference as though fully set out herein, be and the same are hereby adopted as the Order of the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 4th day of December, 1987, the above styled cause comes on for consideration pursuant to assignment regularly made to ALJ 1, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was had before ALJ 2 on May 20, 1987, at which hearing, the Business Tax Division of the Oklahoma Tax Commission appeared by OTC ATTORNEY, Attorney. Protestant received notice of the scheduled hearing by certified mail and failed to appear. Exhibits, not herein itemized, were received into evidence and the case was submitted for a decision.

STATEMENT OF FACTS

The Franchise Tax Division, hereafter "Division", issued a letter of assessment to the Protestant on March 5, 1985, for additional franchise tax, interest and penalty. The Division proposed to assess tax in the amount of One Thousand Six Hundred Thirty-eight Dollars and Seventy-five Cents (\$1,638.75), plus interest, penalty and reinstatement fee for the tax year 1983-84, and Three Hundred Eighty-seven Dollars and Fifty Cents (\$387.50) in tax, plus interest and penalty for the tax year 1984-85.

The facts underlying this assessment are as follows:

Protestant was suspended from doing business on February 13, 1984, for failure to comply with the franchise tax law for tax year 1983-84. On March 27, 1984, Protestant filed its franchise tax return for tax year 1983-84 and remitted Seventeen Dollars and Five Cents (\$17.05) on May 7, 1984. The 1984-85 franchise tax return was filed by Protestant on August 31, 1984, with a remittance of Ten Dollars (\$10.00), and an amended return for tax year 1984-85 was filed on September 17, 1984. Subsequent to the amended return, the Franchise Tax Division

requested information regarding debt details for the notes designated current notes payable on Protestant's balance sheet. The information provided by Protestant, in the form of a debenture and several notes, served as the basis for the assessment of the additional tax.

A protest to the assessment for additional tax, interest and penalty was filed on behalf of Protestant by ACCOUNTANT, C.P.A. A formal hearing was not requested. A hearing was held, however, and at the hearing, that portion of the March 5, 1985 assessment pertaining to the 1984-85 additional tax, penalty and interest, was withdrawn by the Division, leaving at issue only that portion of the assessment pertaining to additional tax, penalty and interest for tax year 1983-84.

ISSUE AND CONTENTIONS

The issue presented herein is whether notes and debentures on which Protestant had defaulted as of its balance sheet date in 1982 are properly designated as current notes payable on Protestant's franchise tax return for tax year 1983-84.

Protestant contends that the debenture and notes, hereinafter "notes", which were in default as of the December 31, 1982 balance sheet date, were under the terms of the notes payable immediately and constituted demand notes for franchise tax purposes. Protestant's creditor, according to Protestant, demanded payment and repossessed the collateral to which it was entitled in May, 1983, which was prior to the time for filing the 1983-84 franchise tax return.

The Division maintains that the Franchise Tax Code does not provide a current debt treatment for long-term debt that has gone into default as of the balance sheet date when demand for payment has not been made and action to repossess collateral securing the notes has not been completed.

APPLICABLE LAW

The applicable sections of the Franchise Tax Code to a determination of the issue presented by the Protestant are Sections 1209 and 1210 of Title 68 of the Oklahoma Statutes. Section 1209 of Title 68 provides that "capital", for franchise tax purposes, shall include bonds, notes, debentures, or other evidences of indebtedness maturing and payable more than three (3) years after issuance. Section 1210 of Title 68 mandates that the franchise tax return be filed on an annual basis during the period of July 1st to August 31st, inclusive. The pertinent provisions of these applicable sections are as follows:

§ 1209. Capital - Computation

(a) For the purpose of computing the amount of annual franchise tax levied upon and payable by the corporations, associations and organizations

enumerated in Sections 1203 and 1204 of this Code, the word "capital" shall be construed to include the following:

(1) 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.

§ 1210. Annual statement or return

(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 all business wherever transacted during 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.

As evidenced by Section 1210, the franchise tax is measured by the capital employed in this State, as defined in Section 1209, during the last preceding taxable year utilized by the taxpayer for income tax purposes. Protestant's balance sheet date was December 31, 1982, for the last preceding taxable year for which an income tax return was required to be filed.

The notes designated by Protestant as current notes payable on the 1983-84 franchise tax return were dated in 1982 and each was payable more than three (3) years from issuance. Thus, under the provisions of Section 1209, they are considered long-term debt and constitute capital employed in Oklahoma. However, Protestant was in default on the notes on the balance sheet date. Each of the notes provided that upon default by the debtor, all remaining installments of principal became immediately due and payable. Protestant's creditor, FINANCE COMPANY,

had neither demanded payment nor repossessed collateral to which it was entitled as of the balance sheet date. That action was not accomplished until May, 1983. Consequently, the borrowed capital remained employed by Protestant on December 31, 1982, and should have been designated long-term debt on Protestant's 1982-83 franchise tax return.

CONCLUSIONS OF LAW

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

- (1) That the Oklahoma Tax Commission has jurisdiction in this matter.
- (2) This protest is governed by Section 1209(a) and 1210 of the Oklahoma Franchise Tax Code.
- (3) In accordance with Section 1209, Protestant must pay franchise tax to Oklahoma measured by the capital employed in Oklahoma. The capital employed in Oklahoma for the taxable year 1983-84 was that capital employed in Oklahoma at the close of Protestant's last preceding taxable year for which an income tax return was required to be filed. 68 O.S. 1981, § 1210.
- (4) The debenture and notes in the amount of One Million Four Hundred Ninety-Seven Thousand Eight Hundred Forty-Seven Dollars (\$1,497,847.00) that were in default when the balance sheet was prepared for the last preceding taxable year for income tax purposes remained "capital" under the provisions of Section 1209(a) for determining franchise tax due for tax year 1983-84.
- (5) The assessment for tax year 1983-84 issued on March 5, 1985, is correct and proper. Said amounts are now due and owing plus any additional interest accruing thereon until paid in full.

RECOMMENDATION

It is the recommendation of the undersigned Administrative Law Judge, based upon the specific facts and circumstances of this case, that the Franchise Tax 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.