JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **98-01-15-003 / NOT PRECEDENTIAL**
ID: **P9500262**
DATE: **01-15-98**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Division conducted an office audit of Protestant's 1990, 1991, 1992 and 1993 corporate income tax returns.

2. The audit resulted in the disallowance of that portion of the deduction for depreciation claimed by Protestant on its Oklahoma returns which was in excess of the depreciation deduction claimed by Protestant on its Federal returns for the respective tax years.

3. Protestant calculated its Oklahoma depreciation for the years at issue taking into account depreciation which was allowable but not claimed on its Oklahoma returns prior to the 1990 tax year.

4. Protestant failed to deduct the additional depreciation in prior years due to its erroneous understanding that Oklahoma required a more conservative depreciation method than that allowed by Federal law.

5. On September 8, 1995, the Division caused to be issued a proposed income tax assessment against Protestant for the years at issue.

6. Protestant timely protested the proposed assessment.

7. The amount in controversy is $2,261.00, inclusive of tax in the amount of $1,369.00, interest accrued through September 30, 1995, in the amount of $802.00 and penalty in the amount of $90.00.

ISSUES AND CONTENTIONS

Protestant does not dispute the denial of its excess depreciation deductions. Protestant instead argues that equitable recoupment is applicable and should be used to offset its time barred overpayments against the deficiencies.

The Division contends that the protest and request for setoff should be denied. In support of this contention, the Division argues that equitable recoupment does not apply since the overpayments and deficiencies do not involve a single transaction.

The issue presented for decision is whether the doctrine of equitable recoupment is applicable to the case at bar.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. "Equitable recoupment", as the phrase implies, is a rule of law which diminishes the right of a party to recover a debt, to the extent the party seeking to recover the debt holds money or property of the debtor without a moral right. ***Black's Law Dictionary*** 484 (5th Ed. 1979). Equitable recoupment is ordinarily a defensive remedy going only to mitigation of damages. ***Id.***

3. In the tax context, the doctrine of equitable recoupment provides that time barred refund claims may be offset against the tax claims of the government and; likewise, that time barred tax claims may be offset against the refund claims of the taxpayer. ***United States v. Dalm***, 494 U.S. 596, 110 S.Ct. 1361, 108 L.Ed.2d 548 (1990). The doctrine, however, is narrowly applied to a single transaction, item, or taxable event receiving inconsistent tax treatment. ***Id.*** See, ***Philadelphia & Reading Corp. v. United States***, 944 F.2d 1063, 1075-76 (3rd Cir. 1991) and ***United States v. Forma***, 784 F.Supp. 1132, 1138 (S.D.N.Y. 1992).

4. Equitable recoupment is limited to a single year or a single tax period situation. ***Kasishke v. Oklahoma Tax Commission***, 541 P.2d 848, 853 (Okl. 1975). Taxes fairly due but not properly assessed for one year cannot be set off against refunds due for another year. ***Philadelphia & Reading Corp.***, *supra*. Likewise, time barred claims for the overpayment of taxes cannot be set off against tax claims of the government for different taxable years.

5. Protestant's protest should be denied.

DISPOSITION

Based on the above and foregoing, it is DETERMINED that the protest be denied. It is further DETERMINED that the amount in controversy, plus any additional accrued and accruing interest, be fixed as the deficiency due and owing.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not 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.