

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 98-11-17-012 / NOT PRECEDENTIAL  
**ID:** P9600304 / P9600306  
**DATE:** 11-17-98  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The parties stipulate to the following procedural facts:

1. The Protestants filed their 1994 individual Oklahoma Income Tax Return[s] on October 17, 1995.

2. The Division, by letter dated January 29, 1996, denied the Investment/New Jobs Credit claim of PROTESTANT "C" Drilling, L.L.C., for the 1994 taxable year, all as set forth in a letter of the Division by A Corporate Auditor.

3. The Division, by letter[s] dated March 29, 1996, proposed the assessment of additional Oklahoma income taxes, together with interest [accrued through March 29, 1996] thereon, against the Protestants for the 1994 taxable year, all as set forth in [the] letter[s] of the Division by A Individual Auditor, in the following amount[s]:

#### [PROTESTANTS "A"]

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1994	\$2,601.00	\$373.89	\$2,974.89

#### [PROTESTANTS "B"]

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1994	\$2,750.00	\$395.31	\$3,145.31

4. The Protestants timely filed a formal protest objecting [to] the assessment of additional income tax and interest, accrued and accruing, on April 29, 1996.

5. A Pre-hearing Conference was held on September 24, 1996. On October 11, 1996, the Protestants filed a Waiver of Confidentiality for the purpose of consolidating the cases. The Administrative Law Judge issued a Pre-hearing Conference Order on November 5, 1996, consolidating the protests of the Protestants, based on the above referenced waiver.

6. The Income Tax Protests of the Protestants are properly before the Commission.

B. The parties stipulate to the following facts relating to the Investment/New Jobs Credit:

1. The basis for the referenced assessments is the denial of the claim for an Investment/New Jobs income tax credit of PROTESTANT "C" Drilling, L.L.C., which flows through to the Protestants as shareholders in the L.L.C. It is the position of the Protestants that PROTESTANT "C" DRILLING, L.L.C., and ANOTHER COMPANY produce the initial and integral part of an oil well through the use of raw and prepared materials by giving such materials new forms, qualities, and properties by both hand labor, machinery, and equipment.

2. The reason the Division denied the claimed credit was because the Division does not think that equipment used in drilling operations should be considered as manufacturing or processing equipment for the Investment/New Jobs Credit. This is based on Rule 710:50-15-74(c) of the Oklahoma Administrative Code which specifically disqualifies oil and gas production and drilling for the Investment/New Jobs Credit. It is the Protestants' position that the above mentioned rule is not valid and is neither authorized nor contemplated by Title 68 O.S. § 2357.4.

### **ISSUE**

The issue presented for decision is whether the drilling equipment qualifies as manufacturing or processing equipment for purposes of the Investment/New Jobs Credit.

### **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. Section 2357.4, as amended, provides a credit against the tax imposed by Section 2355 of the Oklahoma Income Tax Act for either an investment in qualified depreciable property placed in service for use in a manufacturing or processing facility in this state or a net increase in the number of full-time-equivalent employees engaged in manufacturing or processing, including employees engaged in support services. 68 O.S. Supp. 1992, § 2357.4(A).

3. The Tax Commission, pursuant to its authority under 68 O.S. 1981, § 203 to enforce and implement the provisions of the state tax laws, adopted Rule 23.008.04 of the Oklahoma Tax Commission Permanent Rules<sup>1</sup>. This Rule provides in pertinent part that "[A] company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit." OAC 710:50-15-74(c). See, Oklahoma Tax Commission Order No. 89-11-14-007(Prec.).

4. The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless the rules and regulations are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, *Boydston v. State*, 277 P.2d 138 (Okl. 1954); *Arkansas Louisiana Gas Co. v. Travis*, 682 P.2d 225 (Okl. 1984); *Rutherford v. United States*, 438 F. Supp. 1287 (D.C. Okl. 1977). As a general rule, it is presumed that administrative rules and regulations are fair and reasonable and that the complaining party has the burden of proving the contrary by competent and convincing evidence. *Stiner v. Califano*, 438 F. Supp. 796 (D.C. Okl. 1977); *State ex rel. Hart v. Parham*, 412 P.2d 142 (Okl. 1966).

5. The contemporaneous construction of a statute by a department of government charged with its execution is entitled to great weight and should not be overturned without cogent reasons. *Peterson v. Oklahoma Tax Commission*, 395 P.2d 388, 391 (Okl. 1964). Where the legislature has convened many times during the period of administrative construction without expressing its disapproval, such silence may be regarded as acquiescence in or approval of the administrative construction. See, *Atlantic Refining Company v. Oklahoma Tax Commission*, 360 P.2d 826 (Okl. 1961).

6. Rules promulgated pursuant to the Administrative Procedures Act<sup>2</sup> are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. 75 O.S. 1991, § 306(C). They are valid and binding on the persons they affect and have the force of law. 75 O.S. 1991, § 308.2(C). They also are prima facie evidence of the proper interpretation of the matter to which they refer. *Id.*

7. In Order No. 89-11-14-007, the Tax Commission considered the application of the Investment/New Jobs Credit to restaurants. In holding that the credit provision does not encompass restaurants as manufacturers or processors, the Commission found that "[T]he . . . purpose of the credit provision . . . is to stimulate industrial activity relating to manufacturing and processing, which is not dependent on locale for its existence." Thus, the Commission drew a distinction between taxpayers engaged in retailing or providing a service and those engaged in manufacturing or processing.

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<sup>1</sup> Amended effective May 13, 1991. Currently codified as Rule 710:50-15-74 of the Oklahoma Administrative Code.

<sup>2</sup> 75 O.S. Supp. 1987, § 250 et seq., § 301 et seq.

8. Based on the above conclusions, Protestants' protests to the proposed income tax assessments should be denied.

**DISPOSITION**

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the protests of PROTESTANTS "A", PROTESTANTS "B" and PROTESTANT "C" Drilling, L.L.C., be denied. It is further DETERMINED that the amounts in controversy, inclusive of any additional accrued and accruing interest, be respectively 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.