JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2001-04-24-005 / NOT PRECEDENTIAL**
ID: **P9700015**
DATE: **04-24-01**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. CORPORATION X was formed as a corporation in 1988.

2. CORPORATION X manufactures products invented and developed by Protestants.

3. Protestants own seventy-four percent (74%) of CORPORATION's common stock.

4. In 1995, Protestants purchased a building and moved the manufacturing operations of CORPORATION X into the building.

5. CORPORATION X purchases all tools, machinery and equipment used in the manufacturing process.

6. On their 1995 State of Oklahoma Individual Income Tax Return, Protestants claimed the royalty exemption allowed by the Inventors Assistance Act[1] at Section 5064.7(A)(1) and the Oklahoma Income Tax Act[2] at Section 2359(D) in the amount of $23,869.00. Protestants also claimed as a deduction from adjusted gross income $87,750.00 or sixty-five percent (65%) of the cost of the building housing CORPORATION X's manufacturing operations as allowed by Section 5064.7(A)(2) of the Inventors Assistance Act.

7. The Division audited Protestants' 1995 income tax return. It allowed the royalty exclusion, but disallowed the investment exclusion.

8. By letter of adjustment dated November 8, 1996, the Division notified Protestants of the disallowance of the investment exclusion. As a result of the disallowance, Protestants' $2,511.00 refund claim was denied and $441.00 in additional tax due was assessed.

9. Protestants timely protested the disallowance.

---

[1] 74 O.S. 1991, § 5064.1 et seq. Added by Laws 1987, c. 121, § 1, eff. Nov. 1, 1987.

[2] 68 O.S. 1991, § 2351 et seq.

ISSUE AND CONTENTIONS

Whether Protestants are statutorily entitled to claim the investment exclusion under 74 O.S. 1991, § 5064.7(A)(2) on their 1995 income tax return notwithstanding they are not the manufacturer of the products.

Protestants contend that the disallowance of the investment exclusion is erroneous. In support of this contention, Protestants argue that the language of Section 5064.7(A)(2) does not preclude their theory that they may exclude sixty-five percent (65%) of the cost of the building since they own the building, the building qualifies as depreciable property and the depreciable property is utilized directly in manufacturing the product.

The Division contends that the disallowance of the investment exclusion is correct. In support of this contention, the Division argues that the incentives provided in Section 5064.7(A)(2) are limited to the manufacturer of the product and since Protestants are not the manufacturer of the product they are not entitled to the investment exclusion.

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. The legislature has enacted income tax incentives for inventors of products developed and manufactured in Oklahoma and manufacturers of such products. 74 O.S.1991, § 5064.7(A).

3. The incentives provided in Section 5064.7(A)(2) are exclusive to the manufacturer of the product.

4. The conclusion that the incentives in Section 5064.7(A)(2) are exclusive to the manufacturer is drawn from the structure of Section 5064.7 wherein the legislature announces that it is providing incentives to inventors and manufacturers of products developed and manufactured in Oklahoma in subsection (A), then lists the incentive to inventors in paragraph (1) of subsection (A) and the incentives to manufacturers in paragraph (2) of subsection (A). See, ***Lucas v. Canadian Valley Area Vocational Technical School of Chickasha, Dist. No. Six***, 824 P.2d 1140 (Okl.App. 1992). Further, this conclusion is drawn from the language of paragraph (2) wherein it begins "[a]n instate manufacturer" and then in the second sentence begins "[i]n addition, such manufacturer". See, ***Matter of Estate Tax Protest of Leake Estate***, 891 P.2d 1299 (Okl.App. 1994).

5. Protestants cite the language of the second sentence of paragraph (2) for the proposition that not only the manufacturer, but anyone investing in the qualified depreciable property is entitled to the investment exclusion. The cited language, however, is modified by "such manufacturer". See, ***Leake Estate****, supra*. Further, the cited language merely recognizes that an individual, as opposed to some other legal entity, may qualify for the incentive and that the basis for the exclusion for individuals is adjusted gross income, while the basis for the exclusion for corporations is taxable income. See, 68 O.S. 1991, § 2358(A).

6. Here, Protestants admit they are not the manufacturer of the products. CORPORATION X is the manufacturer. Accordingly, Protestants are not statutorily entitled to claim the investment exclusion under 74 O.S.1991, § 5064.7(A)(2).

7. Protestants' investment in the building does qualify for the investment credit allowed by Section 2357.4, provided Protestants submit proof that the investment did not cause a decrease in the number of full-time-equivalent employees. 68 O.S.1991, § 2357.4(A). The credit is equal to one percent (1%) of the cost of the qualified depreciable property. 68 O.S.1991, § 2357.4(B) and (D).

8. Protestants protest to the disallowance of the investment exclusion allowed by 74 O.S.1991, § 5064.7(A)(2) should be denied.

DISPOSITION

Based on the above and foregoing, it is DETERMINED that the protest of Protestants, to the disallowance of the investment exclusion be denied. It is further DETERMINED that upon submission of satisfactory proof of the hereinabove solicited information, an investment credit of one percent (1%) of the cost of the qualified depreciable property or $1,350.00 be allowed against Protestants' 1995 income tax liability, thus resulting in a net refund to Protestants of $909.00 for the 1995 tax year.

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.