JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2005-06-07-12
ID: P-04-142-H
DATE: JUNE 7, 2005
DISPOSITION: DENIED
TAX TYPE: FRANCHISE
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STIPULATION OF FACTS

At the request of the parties, this matter was submitted on briefs.[1] On January 12, 2005, the parties submitted the following Stipulation of Facts:

1. The name of the Protestant is BANK.

2. BANK was an Oklahoma state bank that converted to a national bank in November, 2001.[2]

3. BANK, as a national bank, has never paid any Oklahoma corporate franchise tax pursuant to 68 O.S. 2001 §§1201-1214 (the "Franchise Tax Code").

4. That VICE-PRESIDENT, Senior Vice-President/Cashier, would present the following testimony at a hearing if one were to be held.[3] The Division does not stipulate to the veracity or accuracy of any statement(s) made by Protestant but simply acknowledges that if a hearing were held, VICE-PRESIDENT'S testimony would be as follows:

(a) That he is the Senior Vice President and Cashier of BANK.
(b) That BANK was at one time an Oklahoma State Bank.
(c) That BANK while an Oklahoma State Bank did pay franchise tax.
(d) That BANK converted to a national bank in November 2001.
(e) That BANK has not paid any franchise tax to the State of Oklahoma since becoming a national bank.
(f) That it is the position of BANK that BANK is not included as an entity required to pay Franchise Tax pursuant to the Oklahoma Franchise Tax Code.

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[1] OKLA. ADMIN. CODE § 710:1-5-38, which in pertinent part states:

> When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral hearing is not needed, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. . . .

[2] Exhibit A.

[3] Exhibit B.

(g) That BANK failed to pay franchise tax as a result of their understanding that the Oklahoma Franchise Tax Code did not encompass national banks.

5. The Oklahoma Tax Commission assessed a franchise tax pursuant to the Franchise Tax Code against BANK for the period July 1, 2002 through June 30, 2005, for $60,000 (Sixty thousand dollars) (the "Assessment") plus interest in the sum of $9,732 (Nine thousand seven hundred thirty-two dollars) for a total tax and interest due of $69, 732 (Sixty-nine thousand seven hundred thirty-two dollars).[4]

6. The assessment and interest have been paid by BANK under protest.[5]

ADDITIONAL FINDINGS OF FACT

7. Prior to converting to a national bank, the Protestant was a state bank, which operated under the name BANK, located in Oklahoma City, Oklahoma.[6]

8. After converting to a national bank, the Protestant remained in Oklahoma City, Oklahoma.[7]

9. On September 13, 2004, the Division issued the proposed Assessment against the Protestant.[8]

10. On October 13, 2004, the Protestant timely filed its protest to the proposed Assessment with this office.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[9]

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[4] Exhibit C.

[5] Exhibit D. *See* OKLA. ADMIN. CODE § 710:1-3-47 (2004):

> In any case where a taxpayer files a written protest to a proposed assessment as provided by 68 O.S. § 221, the taxpayer may pay the tax amounts proposed to be assessed and designate such payment as being made under protest. Such payment will stop the accrual of interest on the amounts so paid. If the Commission sustains the protest, in whole or in part, the amount determined by the Commission not be due shall be refunded to the taxpayer, without interest, except as otherwise provided by law.

[6] Exhibit A.

[7] *See* Exhibits A and C. The proposed Assessment was mailed to the Protestant at 123 FAKE STREET BIGCITY, OK 73112.

[8] Exhibit C.

2. The terms of the Oklahoma Franchise Tax Code "shall apply to every corporation organized under the laws of this state, or qualified to do, or doing business in Oklahoma in a corporate or organized capacity by virtue of creation or organization under the laws of this or any other state, territory or district, or a foreign country, including associations, joint-stock companies and business trusts as defined by Section 202 of this title, but not including limited liability companies as defined by Section 2001 of Title 18 of the Oklahoma Statutes."[10]

3. For purposes of the Franchise Tax Code, when the term "doing business" is used "it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations, as are enumerated in the preceding section."[11]

4. The Uniform Tax Procedure Code[12] defines "corporation"[13] as follows:
The term "corporation" means an organization, other than a partnership, as hereinafter defined:

(1) *Created or organized under the laws of Oklahoma*;
(2) *Qualified to do or doing business in Oklahoma, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States* or of some state, territory or district, or of a foreign country;
(3) Associations, joint-stock companies, insurance companies, including surety and bond companies;
(4) Business trusts, which shall mean and include common law trusts, such as Massachusetts trusts and every other business organization consisting essentially of an arrangement whereby property is conveyed to one or more trustees for purposes other than the protection and conservation of assets or the protection of debtholders; and
(5) *National banking associations*, state banks, and trust companies; (Emphasis added)

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[9] OKLA. STAT. ANN. tit. 68, § 207 (West 2001).

[10] OKLA. STAT. ANN. tit. 68, § 1201 (West 2001).

[11] OKLA. STAT. ANN. tit. 68, § 1202 (West 2001).

[12] OKLA. STAT. ANN. tit. 68, §§ 201 *et seq.* (West 2001). OKLA. STAT. ANN. tit. 68, § 201 (West 2001), states:

> The purpose of this Article, which may be cited as the "Uniform Tax Procedure Code", is to provide, so far as is possible, uniform procedures and remedies with respect to all state taxes. Unless otherwise expressly provided in any state tax law, heretofore or hereafter enacted, the provisions of this article shall control and shall be exclusive.

[13] OKLA. STAT. ANN. tit. 68, § 202(g) (West 2001).

5. "Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears."[14]

6. A franchise tax at the rate of One Dollar and twenty five cents ($1.25) for each One Thousand Dollars ($1,000.00) or fraction thereof of the amount of capital used, invested or employed within the state is assessed against every corporation, association, joint-stock company and business trust organized under the Oklahoma law.[15]

7. For purposes of tax law in the State of Oklahoma, a national bank shall be treated as a bank organized and existing under the laws of the State of Oklahoma.[16] The Oklahoma Supreme Court has held that in view of 12 U.S.C.A. § 548, "states have no option but to treat national banks the same as state banks for tax purposes."[17]

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[14] OKLA. STAT. ANN. tit. 25, § 2 (West 2001).

[15] OKLA. STAT. ANN. tit. 68, § 1203 (West 2001):

> There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company and business trust organized under the laws of this state, equal to One Dollar and twenty-five cents ($1.25) for each One Thousand Dollars ($1,000.00) or fraction thereof of the amount of capital used, invested or employed in the exercise of any power, privilege or right inuring to such organization, within this state; it being the purpose of this section to require the payment to the State of Oklahoma this tax for the right granted by the laws of this state to exist as such organization and enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by reason of the form of such existence.

[16] 12 U.S.C.A. § 548:

> For the purposes of any tax law enacted under authority of the United States or any State, *a national bank shall be treated as a bank organized and existing under the laws of the State* or other jurisdiction within which its principal office is located. (Emphasis added)

[17] *First National Bank and Trust Co. v. Parham*, 1973 OK 136, 515 P.2d 1374. The bank in *Parham* argued that the "In Lieu Tax" provided by OKLA. STAT. ANN. tit. 68, § 2370 was the exclusive method by which national banks in this state could be taxed, and since mortgage tax was not specified in Section 2370, the bank was exempt.

OKLA. STAT. ANN. tit. 68, § 2370 (West 2001), in pertinent part states:

> A. For taxable years beginning after December 31, 1989, for the privilege of doing business within this state, every state banking association, national banking association and credit union organized under the laws of this state, located or doing business within the limits of the State of Oklahoma shall annually pay to this state a privilege tax at the rate of six percent (6%) of the amount of the taxable income as provided in this section.
>
> B. 1. The privilege tax levied by this section shall be in addition to the franchise tax levied in Article 12 of this title and in lieu of the tax levied by Section 2355 of this title and in lieu of all taxes levied by the State of Oklahoma, or any subdivision thereof, upon the shares of stock or personal property of any banking association or credit union subject to taxation under this section.

The Protestant's position is that national banks are not included in the classes of entities subject to tax under the Franchise Tax Code, because Section 1201 does not contain a specific reference to corporations organized under the laws of the United States or similar language.

The Protestant references the 1985 amendments to the exemptions set forth in Section 1206, which deleted the terms "national banks" and "state banks," and asserts that "[s]tate banks, as a result of such deletion by the 1985 amendments, would be included in the Franchise Tax Code, without specific reference, because state banks are organized under the laws of this State."[18]

Prior to the 1985 amendments to the Franchise Tax Code, the Uniform Tax Procedure Code[19] defined a corporation as including corporations created or organized under the laws of Oklahoma; qualified to do *or doing business* in Oklahoma, in a corporate capacity, by virtue of creation or organization under the laws of the United States, and specifically included, national banking associations and state banks.[20]

In 1985, Section 202 of Title 68 was also amended,[21] but the Legislature did not delete "national banking associations" from the definition of "corporations" in subsection (g) (5) of Section 202. National banking associations remained subject to franchise tax under the Franchise Tax Code in the State of Oklahoma.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest should be denied. It is further ORDERED that the total amount of franchise tax assessed be fixed as the Protestant's deficiency and that those amounts be determined as due and owing, including interest[22] accrued to date the Assessment was paid under protest.[23]

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[18] Protestant's Brief in Chief, Pg. 7. *See also* the Oklahoma Banking Code, which required the Protestant as a state bank to organize as a corporation in the State of Oklahoma, and receive a certificate of incorporation from the Oklahoma Secretary of State. After the Protestant converted to a national bank, the Oklahoma Banking Code still recognizes the converting bank as the same business and corporate entity, which was organized under the law of the State of Oklahoma. However, there is no evidence in the record regarding the current status of the corporate entity formed when the Protestant was a state bank.

[19] OKLA. STAT. ANN. tit. 68, §§ 201 et seq. (West 2001).

[20] *See* OKLA. STAT. ANN. tit. 68, § 202(g) (West 2001).

[21] 1985 Okla. Sess Laws c. 182, § 1.

[22] The Protest includes a Petition for Waiver of Interest, if it was determined that the Protestant was subject to franchise tax. This office does not have the authority to waive penalty and interest. The authority to waive penalty and interest rests exclusively with the Commissioners or their designee, pursuant to OKLA. STAT. ANN. tit. 68, § 220 (West 2001).

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.

[23] *See* Note 5.