

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-03-14-37
ID: P-00-197
DATE: MARCH 14, 2006
DISPOSITION: DENIED
TAX TYPE: AD VALOREM - 5 YEAR MANUFACTURERS EXEMPTION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By agreement of the parties, this matter was submitted for decision without a hearing. Former Representative for Protestant, REPRESENTATIVE, **ACCOUNTING FIRM** and the Ad Valorem Division, by and through its former representative, OTC ATTORNEY 1, Assistant General Counsel, General Counsel's Office of the Oklahoma Tax Commission, submitted a *Stipulation of Facts* and filed briefs in support of their respective positions, all in accordance with *Oklahoma Administrative Code 710:1-5-38*. The Division is currently represented by OTC ATTORNEY 2, Senior Deputy General Counsel, and OTC ATTORNEY 3, Assistant General Counsel.

FINDINGS OF FACT

1. In Oklahoma, PROTESTANT owns and operates a glass manufacturing plant located at 123 FAKE STREET in ANYTOWN, BOGUS County, Oklahoma, where it manufactures a variety of glass products.

2. PROTESTANT'S ANYTOWN facility is a "Manufacturing Facility" as that term is defined in 68 O.S. §2902.

3. On March 15, 2000, PROTESTANT hand delivered and filed with the BOGUS County Assessors office its initial application for Oklahoma's five-year exemption from ad valorem taxation for an expansion of its ANYTOWN facility.

4. The machinery and equipment, which is the subject of this application, was acquired after January 1, 1996 and before December 31, 1996, at a total cost of \$4,311,206. The date of first qualification for the exemption as determined in accordance with *Oklahoma Tax Commission Rule 710:10-7-5* is January 1, 1997. The first year of eligibility (XM1 year) for the five-year exemption from ad valorem taxation was 1997.

5. Taxpayer failed to file an application in 1997, 1998 and 1999 (the XM1, XM2 and XM3 years respectively). In accordance with 68 O.S. § 2902 and *Oklahoma Tax Commission Rule 710:10-7-5*, taxpayer has lost its unclaimed exemption for those years. The only years that will be affected by this Protest will be the fourth and fifth year of exemption eligibility (XM4 and XM5 years).

6. PROTESTANT'S application was initially denied by the BOGUS County Assessors Office.

7. Taxpayer received notice of the disapproval via facsimile on May 22, 2000, and in accordance with *Oklahoma Tax Commission Rule 710:10-7-13*, PROTESTANT timely filed its written complaint in the office of the BOGUS County Clerk on May 24, 2000.

8. The BOGUS County Board of Equalization conducted a hearing on this matter on May 25, 2000 and granted PROTESTANT'S application for the XM4 year of exemption eligibility.

9. On August 25, 2000, the Division denied PROTESTANT'S application for the five-year exemption from ad valorem taxation stating that PROTESTANT'S application was governed by a prior version of 68 O.S. § 2902, and in accordance with that version of the statute, PROTESTANT did not have, or alternatively did not maintain, a net increase of fifteen (15) full-time-equivalent employees.

10. In this case, PROTESTANT has properly and timely perfected a protest regarding the denial of its application for the Oklahoma five-year exemption from ad valorem taxation for new, acquired or expanded manufacturing facilities.

11. The average of the 3rd and 4th quarter payroll in 1995, the year immediately preceding the year for which initial application is made was \$2,869,422 and the average number of full-time-equivalent employees for the 4th quarter of 1995 was 487. The average of the 3rd and 4th quarter payroll and the average number of full-time-equivalent employees for each period of exemption eligibility has been as follows:

	<u>Payroll</u>	<u>Full-Time-Employee Count</u>
1996	\$3,055,851	501
1997	\$3,220,450	488
1998	\$3,170,864	463
1999	\$3,141,595	408

The average payroll has been higher than the base-line payroll.

12. PROTESTANT agrees that it did not have, or has not maintained, a net increase of fifteen (15) full-time-equivalent employees for each year of exemption eligibility.

ISSUE

The issue is which version of 68 O.S. § 2902 governs PROTESTANT'S first application filing, the version in effect of January 1, 1997, the first year of exemption eligibility, or the version in effect on March 15, 2000, the year of PROTESTANT'S first application filing for the exemption.

CONTENTIONS

Protestant contends that the statute in effect when its initial application was made should govern. Protestant also contends that the five-year exemption period can be analogized to a

Statute of Limitation period and that the superceded amendments simply extended the period of time for the application to become effective. Such an extension causes the application to be granted under the amended statute.

The Division contends that because the facility was expanded, acquired or built in 1996, that date triggers the application of the Protestant and any application must come under the statute in effect at that time. Any other interpretation would give the statute a retroactive effect.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission (the "Commission") has jurisdiction of this protest. 68 O.S. 1991, §207.

2. The pertinent sections of 68 O.S. § 2902 as effective on January 1, 1997 provide as follows:

A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities...

D. For applications for a five year exemption submitted after December 31, 1993, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site...

4. Except as provided in paragraphs 5 and 6 of this subsection, any exemption for a new, acquired or expanded manufacturing facility shall be granted only if

a. the construction, acquisition or expansion results in a net increase of fifteen (15) or more full-time-equivalent employees of the manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year,...

The statute was amended in 1999 effective on January 1, 2000 and amended portion now provides:

4. Except as provided in paragraphs 5 and 6 of this subsection, all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

a. there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in payroll, or a net increase of Five Hundred Thousand Dollars (\$500,000.00) or more in capital improvements while maintaining or increasing payroll...

3. To receive the benefit offered by the exemption, the application should be filed in accordance with *Oklahoma Tax Commission Rule 710:10-7-5* which states:

Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption by March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the TAX year in which the facility desires to take the exemption. Incomplete application and applications filed after said date will be declared null and void by the Commission.

4. The application as interpreted by the Rule grants an exemption if such conditions are met at the time the statute was triggered. Protestant argues that the statute is not triggered until the application is filed and the Division argues that the statute was triggered by the construction, acquisition or expansion of the facilities. The Division argues further that granting the exemption results in a retroactive effect of the statute.

5. The conduct triggering the use of § 2902 occurred before the passage of an amendment. Without the initial conduct of construction, acquisition or expansion, an application would need not be filed so therefore, it would be logical to tie the specific conduct to a time frame and all successive conduct is bound by the initial act of the Protestant. An application is merely the formalizing of granting what is allowed by the statute if all such provisions of the statute are met. Protestant seems to argue that even though the requirements of the statute were not met in 1997, such successive extensions would allow for the requirements as amended to be met at a future time. The Division contends it is this application which would be retroactive.

6. The general rule is there is a presumption against a retroactive application unless the legislature has clearly expressed its intent that it be applied retroactively. *Boyd Rosene & Assoc. Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115 (10th Cir. 1999), rehearing denied, 178 F.3d 1363. The reasoning was the unfairness of imposing new burdens on persons after the fact. *Landgraf v. USI Film Products*, 511 U.S. 244, 255, 114 S.Ct. 1483, 128 L.Ed. 2nd 229 (1994).

A statute does not operate “retrospectively” merely because it is applied in a case arising from conduct antedating the statute’s enactment, or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. *Landgraf* at 269.

7. In this case, however, the converse is true. The statute would grant a new benefit, not a new burden to this particular taxpayer. Parties whose past acts cannot be granted an exemption at the time of said act cannot be granted an exemption because the parameters of the law now fit their particular circumstance unless specifically granted such effect by the legislature. Finding no intent to do so by the legislature in this case, the exemption should be denied.

8. Protestant argues that the five-year exemption can be analogized to a statute of limitation period, the effect of each amendment to the statute was to renew causes of action which had not yet expired before new provisions too effect. Therefore, the exemption under the 1997 version is superceded by the 1999 amendment and should be granted.

9. A statute of limitations is by definition a maximum period of time during which certain actions can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought regardless of whether any cause of action ever existed. *Black's Law Dictionary*, Sixth Edition, 1990. Here, an exemption from payment of ad valorem taxes is obtained by meeting certain criteria, namely construction, acquisition or expansion of the facilities and an employee base. Protestant is equating the length of the exemption with the statute of limitation time period and has given no legal basis for it other than "an analogy". Finding no legal basis, the Court must reject this argument.

10. Finding no legislative intent for the statute to be applied retroactively and based on the foregoing conclusions of law, this Court finds that the protest of Protestant should be denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the 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.