

JURISDICTION: OKLAHOMA TAX COMMISSION DECISION
CITE: 87-05-19-04 / NON-PRECEDENTIAL
ID: P-86-315
DATE: MAY 19, 1987
DISPOSITION: DENIED
TAX TYPE: FRANCHISE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled cause comes on for consideration pursuant to assignment regularly made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was not held in this case since the Franchise Tax Division of the Oklahoma Tax Commission and Protestant agreed to submit the case on briefs.

The Protestant is represented by CPA, Certified Public Accountant and Controller of COMPANY and the Franchise Tax Division of the Oklahoma Tax Commission is represented by OTC ATTORNEY, Attorney, of the General Counsel's Office of the Oklahoma Tax Commission.

STATEMENT OF FACTS

Protestant filed its franchise taxes for the years 1983-84 and 1984-85. Protestant paid a penalty for late filing of its 1984-85 franchise tax return. Protestant timely filed and paid its 1985-86 franchise tax.

The Franchise Tax Division subsequently requested from Protestant and was furnished details concerning certain long term notes and demand notes owed by Protestant.

Based on information received from Protestant, additional franchise tax, interest and penalty were assessed on February 28, 1986, for tax years 1983-84, 1984-85 and 1985-86, as follows:

	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Line-Three	\$ 494,141.00	\$ 903,816.00	\$214,628.00
Add'l Long-Term Debt	<u>917,463.00</u>	<u>163,112.00</u>	<u>552,864.00</u>
Capital Employed	\$1,411,604.00	\$1,066,928.00	\$767,492.00
Franchise Tax	\$ 1,765.00	\$ 1,333.75	\$ 960.00
Less Timely Payment	<u>(618.25)</u>		<u>(268.75)</u>
	\$ 1,146.75		\$ 691.25
Plus Penalty Due	114.68	133.38	69.13
Plus Interest Due	516.04	<u>24.50</u>	62.21
		\$ 1,491.63	
Less Late Payment		(1,130.00)	
		<u>(113.00)</u>	
Add'l Amount Due	<u>\$ 1,777.47</u>	<u>\$ 248.63</u>	<u>\$ 822.59</u>

On March 10, 1986, Protestant was given an extension of time in which to protest to June 28, 1986. On June 11, 1986, the Franchise Tax Division assessed additional interest as follows:

	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>
Assessed on February 28, 1986	\$1,777.47	\$248.63	\$822.59
Additional Interest	<u>68.80</u>	<u>5.45</u>	<u>41.48</u>
Amount Due	\$1,846.27	\$254.08	\$864.07

Protestant timely filed its protest on June 25, 1986.

Prior to the 1982-83 tax year, the Franchise Tax Division allowed payments made within the first three years on indebtedness maturing in more than three years to be included on a taxpayer's books as current liabilities and thus exempt from taxation.

CONTENTIONS OF PROTESTANT

Protestant contends payments made on long term debt within the first three years of the debt reduction are current liabilities and therefore exempt from calculation of capital employed in Oklahoma under 68 O.S. 1981, § 1209. Protestant further contends that the Franchise Tax Division did allow an exemption for those payments until 1982 or 1983, and the Franchise Tax Division is therefore estopped from changing its treatment of capital employed without first notifying taxpayer. Finally, Protestant contends that the Franchise Tax Division may not also collect penalty and interest from Protestant due to this lack of notice.

CONTENTIONS OF THE DIVISION

The Franchise Tax Division contends that Franchise Tax Law does not provide a current debt treatment of payments to be made on long term debt during the first three years. Therefore, the entire outstanding portion of the notes in question should be included as capital employed in Oklahoma.

ISSUE

Whether the Oklahoma Franchise Tax Code provides an exemption for payments made in the first three years of a note payable and maturing in more than three years.

APPLICABLE LAW

This action arises under the Oklahoma Franchise Tax Code, 68 O.S. 1981, §§ 1203 and 1209, and the Oklahoma Tax Commission has jurisdiction under the Uniform Tax Procedure Code, as amended, 68 O.S. 1981, §§ 201-263. Section 1203 provides:

§ 1203. Tax on domestic corporations and business organizations.

There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company, common law or statutory trust, and other business organizations, as defined in Section 1201 of this Code, 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.

Section 1209 of Title 68 of the Oklahoma Statutes provides direction as to how evidences of indebtedness are to be treated for purposes of computing the amount of capital employed in the state. Section 1209 states that, for purposes of computing the franchise tax, capital shall include, inter alia, notes or other evidence of indebtedness maturing and payable more than three years after issuance.

On its face, this provision plainly includes installment notes maturing and payable at a date more than three years after issuance. Moreover, there is no exemption provided in Section 1209 or in other sections of the Franchise Tax Code for installment payments made during the first three years of a note which matures beyond that period of time. The Oklahoma Supreme Court has also interpreted Section 1209, and has held that installment payments made within the

first three years on a note maturing and payable more than three years after issuance is within the definition of “capital”. C & Z, Inc. v. Oklahoma Tax Commission, 459 P.2d 601, 602 (Okla. 1969).

That the Franchise Tax Division’s interpretation of Section 1209(a) is the correct interpretation and supported by its legislative history. In 1984-85, Senate Bill 206 proposed an amendment to § 1209(a) which would have made that section read as follows:

(1) Outstanding capital stock, surplus and undivided profits, which shall include any amounts designated for the payment of dividends until such amounts are defined and irrevocably placed to the credit of stockholders subject to withdrawal on demand, plus the amount of bonds, notes, debentures or other evidences of indebtedness maturing and payable more than three (3) years after issuance but not any total or installment amount maturing and payable three (3) years or less after issuance. [proposed amendment underlined.)

This additional statement, which would have supported Protestant’s position regarding the proper interpretation of § 1209(a) was considered by the Legislature. The final version, however, excluded the provision underlined above, affirming the Franchise Tax Division’s position that the Legislature did not intend an exemption from “capital” for installment payments made during the first three years of a note which matures beyond that period of time.

Protestant further contends that the Franchise Tax Division may not change its longstanding interpretation of Section 1209 without first notifying taxpayer. Protestant states in its Brief as follows:

Historically, the Tax Commission has effectively supported our position which includes installments due within three years as current and amounts due after three years as long term. The Tax Commission has established a longstanding precedent for accepting and approving franchise returns utilizing the same interpretation of long term debt as we maintain is still correct. We prepared our returns in compliance with the Tax Commission’s instructions. However, as mentioned earlier, the Tax Commission has since adopted a more aggressive interpretation of Section 1209. At the suggestion of their legal staff in 1983 they now consider all debt long term which has a final payment three years or more from issuance. To compound the problem, the Tax Commission elected not to give any notice whatsoever of this change. This lack of notification enables the Commission not only to assess additional taxes, but to go back and collect penalties and interest on a de facto change in tax law. (Brief of COMPANY, p. 1).

In Oral Roberts University v. Oklahoma Tax Commission, 714 P.2d 1013 (Okla. 1985), the Oklahoma Supreme Court stated the doctrine which addresses the question whether an administrative agency may correct its own erroneous interpretation of law, as follows:

Generally speaking an administrative agency has the flexibility to correct its own erroneous interpretation of the law. However, there is a long line of cases holding that the interpretation or construction of an ambiguous or uncertain statute by the agency charged with its administration is entitled to the highest respect from the courts, especially when the administrative construction is definitely settled and uniformly applied for a number of years. It will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable.

Oral Roberts, 714 P.2d at 1014-15.

The Court developed this approach from the rule stated in an earlier Oklahoma Supreme Court case which was cited in part in Oral Roberts, as follows:

In McCain v. State Election Board, we stated the applicable rule:

It is a well settled rule that the contemporaneous construction of a statute by those charged with its execution and application, especially when it has long prevailed, while not controlling, is entitled to great weight and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous. The courts are especially reluctant to overturn a long standing executive or departmental construction where great interests have grown up under it and will be disturbed or destroyed by the announcement of a new rule, or where parties who have contracted with the government upon the faith of such construction will be prejudiced. (Citation omitted)

Oral Roberts, 714 P.2d at 1015.

In summary, the Court has said, in terms relevant to this protest, that administrative construction will not be overturned except for cogent reasons, or where the construction is clearly erroneous or where great interests have grown up around it. Applying the standards prescribed by the Court to the facts of this protest, it may be fairly stated that the Oklahoma Tax Commission had cogent reasons for changing its construction of the statute.

The Oklahoma Supreme Court decision in C & Z, Inc. v. Oklahoma Tax Commission, 459 P.2d 601 (Okla. 1969) supports the Franchise Tax Division's current policy. That case involved a note that was payable "on demand, but if demand is not made, then in 240 monthly payments." C & Z, Inc., 459 P.2d at 602. The plaintiff in error had begun making monthly payments. In deciding that the note was capital within the meaning of Section 1209, the Court stated:

The note here is payable, at the convenience of the holder, either on demand or in installments for twenty years. The note is not definitely payable in the full amount within less than three years, § 12-1209, supra, and the holder had

been accepting installment payments for approximately two years at the time of the hearing before the Oklahoma Tax Commission. Under these circumstances, the note is within the definition of “capital” as construed by the language of § 1209, supra.

C & Z, Inc., 459 P.2d at 602.

Additionally, the statute plainly does not provide an exemption for installment payment made within the first three years of a note. In this respect, the construction originally given the exemption provision of Section 1209(a)(1) was not correct, and since the exemption provision is not ambiguous, the Franchise Tax Division was clearly without authority to grant an exemption where none existed. C & Z, Inc., 459 P.2d 602 (Okla. 1969).

As to the other relevant requirement stated in Oral Roberts, that an administrative construction will not be overturned where great interests have grown up under it, and will be disturbed or destroyed by a new approach, Protestant has asserted no such interest or resulting harm.

CONCLUSIONS

In view of the above and foregoing findings of fact and conclusions of law applicable thereto, the undersigned Administrative Law Judge concludes as follows:

(1) That the Oklahoma Tax Commission has jurisdiction to hear this protest under 68 O.S. 1981, § 207.

(2) This protest is governed by the following provisions of the Oklahoma Franchise Tax Code:

68 O.S. 1981, §§ 1203 and 1209(a)

(3) The Oklahoma Tax Commission has authority to enforce the provisions of the Oklahoma Tax Code and to promulgate and enforce reasonable rules and regulations consistent with the intent of the Legislature as expressed in the relevant statutes. 68 O.S. 1981, § 203.

(4) Section 1209 does not provide an exemption for installment amounts paid during the first three years of a note which matures beyond that period of time.

(5) The Oklahoma Tax Commission is not estopped from correcting its interpretation of a taxing statute where the former interpretation was clearly erroneous as interpreted by the Oklahoma Supreme Court, and where it should be changed for cogent reasons. Oral Roberts University v. Oklahoma Tax Commission, 714 P.2d 1013 (Okla. 1985).

(6) No great interest of Protestant has grown up around the Oklahoma Tax Commission's former interpretation of Sections 1203 and 1209(a) of the Oklahoma Franchise Tax Code.

(7) The assessment by the Franchise Tax Division of the Oklahoma Tax Commission, dated February 28, 1986, in the amount of One Thousand Seven Hundred Seventy-Seven Dollars and Forty-Seven Cents (\$1,777.47) for tax year 1983-84, plus additional interest of Sixty-Eight Dollars and Eighty Cents (\$68.80), plus any accrued interest, is due and payable; in the amount of Two Hundred Forty-Eight Dollars and Sixty-Three Cents (\$248.63) for tax year 1984-85, plus additional interest of Five Dollars and Forty-Five Cents (\$5.45), plus any accrued interest is due and payable; in the amount of Eight Hundred Twenty-Two Dollars and Fifty-Nine Cents (\$822.59) for tax year 1985-85, plus additional interest of Forty-One Dollars and Forty-Eight Cents (\$41.48), plus any accrued interest, is due and payable.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION that the protest of COMPANY 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.