

**JURISDICTION:** OKLAHOMA TAX COMMISSION DECISION  
**CITE:** 87-09-10-15 / PRECEDENTIAL  
**ID:** P-86-234  
**DATE:** SEPTEMBER 10, 1987  
**DISPOSITION:** SUSTAINED  
**TAX TYPE:** FRANCHISE  
**APPEAL:** NO APPEAL TAKEN

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled cause comes on for consideration pursuant to regular assignment made to ALJ, Administrative Law Judge, by the Oklahoma Tax Commission. A hearing was held, at which hearing, Protestant appeared by ACCOUNTANT, Certified Public Accountant, and the Franchise Tax Division of the Oklahoma Tax Commission (hereafter Division) appeared by OTC ATTORNEY, Attorney, of the General Counsel's Office of the Oklahoma Tax Commission.

Prior to the hearing all issues except one were resolved and these findings will be limited to that one remaining issue.

### **STATEMENT OF FACTS**

By letter dated January 23, 1986, the Division issued its assessment for tax years 1977-78 through 1984-85 for tax, penalty and interest in the amount of \$79,040.32.

The interest on the tax deficiency was calculated at the rate of 1½ percent per month pursuant to 68 O.S. Supp. 1983, §217(b), which became effective on March 23, 1983 and was in effect in January 1986, when the assessment was issued. Prior to the 1983 amendment, the statutory rate of interest was one percent per month.

The Protestant timely protested the assessment, raising several issues. However, as mentioned earlier, all issues have been resolved except the issue of the proper interest calculation.

### **CONTENTIONS OF THE PROTESTANT**

Protestant contends that the computation of interest due on the franchise tax deficiency should reflect the interest rate in effect for the tax year in question.

### **CONTENTIONS OF THE DIVISION**

Title 68 O.S. Supp. 1983, §217(b) was in effect at the time the assessment was issued and it is the rate that is in effect at the time of the assessment which should be applied.

**ISSUE**

The sole issue is whether Title 68 O.S. Supp. 1983, §217(b) shall be applied to tax deficiencies for years prior to 1983, when the assessment letter is issued subsequent to 1983.

**APPLICABLE LAW**

This action arises under the Uniform Tax Procedure Code, 68 O.S. Supp. 1983, §217(b) and the Oklahoma Tax Commission has jurisdiction to hear this protest under Section 207 of the Code.

Section 217 of Title 68 of the Uniform Tax Procedure Code, as amended, provides in pertinent part:

§217. Interest and penalties

(a) If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-half percent (1½%) per month from the date of the delinquency until paid.

(b) Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this Code, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Tax Commission at the rate of one and one-half percent (1½%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

Section 217, as amended, became effective on March 23, 1983. Prior to amendment, Section 217, subssecs. (a) & (b) were the same as to all but the allowable rate of interest which could be assessed. Prior to amendment, and including all years prior to amendment which are the subject of this protest, the allowable statutory rate of interest was one percent (1%) per month from the date prescribed in the levying statute for the levy and payment of the tax to the date the deficiency was assessed.

The Division interprets Section 217 so as to apply the higher rate of interest to tax years occurring prior to the effective date of the statute. This interpretation is not consistent with the law in Oklahoma.

The general rule in Oklahoma as to retrospective application of statutes is stated in State v. Board of Education of Independent School District No. 74 of Muscogee County, 206 Okl. 699, 246 P.2d 368 (1952). In that case, the Court stated:

Statutes are to be construed as having a prospective operation unless the purpose and intention of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In every case of doubt the doubt must be resolved against the retrospective effect.

Board of Education, 206 Okl. at 703, 246 P.2d at 372 (citing Swatek Construction Co. v. Williams, 177 Okl. 305, 58 P.2d 585 (1935) )

The above rule was applied in Sunray DX Oil Co. v. Great Lakes Carbon Corp., 476 P.2d 329 (Okl. 1970). In that case, a question was raised as to whether, when a judgment has been obtained bearing a fixed interest rate under existing law, a change in the existing statute, either diminishing or increasing the allowable interest rate to be applied to the judgment, will affect the computation of the amount collectible under the judgment. The Oklahoma Supreme Court held that the new rate of interest on judgments allowed under the amended statute does not apply to a judgment rendered prior to the effective date of the amended statute. (Sunray DX, 476 P.2d at 346).

Further support is found in Wilson v. State ex rel Oklahoma Tax Commission, 594 P.2d 1210 (Okl. 1979), where the Oklahoma Supreme Court stated:

Where a statute or a portion thereof is amended by setting forth the amended section in full, the provisions of the original statute which are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions or changed portions are to be understood as enacted at the time the amended act takes effect, and not to have any retroactive operation.

Wilson, 594 P.2d at 1212 (citations omitted).

The amended statute governing applicable interest rates on assessments does not provide for retrospective effect, nor is that effect fairly implied from the language used. As stated earlier, in case of doubt, the doubt must be resolved against retrospective effect. It follows, then, that the increased interest rate under Section 217(b) applies prospectively only and that the statutory interest rate for the tax year(s) in question is to be applied regardless of the date of the assessment.

### CONCLUSIONS

In view of the above and foregoing factual situation and applicable law relevant thereto, the Administrative Law Judge concludes as follows:

- (1) The Oklahoma Tax Commission has jurisdiction in this matter. 68 O.S. 1981 §203.

(2) That for purposes of computing the interest due on a tax deficiency, the interest rate in effect for the tax year involved is the proper rate rather than the interest rate in effect at the time of the assessment. (See Sunray DX Oil Co. vs. Great Lakes Carbon Co., 476 P.2d 329 (Okl. 170)).

### **DISPOSITION**

It is the ORDER of the OKLAHOMA TAX COMMISSION that the Franchise Tax Division be directed to correct the interest computation in accordance with the findings herein.

### **ORDER CLARIFYING FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above styled cause comes on for consideration pursuant to a Motion for Clarification of Findings, Conclusions and Recommendations filed by the Business Tax Division on August 21, 1987.

Having reviewed the Business Tax Division's Motion for Clarification of Findings, Conclusions and Recommendations, the undersigned Administrative Law Judge finds as follows:

(1) In accordance with the Division's Motion, Conclusion No. 2 of the Findings, Conclusions and Recommendations issued on the 7<sup>th</sup> day of August, 1987, should read as follows:

That for purposes of computing the interest due on a tax deficiency, the interest rate in effect for the tax year involved is the proper rate rather than the interest rate in effect at the time of the assessment. (See Sunray DX Oil Company v. Great Lakes Carbon Company, 476 P.2d 329 (Okla. 1970).) However, although the interest rate in effect for the tax year involved should be applied to the deficiency for that tax year, in the event said deficiency is still in existence when the statutory interest rate is changed by the Legislature, the new interest rate will apply to said deficiency from the effective date of the new interest rate.

By way of illustration, if a deficiency is assessed for the 1981 tax year by an assessment letter dated January 1, 1986, the interest rate assessed should be one percent (1%) per month, pursuant to 68 O.S. 1981, §217, from the date the tax becomes delinquent until March 23, 1983, when the one and one-half percent (1½%) per month rate became effective by 68 O.S. Supp. 1983, §217. From March 23, 1983 forward, interest is to be assessed at one and one-half percent (1½%) per month, as long as the deficiency exists, unless there is a subsequent change in the statute. (Clarification underscored.)

To conclude, the Division's Motion for Clarification of Findings, Conclusions and Recommendations, filed on August 21, 1987, is granted and the Findings, Conclusions and

Recommendations issued on the 7<sup>th</sup> day of August, 1987 are to be read in conjunction with the above clarification.

OKLAHOMA TAX COMMISSION

Deemed precedential by Tax Commission Order No. 87-01-10-03.