



Oklahoma Capital Gains Deduction Held Unconstitutional ***Law Improperly Discriminates Against Business with Headquarters in Another State***

The Oklahoma income tax capital gains deduction favoring in-state businesses, 68 O.S. § 2358(D), has been held to be unconstitutional by the Oklahoma Court of Civil Appeals. *CDR Systems Corp. v. Okla. Tax Comm'n*, Case No. 109,886 (Okla. App. Jan. 17, 2013).

The decision overruled an Oklahoma Tax Commission decision denying allowance of the capital gains deduction for sale of Oklahoma assets of an out-of-state business. The court held the Oklahoma law enacted in 2005 as an economic and business development incentive violated the Commerce Clause of the U.S. Constitution by facially discriminating against out-of-state businesses.

The law allows capital gains deduction for Oklahoma income tax purposes for sales of stock, ownership interests, and business real and tangible and intangible personal property assets of an Oklahoma-based business after owning those items for three (3) years, while allowing the deduction for out-of-state businesses for sales of business real and tangible personal property assets only after a five (5) year ownership period.

The court found this is improper “economic protectionism” by benefiting in-state economic interests by burdening out-of-state competitors. The court held this discrimination made the law invalid under the Commerce Clause.

The taxpayer in the case had claimed a capital gains deduction on its Oklahoma income tax return for the year of sale of capital assets of a business that had been owned in Oklahoma for more than three (3) years, but was denied the deduction by the Tax Commission because it did not have its primary headquarters in Oklahoma.

Taxpayers in a similar position may also be entitled to relief and a refund of Oklahoma income tax for a prior year in which they sold capital assets but did not receive a corresponding deduction from state income tax. The Oklahoma Tax Commission has filed for rehearing of the above case, requesting, among other things that Court reverse its original holding and/or limit application of the decision to prospective cases. A final decision may take time, so taxpayers who may be entitled to relief and a refund of Oklahoma income tax for a prior year are encouraged to consider filing a protective refund claim before the three-year statute of limitations period runs.

This is a summary of the court decision provided for general information purposes. It is not intended as and should not be relied upon as legal advice.

If you have questions about this decision, please contact Sheppard F. Miers, Jr. or Melissa S. Taylor at Gable Gotwals, 918-595-4800.

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