Oklahoma Capital Gains Deduction Held Unconstitutional
Court Decision To Apply Retroactively
Law Improperly Discriminates Against Businesses 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. June 12, 2013).

The court has clarified its previous opinion, issued January 17, 2013, by specifically holding that its ruling that the statute is unconstitutional is to be given retroactive effect. The court held that the ruling will apply in all cases still open on direct review and as to all events that are not time-barred (capable of being litigated) regardless of whether they predate or postdate the entry of the court's opinion. Thus, other taxpayers in circumstances with capital gains similar to CDR Systems Corporation may also be entitled to claim and receive a refund of Oklahoma income tax paid in a prior year.

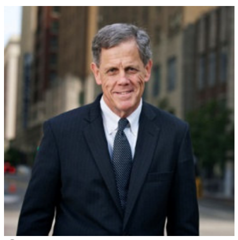
The court's opinion overruled an Oklahoma Tax Commission decision denying a capital gains deduction for sale of Oklahoma assets of an out-of-state business. The court held the Oklahoma law enacted in 2005 as an economic and business development incentive violated the Commerce Clause of the U.S. Constitution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

The law allows an Oklahoma income tax capital gains deduction for sales of stock, ownership interests, real property, and tangible and intangible personal property assets of an Oklahoma-based business after owning those items for three (3) years. The deduction is allowed for capital gains from sale of real property or tangible personal property located within Oklahoma of an out-of-state corporation, not headquartered in Oklahoma, if owned for a holding period of at least five (5) years.

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 owned in Oklahoma for more than three (3) years, but was denied the deduction by the Tax Commission because the taxpayer did not have its primary headquarters in Oklahoma.

Other taxpayers in a similar position may be entitled to relief and a refund of Oklahoma income tax for a prior year if they sold capital assets but did not receive a corresponding deduction from state income tax. Taxpayers who may be entitled to relief and a refund of Oklahoma income tax for a prior year should consider filing a protective refund claim before the three-year statute of limitations period runs.

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



Sheppard F. Miers, Jr.

1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217
(918) 595-4800
smiers@gablelaw.com
www.gablelaw.com