Oklahoma Capital Gain Deduction Upheld by Oklahoma Supreme Court

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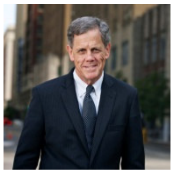
The Oklahoma Supreme Court has ruled that the Oklahoma income tax capital gains deduction is allowable and does not violate the Commerce Clause of the U.S. Constitution. The denial of the deduction to an out-of-state company had earlier been found to be unconstitutional under the Commerce Clause by the Oklahoma Court of Civil Appeals. Published commentary on the decision indicated it raised the possibility of as much as $450 million in Oklahoma income tax refunds being owed by the state to other taxpayers. The law, Oklahoma Statutes, Title 68, Section 2358(D), allows an Oklahoma income tax deduction for capital gain from the sale of assets of, or stock in, an Oklahoma company held for more than three (3) years. An "Oklahoma company" is defined in the law as an entity whose primary headquarters have been located in Oklahoma for at least three (3) uninterrupted years prior to the date of the transaction from which the net capital gains arise. While the law allows a three (3) year holding period for deduction by an Oklahoma company, a five (5) year holding period applies for other companies which do not meet the Oklahoma primary headquarters requirement. The opinion of the Oklahoma Court of Civil Appeals in 2013 ruled this difference in taxation of capital gain transactions as between corporations classified as Oklahoma companies by having their primary headquarters in Oklahoma and out-of-state companies having a primary headquarters in another state violated the Commerce Clause of the U.S. Constitution. The Oklahoma Court of Civil Appeals ruled such a difference in tax treatment based upon location of the primary headquarters of the taxpayer was facially discriminatory in favoring in-state economic interests over out-of-state counterparts. The Oklahoma Court of Civil Appeals also held that its decision on the law could apply to other taxpayers who filed timely claims for refunds of state income tax for having also been disallowed a capital gains deduction related to an out-of-state company. After accepting the case for review as requested by the Oklahoma Tax Commission, the Oklahoma Supreme Court, in a 5-4 decision, vacated the Oklahoma Court of Civil Appeals opinion and held the law does not violate the Commerce Clause. The majority of the Court found that the deduction does not facially discriminate against interstate commerce because the Oklahoma primary headquarters requirement is not directly based on any proportion of in-state economic activity to out-of-state activity. The Court also said the law does not have a discriminatory purpose of taxing products manufactured in another state or business performed in another state and that based on the record in the case there was no discriminatory effect on interstate commerce shown. *CDR Systems Corporation v. Oklahoma Tax Commission*, 2014 OK 31, Case No. 109,886, Apr. 22, 2014.



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