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State Income Tax ALERT

Vol. XVI, No. 17, October 1, 2007

INSIDE

SALT CONFERENCE

Vanderbilt's School of Law will host the 14th annual Paul J. Hartman State and Local Tax Forum in Nashville, Tenn., Oct. 17-19. The forum will address FIN 48 issues, attorney-client privileges, significant state tax cases, re-engineering of UDITPA, disclosure of tax information, un-income taxes, addback statutes, nexus, sales and use tax developments, and more. The cost of the Oct. 17 afternoon Accounting for State Taxes or Sales and Use Taxes sessions are $265. The Oct. 18 and 19 SALT forum is $775 for practitioners and $675 for government representatives. A $50 discount is offered for attendees registering for all three days. Call (615) 822-6960 or visit www.hartmansaltforum.org.

COMING IN FUTURE ISSUES

- California Franchise Tax Board Rulings
- Illinois Legislation

■ APPORTIONABLE BUSINESS INCOME

U.S. Supreme Court to Rule if Sale of Business Segment Apportionable

The U.S. Supreme Court has granted an Ohio corporation's request to decide if Illinois may require it to treat the gain from its sale of an underlying business segment as apportionable business income, for state corporate income tax purposes, on the basis that the asset served an operational function. *Meadwestvaco Corp. v. Ill. Dept. Rev.*, SCt, Dkt. 06-1413, *cert. granted*, September 25, 2007 ("*Mead*").

Operational Income

Paul Frankel, a partner with **Morrison & Foerster LLP**, in New York, represents Mead. Frankel is pleased that the Court decided to hear the case. In the 2007 CCH State Tax Advisory Board meeting, Frankel agreed that practitioners need more clarity regarding operational analysis than existing case law provides.

"[O]perational does not mean, 'It's 100% sub. Got you.' That's not enough. I just had a trial in Boston and the auditor said, in effect: 'Well, you're a 100% sub. No further tests.' Nothing on unitary, nothing on operational connection, nothing on products, nothing on short-term interest. Nothing. Just: 'You own it. We're going to apportion it.'"

Richard Pomp, a professor at the **University of Connecticut Law School**, who testified on behalf of Mead, commented, "This case gives the Court a chance to unbundle what is meant by 'operational income' in *Allied-Signal*. It cannot mean what Illinois thinks it means and I am quite confident that Mead will prevail." *Allied-Signal, Inc. v. Dir., Div. of Taxation*, SCt, 504 US 768, 112 SCt 2251 (1992).

Procedural History

Since 1968, the corporation (Mead) had owned 100% of what became Lexis/Nexis. Lexis/Nexis changed several times between a division and a subsidiary of Mead. In 1994, Mead sold Lexis/Nexis for a gain of approximately $1 billion. Mead, which transacted business in many states including Illinois, excluded the gain from its 1994 Illinois corporate income tax return. However, the Illinois Department of Revenue issued a deficiency notice on the basis that the gain was apportionable business income.

Mead challenged the Department's action in court, asserting that its investment in and disposition of Lexis/Nexis served an investment, as opposed to an operational, function and, therefore, the gain was not apportionable. The Appellate Court considered several factors in concluding that Lexis/Nexis served Mead in an operational rather than an investment function, including: Mead's capital investment in the early years of Lexis/Nexis, Mead's retention of various tax advantages, Mead's investment of Lexis/Nexis' excess cash, Mead's approval of all major capital expenditures, Mead's ability to change Lexis/Nexis from a division to a subsidiary, and Mead's description in its annual report of Lexis/Nexis as a key business component. Based on these findings, the Appellate Court upheld the circuit court's conclusion that Lexis/Nexis served an operational purpose within Mead's business operations, thereby allowing Illinois to apportion the gain from Mead's sale of Lexis/Nexis under Illinois' statutory definition of "business income," which incorporates the "operational function test" of *Allied-Signal*.

The Illinois Supreme Court denied Mead's subsequent petition for appeal, and Mead filed this petition with the U.S. Supreme Court. Mead asserts that all of the factors relied upon by the Illinois Appellate Court derive from the fact that Mead owned 100% of Lexis/Nexis, and reflect an ordinary relationship between a company and a 100% owned subsidiary.

U.S. Supreme Court Consideration

With all the state issues that have been petitioned to the Court, it is interesting that the Court chose to revisit an issue that they addressed relatively recently. However, **Jordan Goodman**, a partner with **Horwood Marcus & Berk Chartered** in Chicago, hopes that the Court's decision to hear *Mead* signals that it will clarify the tests set forth in the *Allied-Signal* case and explain the import of establishing an "operational relationship." He is cautiously optimistic that there will be a good result and doesn't think that the Court would take the case just to affirm the underlying case.

Goodman goes on to suggest that it's possible that the Court took this case (rather than, perhaps, a nexus case such as *FIA Card Services, N.A. fka MBNA America Bank, N.A., v. Tax Comm'r W.V.*, SCt, Dkt. 06-1228, *cert. denied*, June 18, 2007) because Mead involves a discreet issue that cannot be legislated by Congress. The nexus issue, on the other hand, has already generated multiple attempts at legislation in the U.S. Congress.

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KEY TAKEAWAY POINTS

Taxpayers are still in a position to take apportionment if they have gains. The Constitution still protects taxpayers. Taxpayers should also take heart that the U.S. Supreme Court did take a state income tax case, particularly since the Court has shown little interest in the nexus issue. There is no national movement for a declaration of what is apportionable versus nonapportionable. This is the chance for this issue to be settled.

Professor Pomp says he was surprised the Court took the case. "The issue in the case is very facts-oriented but Mead's petition for cert was exceptionally well done. It sent a strong message to the Court that Illinois flaunted *Allied-Signal* and *Woolworth*. The factors the Illinois court emphasized are common to all large corporations. Factors that describe all large corporations cannot serve usefully to distinguish operational income from investment income." *F.W. Woolworth Co. v. Taxation & Revenue Dept.*, SCt, 458 US 354, 102 SCt 3128 (1982).

If the Illinois decision is allowed to stand, Mead argues that it would mean that all income received by nondomiciliary corporations from subsidiaries or divisions will be subject to apportionment, in direct conflict with *Allied-Signal, Inc.*, *F.W. Woolworth Co.* and *ASARCO Inc. v. Idaho State Tax Comm'n,* SCt, 458 US 307, 102 SCt 3103 (1982), and the Due Process and Commerce Clauses of the U.S. Constitution. Oral argument probably will be in January 2008 and a decision will be issued prior to the end of the Court's term next summer.

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MICHIGAN SINGLE BUSINESS TAX

Department May Make Two Assessments for Same Tax Period

The Michigan Department of Treasury had the statutory authority to make more than one single business tax (SBT) assessment to a taxpayer for the same tax period, despite the taxpayer's argument that the original assessment was final and conclusive. The court of appeals found that the Department was authorized to impose SBT assessments for taxes lawfully owed to the state and could issue more than one assessment if necessary to recover all of the taxes owed.

Although the taxpayer was conducting business in Michigan, the taxpayer did not file SBT returns for tax years 1989–1996. **Patrick Van Tiflin**, a partner at **Honigman Miller Schwartz and Cohn LLP** in Lansing, Michigan, explains that until the *Gillette* decision in 1993, *Gillette Co. v. Michigan Department of Treasury* (1993), 198 MichApp 303, 497 NW2d 595, *cert. denied* 513 US 1103, 115 SCt 779 (1995), the Michigan Department of Treasury was strictly applying the physical presence test in determining tax assessments. After the U.S. Supreme Court decided *Quill* in 1992, *Quill Corp. v. North Dakota*, SCt, 504 US 298, 112 SCt 1904 (1992), the Department started taking a closer look at out-of-state companies.

The taxpayer paid the first assessment from the Department, but did not file returns as requested. However, the taxpayer did file SBT returns for the 1997 and 1998 tax years and was subsequently audited. The audit included the years covered by the first assessment and revealed that the amount of the first assessment was substantially less than the taxpayer's actual tax liability. In discovering this, the Department issued a second assessment, which included the years previously assessed (*i.e.*, 1989–1996).

Michigan law provides that a person who fails to file a return is liable for all the taxes due for the entire period for which the person would be subject to taxes. The court reasoned that if the Department were not authorized to issue the second assessment, then the taxpayer would be rewarded for its failure to file returns. Thus, the taxpayer could evade its legal tax liability and the statute would be made nugatory. The rules of statutory construction prevented this result.

Additionally, state law allows the Department to obtain information on which to base the tax if the taxpayer fails to file a return. This provision, taken in consideration with the provision directing the Department to determine the taxpayer's liability and notify the taxpayer of any deficiency, contemplated a situation where the Department might need to issue more than one assessment for the same tax period. Accordingly, the Department's second assessment was not prohibited by law.

Multiple Tax Assessments Should be Limited

In the last footnote, the court makes clear that a different set of facts could change the outcome of the case. They specifically stated that the Department could not be permitted an unlimited power to issue multiple tax assessments to a taxpayer for the same tax period, because at some point a taxpayer is entitled to the security of knowing that it will not face additional taxation.

The court goes on to say that the Department should not have guessed at Tyson's tax liability for the years at issue and should instead have audited the company at the outset, rather than go back later and make a second assessment. Still, the court indicated that if Tyson had been filing its returns all along, it would have had the benefit of a four-year limitation period on the assessment of tax deficiencies. This, suggests Van Tiflin, suggests that the Court of Appeals is making an example out of Tyson since they didn't file their returns for the years 1989–1996.

Although this case involved the SBT, which is being replaced by the Michigan Business Tax, Van Tiflin points out that this decision is still relevant to future situations. The court's decision was based on the Michigan Department of Revenue Act. Because the relevant provision is in that Act, which is generally applied to all types of taxes, it is relevant not just to business income taxes, but also to all other Michigan taxes, including sales and use.

Tyson Foods, Inc. v. Department of Treasury, Michigan Court of Appeals, No. 272929, September 20, 2007.

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KEY TAKEAWAY POINTS

Although this is a Michigan-specific case, it is good policy to carefully consider how and whether the taxpayer responds to notices of assessment. Once you get a final assessment, you need to be confident that you have properly determined whether, under the state's practices and procedures, the notice of assessment needs to be pursued.

PENNSYLVANIA LEGISLATION

Film Production, Agricultural Resource Credits Enacted

S.B. 97 enacts credits against capital stock/franchise, corporate net income, or personal income taxes for film production expenses and against personal income, corporate net income, capital stock/franchise, bank shares, title insurance and trust company shares, insurance premium, or mutual thrift institution taxes for resource protection and enhancement. In addition, the law increases amounts for the neighborhood assistance credit against corporate net income, personal income, capital stock/franchise and insurance premiums taxes. It also enacts changes to the bank shares tax calculation, nexus requirements for the corporate net income and capital stock/franchise taxes, and taxpayer notice requirements for assessments of corporate net income, personal income, and realty transfer taxes.

Film Production Tax Credit

A taxpayer may apply to the Pennsylvania Community Economic Development Department for a tax credit against capital stock/franchise, corporate net income or personal income taxes for qualified film production expenses. All Pennsylvania production expenses are "qualified film production expenses" if at least 60% of the film's total production expenses were made in the state. The amount of the credit is determined by the Department and may not exceed 25% of the qualified film production expenses incurred. A three-year credit carryover is allowed, but no carryback or refund of the credit is permitted. The aggregate amount of tax credits awarded in any fiscal year may not exceed $75 million.

Resource Enhancement and Protection Tax Credit

A business firm or an individual taxpayer may claim a credit against personal income, corporate net income, capital stock/franchise, bank shares, title insurance and trust company shares, insurance premium, or mutual thrift institution taxes for eligible costs related to a resource enhancement and protection project.

Only best management practices completed after October 23, 2007, are eligible for the credit. A credit equal to 75% of eligible costs may be allowed for any of the following:

- development of a voluntary or mandatory nutrient management plan;
- development of an agricultural erosion and sediment control plan or a conservation plan;
- for an animal concentration area, design and implementation of best management practices necessary to abate storm water runoff, loss of sediment, loss of nutrients and runoff of other pollutants;
- design and implementation of best management practices necessary to restrict livestock access to streams if a riparian forest buffer with a minimum width of 50 feet is established and maintained;
- establishment of a riparian forest buffer with a minimum width of 50 feet.

A credit equal to 50% of eligible costs may be allowed for either of the following:

- an agricultural operation, design and implementation of agricultural best practices or the installation and use of equipment, provided that the best management practice or equipment is necessary to reduce existing sediment and nutrient pollution to surface waters; or
- design and implementation of best management practices necessary to exclude livestock access to streams through fencing, stabilized crossings, and improved watering systems, if vegetated riparian or riparian forest buffer with a minimum width of 35 feet is established and maintained.

A credit equal to 25% of eligible costs may be allowed for the remediation of legacy sediment that is exposed and is discharging or threatens to discharge into surface waters as a result of acute stream bank erosion.

Bank Shares Tax

When calculating the taxable amount of shares for the bank shares tax, the value for each year is determined by deducting from the book value of total equity capital an amount equal to the same percentage of total equity capital as the book value of obligations of the U.S. bears to the book value of the total assets. However, when calculating the value of shares reported on tax returns due March 15, 2008, and for subsequent years, any goodwill recorded as a result of the use of purchase accounting for an acquisition or combination occurring after June 30, 2001, may be subtracted from the book value of total equity capital and disregarded in determining the deduction provided for obligations of the U.S.

Following the combination of two or more institutions, the bank shares tax liability is calculated as if the constituent institutions had been a single institution prior to and after the combination and the book values and deductions for U.S. obligations from the reports of condition of the constituent institutions are combined. A combination includes any acquisition required to be accounted for by using the purchase method in accordance with GAAP or a statutory merger or consolidation. Previously, a combination included any acquisition required to be accounted for by the surviving institution under the pooling of interest method in accordance with GAAP or a statutory merger or consolidation.

Neighborhood Assistance Tax Credit

Passthrough entities are included as "business firms" that are eligible for the neighborhood assistance credit against corporate net income, personal income, capital stock/franchise, and insurance premiums taxes. A credit may be granted equal to 55% (formerly, 50%) of the total amount contributed during the taxable year by a business firm or 25% (formerly, 20%) of qualified investments by a private company. A credit equal to 75% (formerly, 70%) of contributions will be allowed for a business firm, and 35% (formerly, 30%) of contributions by a private company for investment in programs where activities fall within the scope of special program priorities. Provision is also made for sale or assignment of a credit.

Nexus Activities

For purposes of the corporate net income tax and capital stock/franchise tax, activities will

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STATE UPDATES

ARIZONA

The late filing penalty, the late payment penalty and the extension underpayment penalty may be imposed on an income tax return filed under an extension, as noted below. Because Arizona law grants an extension of time to file a return, but does not extend the time to pay the tax, and Arizona law prescribes a time to pay the tax, which is different than the extended filing date, a late payment penalty may be imposed in conjunction with the extension underpayment penalty. If a taxpayer files timely under an extension and pays 100% of the tax due by the return's original due date, no penalties will be imposed. If a taxpayer files timely under an extension and pays 90% of the tax due by the return's original due date and the other 10% at the time the return is filed, no late filing penalty or extension underpayment penalty will be imposed, but a late payment penalty will be imposed on the 10% of tax not paid by the return's original due date. If a taxpayer files timely under an extension and does not pay 90% of the tax due by the return's original due date, but pays the remaining amount due at the time the return is filed, no late filing penalty will be imposed, but a late payment penalty and extension underpayment penalty will be imposed on the amount that remained unpaid. If a taxpayer files under an extension, but does not file within the extended due date and has paid at least 90% of the tax due by the return's original due date and the remainder at the time the return is filed, no extension underpayment penalty will be imposed, but a late filing penalty and late payment penalty will be imposed. If a taxpayer files under an extension, but does not file within the extended due date and has paid less than 90% of the tax due by the return's original due date, but pays the remainder at the time the return is filed, all three penalties will be imposed. Finally, if a taxpayer files a late return without an extension and any tax is remaining due, no extension underpayment penalty will be imposed, but a late filing penalty and late payment penalty will be imposed. This ruling is effective for income tax returns filed on or after January 1, 2008. *(Corporate Income Tax Ruling CTR 07-2, Arizona Department of Revenue, Aug. 13, 2007, Individual Income Tax Ruling ITR 07-1, Arizona Department of Revenue)*

CALIFORNIA

The California State Board of Equalization (SBE) independently determined the amount of California corporation franchise and income tax due on an S corporation's built-in gains at the time of its sale to a third party. In its proposed assessment, the Franchise Tax Board (FTB) had substantially increased the taxpayer's estimated value of the S corporation at the time the corporation was converted from a C corporation to an S corporation, and assessed a built-in gains tax based on the increased value of the corporation at the time of its conversion. The increase resulted from the FTB's determination that the compensation paid the sole shareholder was excessive. Adjusting the amount of deductible compensation paid the shareholder by more than $1 million dollars resulted in a substantial increase in the S corporation's fair market value. The taxpayer contended that the compensation was not excessive but was reasonable given that the corporation benefitted tremendously from the shareholder's client connections and marketing skills. The taxpayer's contention was supported by a third-party appraisal that found that the compensation paid was reasonable. The SBE rejected both parties' valuations and determined that although the deductible compensation claimed by the taxpayer was excessive, it should not be reduced to the extent reduced by the FTB. (*Letter Decision, Appeal of Accounting Solutions, No. 378329, California State Board of Equalization, September 12, 2007*)

INDIANA

The Information Bulletin covering the corporate adjusted gross income tax has been updated to reflect the changes made to the apportionment formula by H.B. 1001, Laws 2006. Currently, the state uses a double-weighted sales factor. Beginning with the 2011 tax year, a single sales factor apportionment formula will be used for calculating corporate adjusted gross income tax. The property and payroll factors will be phased out by 10% each year from 2007 to 2011. Also updated are consolidated and combined reporting revocation requirements. If a unitary group wishes to revoke the election to file a consolidated return in a subsequent tax year, the group must obtain written permission from the Dept. of Revenue at least 90 days prior to the due date of the return (previously, prior to filing the return). A unitary group that wishes to discontinue filing a combined report must request permission from the Department 30 days after the end of the tax year. Previously, there was no provision for revocation of the election to file a combined report. (*Information Bulletin #12, Dept. of Revenue*)

LOUISIANA

The Louisiana Department of Revenue has released an informational bulletin reminding taxpayers that beginning January 1, 2008, a credit may be applied to any Louisiana corporation franchise, corporation income, or personal income tax liability for the costs of purchase and installation of a wind energy system or solar energy

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system, or both, by a resident individual at his or her residence located in this state or by the owner of a residential rental apartment project. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008. (*Revenue Information Bulletin No. 07-025, Louisiana Department of Revenue, September 13, 2007*)

MARYLAND

The Maryland Comptroller of the Treasury has updated its administrative release dealing with taxation of pass-through entities having nonresident members for income tax purposes. The release clarifies that a pass-through entity's nonresident taxable income includes any income derived from (1) real or tangible personal property in Maryland, (2) business that is in part or wholly carried on in Maryland, (3) an occupation, profession or trade carried on in part or wholly in Maryland, and (4) Maryland wagering. (*Administrative Release No. 6, Maryland Comptroller of the Treasury, September 2007*)

MASSACHUSETTS

Because a Massachusetts corporation was engaged in manufacturing during the tax year at issue, it was entitled to classification as a manufacturing corporation and was eligible for corporate income investment tax credits, a local property tax exemption, and certain sales and use tax exemptions. The evidence indicated that the activities conducted by the taxpayer, a corporation that designed, manufactured, and sold a variety of children's and child-care related products, were essential and integral to the manufacturing process. Accordingly, the taxpayer was engaged in manufacturing to a substantial degree, rather than manufacturing that was merely trivial or incidental to its business, and could be granted classification as a manufacturing corporation. (*The First Years, Inc. v. Commissioner of Revenue, Massachusetts Appellate Tax Board, No. C267626, September 17, 2007)*

MICHIGAN

The items that the Michigan Economic Growth Authority (MEGA) must include in agreements with taxpayers for single business tax and Michigan business tax credits are revised. Specifically, if a business has filed for Chapter 11 bankruptcy, the company's plan of reorganization must be confirmed by the court within six years (previously, three years) of the agreement's date. (*Act 62 (S.B. 207), Laws 2007, effective September 18, 2007)*

NEW YORK CITY

In a New York City unincorporated business tax case, a partnership's payments to retired partners had to be added back to unincorporated business taxable income because they constituted payments for services. The partnership argued that the payments were actually for goodwill and that the term "past service compensation" was used in the applicable agreements only so that the payments could be deducted for federal tax purposes. However, because the payments were identified as compensation for prior services in the partnership's own unambiguous agreements, which were knowingly adopted to achieve a specific federal tax result, the partnership was not permitted to argue otherwise for unincorporated business tax purposes. (*Citrin Cooperman & Co., LLP, New York City Tax Appeals Tribunal, TAT(E) 01-17(UB), September 10, 2007*)

OREGON

The Department of Revenue has amended its corporation excise (income) tax rule regarding sales of tangible personal property in the state and has adopted a rule regarding sales of electricity or natural gas to the state, for purposes of the sales factor used to apportion income to Oregon. For purposes of apportioning sales of tangible personal property to Oregon, "tangible personal property" is now defined as personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software. Also, for tax years beginning after 2005, the sale of goods from a public warehouse is not considered to take place in Oregon if the taxpayer's only activity in Oregon is the storage of the goods in a public warehouse prior to shipment, or such storage plus the presence of employees within the state solely for purposes of soliciting sales of the taxpayer's products. Under the new rule, the sale of a commodity like electricity or natural gas, which is delivered or shipped to a purchaser with a contracted point of delivery in Oregon is a sale in this state, regardless of whether the purchaser uses the property in Oregon, transfers the property to another state, or resells the property in Oregon. If the contract states the point of delivery is at the border with another state, the sale is presumed to be in Oregon unless the taxpayer can demonstrate to the satisfaction of the Department that delivery occurred in some other place. A taxpayer who contracts to sell electricity to, and also buy electricity from, the same entity during the same period or partial period of time will have an offsetting contractual amount. The gross sales of electricity, without regard to the offsetting purchase amount, are considered to be Oregon sales if the contracted point of delivery is in Oregon. (*OAR 150-314.665(2)-(A) and OAR 150-314.665(2)-(C), Oregon Department of Revenue, effective August 31, 2007*)

Pennsylvania Legislation

(Continued from page 5)

not constitute "doing business in this Commonwealth," "carrying on activities in this Commonwealth," "having capital or property employed or used in this Commonwealth," or "owning property in this Commonwealth" if they include the following:

- owning or leasing intangible and tangible property, including dies, molds, tooling and related equipment by a person who has contracted with an unaffiliated manufacturer of powder metallurgy products for manufacturing, provided that: (1) the property is for use by the powder metallurgy product manufacturer, (2) the property is located at the Pennsylvania premises of the powder metallurgy manufacturer, and (3) the products manufactured using the property are incorporated into products produced outside the state by the owner or lessor of the property;
- visits by a person's employees or agents to the Pennsylvania premises of an unaffiliated powder metallurgy product manufacturer with whom the person has contracted for manufacturing in connection with the contract; and
- owning of manufactured powder metallurgy products and other included packaged items by a person who has contracted with an unaffiliated powder metallurgy products manufacturer for manufacturing of products on the premises of the unaffiliated powder metallurgy products manufacturer prior to delivery of the property.

This provision is applicable to taxable years beginning after 2004 and taxable years as to which there is an appeal prior to July 25, 2007.

Assessment Notice Requirements

Applicable to assessments issued after 2007, personal income tax, corporate net income tax, or reality transfer tax assessment notices issued by the Pennsylvania Department of Revenue must be sent to a taxpayer by certified mail only if the assessment exceeds $300.

S.B. 97, Laws 2007, effective July 25, 2007, except as otherwise noted above ◆

Review Sought for Withholding of Royalty Payments to Nonresidents

An oil and gas producer has requested review by the U.S. Supreme Court of an Oklahoma Court of Civil Appeals decision that the state personal income tax statute requiring withholding on royalty payments made to nonresidents was constitutional. The Court of Civil Appeals held that, because the state adopted a reasonable method to ensure collection of income taxes from nonresidents, without taxing them differently from residents, the statute requiring withholding of royalty payments made to nonresidents did not violate either the Privileges and Immunities Clause or the Equal Protection Clause of the U.S. Constitution.

The appeals court said that withholding taxes on the royalty income before it left the state, thereby avoiding the burden and expense of having to collect those taxes from nonresidents after, bore a substantial relationship to the state's objective of collecting income taxes on those royalties. Also, only the method by which personal income taxes were collected, and not the rate imposed, differed for nonresidents.

In addition, the court found, the withholding statute did not violate the Commerce Clause because, although only nonresidents were subject to withholding on royalty payments, the nonresidents also had the right to a credit or refund of amounts withheld that exceeded their Oklahoma personal income tax liability. The burden on interstate commerce caused by a particular method of collection was merely incidental compared to the state's legitimate purpose of collecting taxes. Finally, the nonresidents' temporary loss of use of the amounts withheld was not a constitutionally protected interest.

Panhandle Producers v. Oklahoma Tax Commission, U.S. Supreme Court, Dkt. No. 07-451, October 1, 2007 ◆