

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

GETTY OIL COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 537  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

Before: Maurice A. Hartnett, III, Esquire, Chairman, Joseph S. Yucht, Esquire, Vice-Chairman; Cyric W. Cain, Jr., Rhett McGriff, and Nettie C. Reilly, Board Members

Thomas P. Sweeney, Esquire and Richard G. Bacon, Esquire, for Petitioner

John P. Fedele, Esquire, for Respondent.

DECISION AND ORDER

Maurice A. Hartnett, III, Esquire, Chairman: There are no uncontroverted facts. The parties submitted a stipulation of agreed facts.

Getty Oil Company ("Getty"), a Delaware corporation, timely filed a 1971 corporate income tax return. Getty, in computing its taxable income, deducted as exempt certain income dividends.

The income dividends were claimed to be exempt under 30 Del. C. §1903(a)(2).

The income dividend claimed to be exempt under Delaware law and which is the subject of this appeal was reported on Getty's 1971 federal income tax return as "foreign dividend gross-up".

The Director of Revenue ("Director") disallowed the "foreign dividend gross-up" taking the position that such sums were not actually

received by Getty and therefore not excluded under '30 Del. C. §1903(a)(2).

In 1971 30 Del. C. §1903(a)(2) stated inter alia:

"(a) The "entire net income" of a corporation for any income year means the amount of its federal taxable income for such year as computed for purposes of the federal income tax....and adjusted by eliminating:

...

(2) Dividends received on shares of stock or voting trust certificates of foreign corporations or interest income or royalty income, for which foreign tax credit is provided under the applicable provisions of the United States Internal Revenue Code:...."

Both parties concede that the words "under the applicable provisions of the United States Internal Revenue Code" as they appear in 30 Del. C. §1903(a)(2) referred, in 1971, to §78 of the Internal Revenue Code.

§78 of the Internal Revenue Code states:

"If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year an amount equal to the taxes deemed to be paid by such corporation under section 902(a)(1) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1)(C) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation."

Getty argues that the words "dividends received" as appearing in 30 Del. C. §1903(a)(2) should be given the same meaning as the words "dividend received" as they appear in §78 of the Internal Revenue Code.

Getty argues that the words "dividend received" as used in §78 Internal Revenue Code clearly mean "dividends deemed to have been received".

Director argues that the words "dividend received" as appearing in 30 Del. C. §1903(a)(2) really mean "dividends actually received".

Director argues that the foreign dividend gross-ups in question were not actually received by Getty and therefore Getty may not exclude them from its Delaware Income tax under 30 Del. C. §1903(a)(2).

Neither party has cited any cases squarely on point.

We find, however, that the argument of Getty is persuasive. In enacting 30 Del. C. §1903(a)(2) the Delaware General Assembly was obviously dovetailing the Delaware law to the Internal Revenue Code.

The meaning of the words "dividend received" as appearing in 30 Del. C. §1903 must be given the same meaning as they receive in §78 of the Internal Revenue Code.

We are persuaded that the words "dividend received" mean, for the purpose here "dividends deemed to have been received".

It is not necessary for Getty to show that it actually received the dividends in question.

Whenever possible state and federal statutes dealing with the same subject matter are to be construed harmoniously. In Re Bakers Estate 32 Misc. 2d 762, 228 N.Y.S. 2nd 588; In Re Suderov's Estate 156 Misc. 661, 282 N.Y.S. 405 affid 274 N.Y. 525, 10 NE 2nd 531.

Director argues that the words "dividend received" mean dividends actually received and cites Caminelli v. U.S. 242 U.S. 470; Bolma v. Tidewater Oil Company 214 A2d 560 (Del. Supr 1965);

Wilmington Suburban Water Corp. v. Board of Assessments for New Castle County 291 A2d 293 (Del. Supr 1972); Penington v. Commonwealth Hotel Construction Co. 17 Del. Ch 188, 151 A 288; and Fulweiler v. Spruance 222 A2d 555. We do not believe any of these cases are in point.

Both parties cite 2A Sutherland; Statutes and Statutory Construction (4th Ed) §66.03 but ascribe a different interpretation to it.

Director has cited no cases holding that "dividends received" as used in §78 Internal Revenue Code, means "dividends actually received". All of Director's cases refer to other factual situations.

Getty is entitled to exclude from its 1971 Delaware corporate income tax return its foreign dividend gross-ups.

IT IS SO ORDERED.

James A. Gault  
Joseph S. Gucht  
Jay R. W. Cain | 7  
Nettie C. Reilly  
s/ Phyllis M. Griff

Dated: Dec. 4, 1975

SYNOPSIS

DOCKET NO. 537

TAX SEGMENT: CORPORATION INCOME TAX  
Foreign Dividends

ISSUE: Whether the corporation is to be allowed credit  
for gross-up on foreign dividends.

TAB DECISION: The Tax Appeal Board held that Respondent  
cited no cases holding that "dividends received" as used  
in § 78 Internal Revenue Code, means dividends actually  
received and; therefore, entitled Petitioner to exclude  
from its 1971 Corporate Income Tax Return foreign  
dividend gross-up.

DECISION: For Petitioner

DECISION DATE: December 4, 1975