1974 S.C. Op. Atty. Gen. 196 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3810, 1974 WL 21316

Office of the Attorney General

State of South Carolina
Opinion No. 3810
June 25, 1974

Gulf Oil Corporation, a unitary business, cannot apportion only its marketing income to South Carolina. Its production income is not exempt from apportionable net income by the Submerged Lands Act and it is not entitled to an income tax deduction for income taxes paid in the form of the 'minimum tax' to the Federal Government.

***1** Members
S. C. Tax. Commission

This is in reply to your request for the opinion of this office on three questions concerning the income tax liability of Gulf Oil Corporation. The first question is whether the minimum tax for tax preferences imposed by Sections 56, 57 and 58 of the Internal Revenue Code of 1954 is an income tax. If the 'minimum tax' is an income tax, it is not deductible under the South Carolina taxing statutes. Section 56 of the IRC states that the minimum tax 'is hereby imposed * * * *with respect to the income* of every person * * *.' (Emphasis added) The tax has been described as follows:
'This device, while in the form of a 10% tax on the prohibited items, is essentially a technique for limiting certain classes of deductions. The House version of the 1969 legislation did just that, but the law as enacted accepted the far more lenient Senate provision. The result is that it will invariably pay for a high-bracket taxpayer to accept this penalty rather than forego the deduction. The 'minimum' description of this tax is well deserved.' *Rabkin & Johnson, Volume 1, Section 1.01(7) at 109a.*

It is our opinion that the 'minimum tax' is an integral part of the Federal income tax and is not a separate excise tax.

Secondly, you have asked whether a certain portion of the taxpayer's income is exempt from taxation by this State because of the provisions of the Submerged Lands Act contained in Chapter 29 of Title 43 of the United States Code, specifically Section 1333. The taxpayer has extensive drilling operations on the outer Continental Shelf and seeks to exclude from apportionable net income any income attributable to these operations. Section 1333 provides in Section (a)(2):
'State taxation laws shall not apply to the outer Continental Shelf.'

Section (3) provides:
'The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.'

The purpose of the apportionment formula is to tax only income earned within the State of South Carolina. This result is sought to be reached by the use of three factors. See Section 65–279.3, et seq., of the Code. By including the property, payroll and sales (if any) on the outer Continental Shelf operations in the denominator of the apportionment fractions, the formula itself excludes income attributable to the offshore drilling. The inclusion of all unitary income in apportionable net income does not mean that income from extraterritorial sources is being taxed. See *Bass, Ratcliff and Gletton, Ltd. v. State Tax Commission*, 266 U. S. 271, 45 S. Ct. 82.

***2** There is no doubt that the Federal Government has exclusive jurisdiction over the outer Continental Shelf. The question of whether income from transactions occurring in the Federal area is precluded from State taxation is not so clear. The Buck Act contained in 4 U.S.C.A, Section 106, specifically allows such taxation. In light of our conclusion that this income is not being taxed, it becomes unnecessary to decide this question.

It is the opinion of this office that the Submerged Lands Act does not require income applicable to the taxpayer's offshore drilling operations to be excluded from apportionable net income before application of the apportionment formula percentages.

The third and final question is whether the taxpayer should be allowed to exclude a portion of its total income from apportionable net income and apportion only its 'marketing income' to South Carolina. The taxpayer has relied heavily on the Minnesota case of *Skelly Oil Company v. Commissioner of Taxation*, 269 Minn. 351, 131 N. W. 2d 632. In that case the oil company succeeded in establishing that its production and manufacturing departments were operated independently and were not unitary in nature. Most of the production department's crude oil was sold to other refineries, and most of the manufacturing department's crude oil came from other oil producers. Not even ten percent of the crude oil produced by Skelly was used by it in its refineries. The Court held that under these extreme circumstances an oil company was not conducting a unitary business and that Minnesota Law required that the production activities of the company be excluded from apportionable net income. In the instant case, the taxpayer's business has been found to be unitary in nature. See the cases of *Western Auto Supply Co. v. Commissioner of Taxation*, 71 N. W. 2d 797, and *Honolulu Oil Corporation v. Franchise Tax Board*, 386 P. 2d 40, 50 Minnesota Law Review 479 at 561.

The taxpayer has relied on I–R–23. This rule does not apply in that no proof has been furnished that the various 'divisions' of the company are unrelated businesses. It is therefore the opinion of this office that the entire income of the taxpayer is properly included in apportionable net income.

John C. von. Lehe
Assistant Attorney General

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