

trademarks. In November 1993 Talbotts conducted an IPO of its common stock with Jusco B.V. retaining 63.4 percent of the outstanding stock.

Following an audit, the Division of Taxation determined that Talbotts was required to include Classics in its combined franchise tax returns and issued tax assessments. Talbotts appealed to the Division of Tax Appeals, arguing that its royalty payments to Classics were at arm's-length rates and therefore its income was not distorted. The administrative law judge found in favor of the tax division and Talbotts appealed to the New York Tax Appeals Division.

The tax appeals division ruled that the tax division properly required Talbotts to file on a combined basis with Classics because the trademark license agreement between the companies lacked economic substance or any valid business purpose. The tax appeals division explained that Classics did not have an active role in managing and marketing the trademarks because it never performed any quality control, product research, development, or distribution. Moreover, the tax appeals division noted that Classics only had two part-time employees to run its operations and perform accounting duties. The tax appeals tribunal concluded that Talbotts's role regarding the trademarks remained unchanged since the trademarks were transferred to Jusco B.V. in 1988. The tribunal declined to address the royalty rate issue and the ALJ's decision was affirmed. ☆

Full Text Citations: DTA No. 820168. *Doc 2008-20321* or *2008 STT 187-15*

Oklahoma

State Supreme Court: Tax Amnesty Program Is Constitutional

by Kenneth L. Hunt, Tulsa

In a per curiam decision, the Oklahoma Supreme Court has found the new tax amnesty program approved in June to be constitutional (*Fent v. State of Oklahoma*, Sept. 23, 2008). The amnesty program, which the Oklahoma Tax Commission has named Clean Slate 2008, was created by SB 2034.

Under the program, all penalties, interest, and collection fees are waived if the taxpayer voluntarily files delinquent tax returns and pays the taxes due between September 15 and November 14 of 2008. (For coverage, see *State Tax Notes*, June 16, 2008, p. 870, *Doc 2008-12743*, or *2008 STT 113-21*. For SB 2034 as signed, see *Doc 2008-12821* or *2008 STT 116-18*.)

The state supreme court rejected retired attorney Jerry Fent's claim that interest, penalty, and collection fees (like taxes) fall within the prohibition found

in Article V, section 53 of the Oklahoma Constitution. (For prior coverage, see *State Tax Notes*, July 28, 2008, p. 224, *Doc 2008-15778*, or *2008 STT 139-23*.) Section 53 provides that the Legislature is prohibited from releasing or extinguishing tax indebtedness, liability, or obligation of an individual or company. The court found that penalty, interest, and collection fees were *not* taxes.

The state supreme court also found that an earlier case, *City of McAlester v. Jones*, 1937, was dispositive as to the constitutionality of SB 2034. In *Jones*, the supreme court held that there was no constitutional limitation on "the power of the Legislature to direct the refund of penalties on delinquent taxes." Furthermore, citing *Jones*, the court found the applicable constitutional standard to be that "courts will interfere and declare an act invalid and void only where the act of the Legislature is clearly, palpably, and plainly inconsistent with the terms and provisions of the Constitution." 1937 OK 42, para. 16.

Regarding SB 2034, the state supreme court found that Fent had not "presented any authority" that satisfied that high standard. ☆

Voters to Consider Property Tax Questions on November Ballot

by Kenneth L. Hunt, Tulsa

Oklahoma voters will consider four state questions, including two property-tax-related issues, on the November 4 general election ballot. These state questions were placed on the ballot by the Legislature.

The property tax measures would effectively amend the Oklahoma Constitution. State Question 735 would create a household personal property tax exemption for veterans and their spouses if the veteran is 100 percent disabled because of an injury that occurred during military action or through a disease contracted while in active service. If approved, this measure would take effect January 1, 2009.

State Question 741 would require a taxpayer (individual or business) to file an application with the county assessor to claim any exemption from property taxes. An application is currently not required for some exemptions. If approved, this measure would also become effective in 2009. ☆

Full Text Citations

- State Question 735. *Doc 2008-20476*
- State Question 741. *Doc 2008-20480*

Note to Readers

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