

OCT 30 1986

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska

FARMLAND INDUSTRIES, INC.,)

Plaintiff)

vs.)

STATE OF NEBRASKA, BOARD OF)
EQUALIZATION,)

Defendant.)

Docket 371 Page 47

ORDER

This is an appeal pursuant to the provisions of Neb. Rev. Stat. §77-27,127 (Cum. Supp.1984) and Neb. Rev. Stat. §84-917 (Cum.Supp. 1984) from the Findings and Order of the State Board of Equalization and Assessment dated April 6, 1983 which affirmed the decision of the State Tax Commissioner, which sustained a deficiency assessment against the plaintiff for its corporate franchise or income taxes for the years ending August 31, 1975 through August 31, 1977.

A hearing was held in this Court on July 15, 1986 and briefs have now been received.

The record shows that the Department issued a Notice of Deficiency Determination on August 24, 1980 for the years ending August 31, 1975 through August 31, 1977 on a recalculation. This was based on plaintiff's Nebraska net income for Nebraska Corporate franchise or income tax as a result of Farmland's failure to add back to its net income certain deductions allowed for federal tax purposes, which were not permitted for Nebraska corporate franchise or income tax purposes during those years.

(2)

Neb. Rev. Stat. §77-2734(2) (Supp.1974) required cooperatives to include in their net income certain patronage dividends, including qualified written notices of allocation, if they were excludible or deductible for federal income tax purposes. Since qualified written notices of allocation were deducted in computing the cooperatives' federal taxable income, and were not paid in money in the year in which the federal deduction was taken so as to qualify for deduction under the exception contained in §77-2734(2), the cooperatives were required to add back such deduction to arrive at their Nebraska net income.

Farmland Industries, Inc., during the years in question, calculated its federal taxable income by taking the appropriate deduction for qualified written notice of allocation. In the same years, when Farmland calculated its Nebraska net income for Nebraska corporate franchise or income tax, it failed to add back the amount it had deducted on its federal return for qualified written notices of allocation.

The parties stipulated at the administrative hearing that the only issue was whether the appropriate apportionment factor to be employed was the one for the year in which the refund was taken as a deduction on plaintiff's federal income tax return.

(3)

In other words, when plaintiff deducted or excluded such distributions in computing its federal taxable income, was it required to add back such deduction or exclusion for Nebraska tax purposes in the year it was taken or could Farmland choose to add back such deduction or distribution in another year?

It would seem that the only year of significance for federal income tax and Nebraska corporate franchise or income tax purposes was the year in which the qualified written notice of allocation was issued. It is in this year that a deduction or exclusion was taken at the federal income tax level. Since this is the year the federal deduction was taken, it follows that this is the year that the deduction or exclusion must be added back to federal taxable income in order to arrive at Nebraska net income for that year. The redemption of the qualified written notice of allocation in cash has no bearing on federal income tax or on Nebraska corporate franchise or income tax.

The Court finds that the State Tax Commissioner and the State Board of Equalization and Assessment properly determined that the appropriate apportionment factor to be applied in this case, was the factor for the year the deduction was taken by the plaintiff on its federal income tax return.

(4)

IT IS ORDERED that the Findings and Order of the State Board of Equalization dated April 6, 1983 is affirmed.

Costs taxed to plaintiff.

Dated this 29 day of October, 1986

BY THE COURT


District Judge