

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

FARMER'S COOP GRAIN COMPANY,  
David City, Nebraska,  
  
Petitioner,

v.

DONALD S. LEUENBERGER, STATE  
TAX COMMISSIONER, STATE OF  
NEBRASKA DEPARTMENT OF  
REVENUE,  
  
Defendant.

Docket 336 Page 136

DECREE

Dept. of Justice

NOV 30 1982

State of Nebraska

This matter came on for trial on September 27, 1982; present in court were the petitioner, by its attorney, Robert C. Guenzel, and the defendant, by his attorney, Ralph H. Gillan, Assistant Attorney General; evidence was adduced, the matter argued and briefs now having been filed and the matter submitted, and the court being duly advised in the premises, FINDS, ORDERS,

ADJUDGES AND DECREES AS FOLLOWS:

1. That the court has jurisdiction of the parties and subject matter hereto.
2. Generally for the defendant and against the plaintiff.
3. That this is an appeal from an order of the defendant-as State Tax Commissioner, dated March 21, 1980, interpreting Sec. 77-2734 (2) R.R.S., 1943 as amended in 1974

by LB 691. The section was again amended by LB 382 in 1976.

4. That this decision involves only those taxable years controlled by the language of Sec. 77-2734 (2) between the effective date of LB 691 and the effective date of LB 382.

5. That Section 77-2734 (2), as amended by LB 691, provided in part that:

"For the purpose of computing the franchise or income tax levied in this section, the net income of cooperative organizations shall be the entire net income derived from all sources within the state, including distributions of earnings and profits of the cooperative to members or patrons such as dividends paid on capital stock, nonpatronage income allocated to patrons, or patronage dividends attributable to this state as shall be excludable or deductible by such corporation for federal income tax purposes; Provided, that the cooperative may deduct such distributions, not to include redemption of prior years' nonqualified notice of allocation, to members or patrons that are paid in money."  
(Emphasis supplied.)

6. That at issue here is the question of whether cooperative organizations may deduct or exclude from their net income, for purposes of Nebraska's income or franchise tax, payments made to members or patrons in redemption of qualified notices of allocation. At the time in question, the state did not authorize such deduction or exclusion.

7. That Sec. 77-2734 (2) authorized the deduction of distributions excludable or deductible for federal income tax purposes if such distributions were paid in money. Patronage

dividends paid in money were excludable from income for federal income tax purposes pursuant to 26 U.S.C. Sec. 1382. Both parties agree that such dividends were deductible under Sec. 77-2734 (2).

8. That qualified written notices of allocation, as defined in 26 U.S.C. Sec. 1388 (c) were excludable for federal income tax purposes in the years issued pursuant to 26 U.S.C. Sec. 1382, but were not deductible under Sec. 77-2734 (2) because they were not paid in money. In the year when they are redeemed, they are paid in money, but they are not excludable or deductible by the cooperative for federal income tax purposes, and therefore did not qualify for deduction under Sec. 77-2734 (2); Provided, however, that portion of the qualified allocation paid in cash in the year declared was deductible by cooperatives.

9. That LB 691 permitted the deduction of patronage dividends paid in money, but denied such deduction to both qualified and nonqualified notices of allocation both in the year issued and in the year redeemed. That result was accomplished by adding to the language of Sec. 77-2734 (2) the provision that the redemption of prior years' nonqualified notices of allocation should not qualify for deduction because the redemption of nonqualified notices of allocation was

deductible or excludable for federal income tax purposes pursuant to 26 U.S.C. Sec. 1382. Since such redemption was paid in money, it would have qualified for deduction under Sec. 77-2734 (2), had it not been specifically excluded. It was not necessary, and would have been redundant, to include in the exclusionary clause of Sec. 77-2734 (2) the redemption of prior years' qualified notices of allocation, since such redemptions are not deductible or excludable under federal statutes, and they therefore did not qualify for deduction under Sec. 77-2734 (2) except that portion paid in cash in year of allocation.

10. That the order of the Defendant, dated March 21, 1980 should be and hereby is affirmed and that petitioner's petition should be and hereby is dismissed at petitioner's costs.

Dated this 29th day of November, 1982.

BY THE COURT:

---

District Judge