



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
601 Delaware Avenue  
Wilmington, Delaware 19899

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- Corporation Income Tax - "Dividends Received" Deduction

The case of Getty Oil Company v. Director of Revenue, Tax Appeal Board Docket No. 537, concerned the issue of what constitutes "dividends received" within the meaning of Section 1903 (a) (2), 30 Delaware Code, which provides a deduction from taxable income for:

"Dividends received on shares of stock....of foreign corporations.....for which foreign tax credit is provided under the applicable provisions of the United States Internal Revenue Code."

For the taxable year 1971, Getty Oil Company ("Getty"), a Delaware Corporation, deducted as exempt income dividends which were not actually received but which were "deemed to have been received" under Section 78 of the Internal Revenue Code, as amended, relating to the foreign dividend "gross-up." The Division of Revenue denied this deduction and assessed Getty for the tax on the dividends. The Division of Revenue took the position that only dividends actually received and for which a foreign tax credit was allowed, and not dividends deemed to have been received, are deductible under Section 1903 (a) (2), 30 Delaware Code.

The Tax Appeal Board, in its decision dated December 4, 1975, found that Section 1903 (a) (2), 30 Delaware Code and Section 78 of the Internal Revenue Code must be construed harmoniously. Since the term "dividends received" under Section 78 of the Internal Revenue Code includes dividends deemed to have been received, the Board held that this construction applied to the term "dividends received" under Section 1903 (a) (2), 30 Delaware Code, and allowed the deduction.

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