JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **1999-10-26-016 / PRECEDENTIAL**
ID: **P9400158**
DATE: **10-26-99**
DISPOSITION: **SUSTAINED IN PART / DENIED IN PART**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant owns and operates a manufacturing plant located in ANONYMOUS TOWN, Oklahoma. The plant not only houses Claimant's manufacturing facility, but other facilities inclusive of research and development, administration, warehousing and packaging.

2. For purposes of the Oklahoma Investment/New Jobs Credit, Claimant reported capital expenditures in the total amount of $57,490,784.00 at the ANONYMOUS TOWN facility during tax years 1988 through 1991.

3. The expenditures consisted of installing new production equipment, demolishing antiquated structures, re-construction of various parts of the facility and extending the roof. All of the expenditures constitute improvements to the real property which were capitalized and are currently subject to depreciation.

4. On each of its original Oklahoma income tax returns for the tax years 1988 through 1991, Claimant reported an investment credit for the capital expenditures made in such tax year. Claimant failed to report the succeeding years credits for the prior years capital expenditures.

5. On January 6, 1993, Claimant filed amended Oklahoma income tax returns for the tax years 1989 through 1991. In particular to this proceeding, Claimant simply included the succeeding years credits for the prior years capital expenditures in the calculation of the investment credit on each of the amended returns. The original and amended investment credits claimed by Claimant are as follows:

Reported Investment Credit

Tax Year	Original	Amended
1988	77,261.00	
1989	115,538.00	192,799.00
1990	176,219.00	369,018.00
1991	205,890.00	574,908.00

6.The amended returns reported refunds and a credit to the 1992 estimated tax in the total aggregate amount of $807,250.00.

7.The Division audited the amended returns and the original 1988 return. As a result of the audit and in particular to this proceeding, the Division disallowed some of the capital expenditures. Certain of the expenditures were disallowed in total while other expenditures were disallowed on a percentage basis based on a breakdown of percentage use in manufacturing provided by Claimant. The disallowances resulted in an adjustment to the investment credit reported in each of the audited years.

8. The audit of the 1988 return resulted in the assessment of additional income tax for the 1988 tax year which income tax was absorbed by the subsequent years audited refunds. The 1988 return was filed on September 15, 1989. The 1988 income tax return has been amended by Claimant on two separate occasions, to-wit: by amended return filed January 3, 1995 and by amended return filed on January 26, 1999. These returns were filed in response to adjustments made by the Internal Revenue Service to Claimant's federal income tax return.

9. By letter dated May 6, 1994, the Division notified Claimant of the audit results and the proposed adjustments to the refunds reported by Claimant. The proposed adjustments result in proposed refunds for the audited years in the total aggregate amount of $343,126.00.

10. Claimant timely protested the proposed adjustments.

11. The parties settled two (2) out of the three (3) outstanding issues raised in the letter of protest. As a result of the settlement, the revised proposed adjustments result in proposed refunds for the audited years in the total aggregate amount of $411,009.00.

12. The amount in controversy cannot be determined by the undersigned from the evidence reviewed. Claimant alleges that the amount is $100,731.00, however, the numbers utilized to determine this amount cannot be verified.

ISSUES AND CONTENTIONS

Two issues are presented for decision. The first issue is whether the Division erred in disallowing the total cost of the investments in property that were not used in the manufacturing facility of the ANONYMOUS TOWN plant. The second issue is whether the Division erred in disallowing a percentage of the cost of the investments in property that were not exclusively used in the manufacturing facility of the plant.

The Division contends that the disallowance of the capital expenditures should be sustained. In support of this contention, the Division argues that the language of the applicable statute, 68 O.S. Supp. 1987, § 2357.4, restricts the investment credit to expenditures related to the manufacturing facility rather than the entire plant of the company. In support of this argument, the Division cites *Oklahoma Tax Commission Order No. 97-05-07-015*, and asserts that a strict construction of the statute can be inferred from this decision.

Claimant contends that it correctly interpreted the provisions of Section 2357.4 in claiming the Investment Credit and that the credit as reported on its returns should be allowed. In support of this contention, Claimant cites *Oklahoma Tax Commission Order Nos. 89-11-14-07 and 93-07-13-004* for the proposition that Section 2357.4 should receive a construction consistent with the legislative purpose for enacting the credit provision. Claimant asserts that consistent with such construction the language of the statute does not restrict the Investment Credit to expenditures directly related to the manufacturing process or primarily related to the manufacturing area of the facility.

APPLICABLE LAW

At issue in this cause is Section 2357.4 of the Oklahoma Income Tax Act[1] which allows a credit against the tax imposed by Section 2355 of the Act. As originally enacted, Section 2357.4 allowed a credit for investment in qualified depreciable property which directly resulted in a net increase in the number of full-time-equivalent employees engaged in manufacturing or processing in this state.[2] 68 O.S. Supp. 1980, § 2357.4(A). The credit was equal to one-half of one percent (1/2 of 1%) of the qualified cost in the year the property was placed in service and in each of the six (6) subsequent taxable years. 68 O.S. Supp. 1980, § 2357.4(D). "Qualified property" was limited to "machinery, fixtures, equipment, buildings, or substantial improvements thereto, placed in service in this state during the taxable year." 68 O.S. Supp. 1980, § 2357.4(B).

In 1987, Section 2357.4 was amended to provide a credit for either an "investment in qualified depreciable property placed in service . . . for use in a manufacturing or processing facility in this state <u>or</u> a net increase in the number of full-time-equivalent employees engaged in manufacturing or processing in this state including employees engaged in support services."[3] The credit, as rewritten, is equal to the greater of either one percent (1%) of the cost of the qualified property in the year the property is place in service or Five Hundred Dollars ($500.00) for each new employee. 68 O.S. Supp. 1987, § 2357.4(D).

The credit, if based on an investment in qualified depreciable property, is not allowed unless the investment in qualified depreciable property is at least $50,000.00 and the investment does not result in a decrease in the number of full-time-equivalent employees. 68 O.S. Supp. 1987, § 2357.4(B). The "qualified property" subject to the credit is "limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year." Id.

The credit is intended to stimulate capital investment in manufacturing or processing facilities within this state and/or the creation of manufacturing or processing jobs within this state. *Oklahoma Tax Commission Order No. 95-01-26-005*.

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[1] 68 O.S. 1991, § 2351 et seq.

[2] Added by Laws 1980, c. 299, § 1.

[3] Laws 1987, c. 228, § 10, eff. Jan. 1, 1987.

In *Oklahoma Tax Commission Order No. 89-11-14-007*, the Commission denied the credit to a retail food establishment. The Commission reasoned that the "logical purpose of [Section 2357.4] is to stimulate industrial activity relating to manufacturing and processing which is not dependent on locale for its existence" whereas a restaurant is dependent on its locale for its continued existence and, although likened to processing, food preparation is not ordinarily and commonly understood to be an industrial activity.

In *Oklahoma Tax Commission Order No. 93-07-13-004*, the Commission considered whether certain property qualified for the Investment Credit. In that case, the Commission found that "[O]ne logical purpose of the credit provision is to stimulate industrial activity relating to manufacturing or processing by investing in qualified depreciable property for use in a manufacturing or processing facility". In construing the language, the Commission determined that "the property qualifies for the investment credit so long as the qualified property is used in the manufacturing or processing facility rather than used in the manufacturing process".

In *Oklahoma Tax Commission Order No. 97-05-07-015*, the Commission considered the new jobs portion of the credit and the issue whether all employees hired by a manufacturing concern qualified for the credit. The Commission held that "[o]nly those employees whose paid wages or salary are at least $7,000.00 and who are engaged in manufacturing, processing or support services . . . are includable in the calculation of the credit. The Commission also construed the phrase "employees engaged in support services" to mean "employees whose services primarily support the manufacturing or processing function of the manufacturing . . . [concern], not the employees whose services primarily support the business operation of the . . . [company]".

The issue in this cause turns on what is intended by the phrase "a manufacturing or processing facility." The phrase is neither defined by statute nor rule. Where statutory terms are not defined it is assumed that the legislature intended the terms to have the same meaning as attributed to them in ordinary and usual parlance. ***Loffland Bros. Equipment v. White***, 689 P.2d 311 (Okl. 1984). General words do not explain or amplify particular preceding terms but are themselves restricted and explained by the particular terms. ***Oklahoma Tax Commission v. Fortinberry***, 201 Okl. 537, 207 P.2d 301 (1949).

"Facility" is defined in particular as "something that is built, installed, or established to serve a particular purpose." Webster's Ninth New Collegiate Dictionary 444 (1987). In terms of the statute "facility" is modified by the terms "manufacturing" or "processing." Therefore, the credit is limited by statute to the capital expenditures made in qualified property placed in service for use in the portion of a taxpayer's facility that is built, installed, or established for the purpose of manufacturing. This conclusion conforms with the prior language of the statute wherein it provided a credit for investments in property which directly resulted in an increase in employees engaged in manufacturing or processing. See, 68 O.S. Supp. 1980, § 2357.4(A).

A literal construction of the language of the statute, however, does not permit the denial of an investment in qualified property on a percentage basis. The statute does not provide that the property shall be exclusively or primarily used in the manufacturing or processing facility. The statute merely provides that the property be placed in service for use in such facility. By denying only a percentage of an investment the Division admits that the property was placed in service for use in the manufacturing facility. Accordingly, the Division's disallowance of a percentage of the cost of those capital expenditures which were not exclusively used in the manufacturing facility was erroneous.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 68 O.S. 1991, § 207.

2. Section 2357.4, as amended, provides a credit against the tax imposed by Section 2355 of the Oklahoma Income Tax Act for either an investment in qualified depreciable property placed in service for use in a manufacturing or processing facility in this state or a net increase in the number of full-time-equivalent employees engaged in manufacturing or processing, including employees engaged in support services. 68 O.S. 1991, § 2357.4(A).

3. For purposes of Section 2357.4(A), "facility" is defined as "something that is built, installed, or established for a particular purpose." Webster's Ninth New Collegiate Dictionary 444 (1987). In Section 2357.4(A), "Facility" is modified by the terms "manufacturing" or "processing." Therefore, the credit is limited to investments in property that are placed in service for use in the portion of a taxpayer's facility that is built, installed, or established for the purpose of manufacturing.

4. The credit extends to all qualified property that is placed in service for use in the manufacturing facility. The qualified property subject to the credit is not limited to that property used exclusively in the manufacturing facility.

5. The Division properly disallowed in the calculation of the credit the total cost of the investments in property that were not used in the manufacturing facility. The Division's disallowance of a percentage of the cost of the investments in property that were not used exclusively in the manufacturing facility was erroneous.

6. Claimant's protest to the proposed adjustments should be sustained in part and denied in part.

DISPOSITION

Based on the above and foregoing, it WAS DETERMINED that the protest of Claimant be sustained in part and denied in part.

OKLAHOMA TAX COMMISSION

OTC Order No. 1999-10-26-016

ADDENDUM TO FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 10th day of August, 1999, the Findings, Conclusions and Recommendations issued on March 4, 1999, in the above styled and numbered cause come on for consideration of additional findings of fact and a recommendation as to the amount of Claimant's refund which should be confirmed by an order of the Tax Commission.

The Division, as directed by the Findings, Conclusions and Recommendations, revised the proposed adjustments to Claimant's income tax refund and provided notice of the revision to Claimant. Claimant has not challenged the revision proposed by the Division.

Upon consideration of the Findings, Conclusions and Recommendations, and the revision to the refund adjustments, the undersigned finds that the following Findings of Fact should be added to and incorporated in the Findings, Conclusions and Recommendations:

1. That notice of the revision to the refund adjustments was filed of record in this cause on June 25, 1999.

2. That the Division revised the proposed refund for the audited years to a total aggregate amount of $435,593.00.

3. That the revision complies with the recommendations set forth in the Findings, Conclusions and Recommendations.

4. That Claimant was provided notice of the revision.

5. That Claimant did not file a response to the revision.

The ADMINISTRATIVE LAW JUDGE further FOUND that the following Recommendation should be added to and incorporated in the Findings, Conclusions and Recommendations:

> It WAS further DETERMINED that the aggregate amount of $435,593.00, together with any interest under 68 O.S. Supp. 1998, § 217(H), be fixed as the refund due and owing.

THEREFORE, the Findings, Conclusions and Recommendations issued on March 4, 1999, WERE amended to include and incorporate the above and foregoing findings of fact and DETERMINATION.

OKLAHOMA TAX COMMISSION