JURISDICTION:	OKLAHOMA TAX COMMISSION
CITE:	2006-09-05-05 / PRECEDENTIAL
ID:	P-05-106-H
DATE:	SEPTEMBER 5, 2006
DISPOSITION:	SUSTAINED
TAX TYPE:	INCOME, QUALIFIED ELECTRIC MOTOR VEHICLE CREDIT
APPEAL:	NONE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE ("Protestants") appear pro se.[1] The Amended Section of the Audit Division ("Division"), Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On August 10, 2005, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[3] On August 11, 2005, a letter was mailed to the Protestants stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-05-106-H. The letter also advised the Protestants that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.* On August 24, 2005, the Notice of Prehearing Conference was mailed to the last known address of the Protestants, setting the prehearing conference for October 5, 2005, at 3:30 p.m.[4] On October 4, 2005, the Protestants filed a request to reset the prehearing conference due to a scheduling conflict. The Division did not object to the request. On October 5, 2005, a Notice of Prehearing Conference was mailed to the parties resetting the prehearing conference for October 11, 2005, at 10:00 a.m. The prehearing conference was conducted by telephone as scheduled. Pursuant to the prehearing conference the parties were advised to file a status report on or before November 10, 2005.

On November 9, 2005, the Division filed a Status Report, reflecting that documentation provided by the Protestants was being reviewed by the Division, and requested a scheduling order containing dates for both a hearing and an alternative briefing schedule under which the

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[1] "**pro se**" (proh **say** *or* **see**), *adv*. & *adj*. [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (8th ed. 2004), available at *http://westlaw.com*. (March 16, 2006).

[2] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. STAT. ANN. tit. 68, § 208 (West 2001). The notice was mailed to the Protestants at their last known address of 123 FAKE STREET, SUBURB, Oklahoma 12345.

parties could submit this matter for decision on stipulations and briefs. On November 28, 2005, an Order and Notice of Alternative Hearing Date was issued.

On March 8, 2006, the Division filed a Motion to Stay Hearing due to scheduling constraints and additional information that had been provided by the Protestants. The Protestants did not have an objection to a short stay. On March 9, 2006, an Order Granting Motion was mailed to the parties. On April 13, 2006, a Scheduling Order was issued to the parties for submission of this matter on stipulations and briefs.

On April 10, 2006, the parties filed their Stipulation of Fact and Statement of Issue. On May 1, 2006, the Protestants filed their Brief in Chief. On May 22, 2006, the Brief of the Audit Division was filed, followed by the filing of the Corrected Brief of the Audit Division on May 23, 2006. On May 31, 2006, the Protestants filed their Response to Corrected Brief of the Audit Division. On June 7, 2006, the record in this matter was closed and the case was submitted for decision.

STIPULATION OF FACTS

At the request of the parties this matter was submitted for decision on the briefs.[5] The following facts were stipulated[6] by the parties:

1. On or about May 7, 2004, Protestants purchased a 2004 Toyota Prius at a cost of $22,591.00, not including an extended service contract and an additional dent repair provision. See Purchase Agreement, Exhibit A.

2. On or about April 15, 2005, Protestants filed an Amended Oklahoma Individual Return in order to claim a Credit for Conversion of Motor Vehicles to Clean Burning Fuel or Investments in Qualified Electric Motor Vehicle property. See Amended Return, Schedule CR, Exhibit B.

3. On or about July 14, 2005, the Audit Division denied the Amended Return indicating that the Protestants were not entitled to the credit. See July 14, 2005 letter from AUDITOR to Protestants, Exhibit C.

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[5] OKLA. ADMIN. CODE § 710:1-5-38:

> When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral hearing is not needed, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. The Administrative Law Judge will mail notice of a date certain for each party to submit a position letter or brief setting out therein the statement of facts, issues to be determined, contentions and statutory and case law relied upon to support his contentions. The Administrative Law Judge may schedule a conference between the parties if it is deemed necessary to clarify the positions of the parties.

[6] The text of the stipulated facts is set out verbatim.

4. On or about July 31, 2005, Protestants filed their protest to the denial. See July 31, 2005, letter from HUSBAND to AUDITOR, Auditor.

5. On or about August 23, 2005, Division counsel corresponded with Protestants. See Exhibit D.

6. On or about October 4, 2005, the Taxpayer provided to the Division information from Toyota indicating that for at least some portion of the time, the Prius operates on electricity alone. See October 4, 2005, letter from Taxpayer to Counsel for Division, Exhibit E.

7. On October 11, 2005, a Prehearing Conference was held in this matter with all parties appearing by phone wherein the ALJ granted the parties an additional thirty days to seek to resolve this matter. See Exhibit F.

8. On or about November 28, 2005, the Court issued its Order and Notice of Alternative Hearing Date as the parties had not resolved the matter. See Exhibit G.

9. On or about March 8, 2006, the Division requested that the hearing in this matter be stayed for thirty days; Protestant did not object. Exhibit H.

10. On or about March 9, 2006, the Court issued its Order Granting Motion. Exhibit I.

11. On or about April 6, 2006, the Protestant provided a letter, additional arguments and a Toyota Hybrid System Diagnosis, Course 072 Technician Handbook. Exhibit J.

12. The parties now request that this matter be submitted to the Court for decision based on stipulated facts and evidence as outlined herein, as well as each party's position statement as outlined in the Brief in Chief, Response Brief and Reply Brief, respectively.

ADDITIONAL FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the briefs, the undersigned finds:

13. Attached to the 2004 Amended Resident Individual Return (Form 511X) is the "Other Credits Form" (Form 511CR). On line three (3) of the amended return, the Protestants claimed a credit ("Credit") for an investment in "Qualified Electric Motor Vehicle Property" ("QEMVP") in the amount of $1,500.00.[7]

14. The instructions[8] to claim the Credit on Form 511CR in pertinent part, are as follows, to-wit:

[7] Exhibit B.

[8] The Administrative Law Judge is taking judicial notice of the instructions used by the Protestants to claim the Credit for the purpose of completing the factual details and background of this audit. OKLA. ADMIN. CODE

> There shall be a one time credit allowed for . . . investments in qualified electric property. The credit shall be 50% of the cost of . . . qualified electric motor vehicle property as defined in Title 68 O.S. Section 2357.22 and Rule 710:50-15-81. Any credit allowed but not used will have a three year carryover provision. The term "qualified electric motor vehicle property" shall not apply to vehicles which are manufactured principally for use off the streets and highways. In the case where such clean-burning equipment or qualified electric motor vehicle property is installed by the manufacturer of the vehicle and the taxpayer is unable or elects not to determine the exact basis of such equipment, the credit shall be the lesser of 10% of the cost of the vehicle or $1,500.00. . . .

15. The Division's July 14, 2005, letter denying the Credit to the Protestants,[9] states the reason for the adjustment as follows, to-wit:

> The Credit for investment in a qualified electric motor vehicle property has been denied.
>
> Per 68 O.S. § 2357.22, vehicles that are propelled only by a clean burning fuel (CNG, LPG, etc) or only by electricity are eligible for the Oklahoma income tax credit. If the vehicle has both gas combustion engine and electricity (most hybrid vehicles), then credit is limited to extent of propulsion by electricity. Hybrids that we know about are all propelled by gas and electricity makes engine run more efficiently. The position of the Tax Commission is that since no propulsion by electricity, no credit would be allowed.

16. On August 2, 2005, the Division received a timely filed protest to the denial of the Credit.[10] The basis of the protest is stated in pertinent part, as follows, to-wit:

> In the Toyota Prius, electricity does not only "make the engine run more efficiently". The Toyota Prius contains both a gasoline engine and electric motors. A bank of batteries provides electricity to the motors to drive the wheels. A monitor in the dashboard shows the follow of energy between the gasoline engine, the electric motors, the battery bank, and the wheels. At times, only the gasoline engine drives the wheels. At times, both the gasoline engine and the electric motors drive the wheels. And at times, only the electric motors drive the wheels; at these times the vehicle is "propelled solely by electricity".

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§ 710:1-5-36. The instructions are available on the Oklahoma Tax Commission website, *http://oktax.state.ok.us* (last visited July 5, 2006).

[9] Exhibit C.

[10] Exhibit C.

> The Toyota Prius includes no provision for recording what portion of the time the vehicle is propelled by electricity. Consequently, I am unable to determine the exact basis which is attributable to such property. The purchase price of the vehicle was well over $25,000, so $1,500 is less than 10% of the cost of the vehicle.

17. Attached to the Protestants' letter dated October 2, 2005,[11] are copies of pages nine (9) and twelve (12)[12] of the Toyota Prius Owner's Manual. There are three (3) diagrams on page nine (9) of the manual with headings and text, as follows, to-wit:

Electric Power in Use	Gasoline Power in Use	Electric and Gasoline Power in Use
When starting or backing up, etc., the vehicle runs on electric power from hybrid vehicle battery, because the gasoline engine efficiency is low.	During normal driving, the vehicle runs mainly on gasoline power. However, the electric motor, using electric power generated by the gasoline engine, can supplement the gasoline engine power. The vehicle controls the optimum ratio of the gasoline and electric power to help use energy more efficiently.	When driving at full throttle, additional electric power is applied from the hybrid vehicle battery. Vehicle performance improves.

The following text appears on page twelve (12) of the manual:

> Information: The gasoline engine starts and stops automatically. (It stops during a low load driving, deceleration or when the vehicle is stopped.) If the "READY" light remains on, you can start your vehicle using the electric motor even with the gasoline engine stopped.

[11] Exhibit E. *See* Attachment 3.

[12] The stipulations indicate that page ten (10) of the manual is attached, but the exhibit indicates that it is actually page twelve (12).

18. There are three (3) basic hybrid configurations for Hybrid Electric Vehicles, which combine the engine, motor/generator, and battery,[13] as follows, to-wit:

> Series: The engine never directly powers the car. Instead, the engine drives the generator, and the generator can either charge the batteries or power an electric motor that drives the wheels.
>
> Parallel: The engine connects to the transmission, as do the batteries and the electric motor. So both the engine and the generator/motor can supply power to the wheels, switching back and forth as driving conditions vary.
>
> Split: The engine drives one axle and the electric motor drives the other. There is no connection between the engine and the electric components except "through the road."

19. The Toyota Prius ("Prius") combines features of both the "series" and "parallel" Hybrid Electric Vehicles. When starting out under light load and light throttle, the Prius runs on electric power only. When the Prius reaches approximately 14 mph during normal low-speed driving, the engine runs and provides power. One (1) of two (2) generators runs as a motor and provides an electric assist to the engine.

20. When the Prius decelerates, the engine stops running and the First Generator turns backwards to maintain the gear ratio. When the Prius moves in reverse the Second Generator turns in reverse as an electric motor and the engine does not run. The engine also shuts off when it is not needed for acceleration or to recharge the battery.[14]

STATEMENT OF ISSUES

The following issues were stipulated[15] by the parties:

The Taxpayer contends that the following are at issue in the protest:

A. Whether the claimant must determine precisely the portion of time electrical power provides propulsion and/or whether the inability to determine an accurate percentage in excess of 6-7% of the time renders the claimant ineligible for the credit.

B. Whether the Taxpayer must determine the portion of operation attributable to "electrical power alone."

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[13] Exhibit E. *See* Attachment 4, U.S. Department of Energy Technology Snapshot-Featuring the Toyota Prius.

[14] Exhibit E. *See* Attachment 4. *See* Exhibit J. Pages 1-3 through 1-7 of the Toyota Hybrid System Diagnosis Course 072 Technician Handbook.

[15] The text of the stipulated statement of issue(s) is set out verbatim.

The Division contends that the issue is as follows:

C. Whether the Protestant must prove what portion or percentage of time that the vehicle at issue is operated by electrical power alone in order to receive a credit or any portion thereof for a qualified electric motor vehicle property pursuant to 68 OS Supp. 2004 § 2357.22(C).

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[16]

2. The Tax Commission has promulgated rules as provided by law to facilitate the administration, enforcement and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to income.[17]

3. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.[18]

4. Tax exemptions, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction, or credit.[19]

5. Legislative intent controls statutory interpretation.[20] Intent is ascertained from the whole act in light of its general purpose and objective[21] considering relevant provisions together to give full force and effect to each.[22] The Court presumes that the Legislature expressed its intent and that it intended what it expressed.[23]

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[16] OKLA. STAT. ANN. tit. 68, § 221(D) (West 2001).

[17] OKLA. ADMIN. CODE § 710:50-1-1.

[18] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2001).

[19] *TPQ Inv. Corp. v. State ex rel. Oklahoma Tax Com'n*, 1998 OK 13, ¶8, 954 P.2d 139.

[20] *World Publishing v. Miller*, 2001 OK 49, ¶7, 32 P.3d 829.

[21] *Id.* at ¶7.

[22] *Id.* at ¶7.

[23] *Id.* at ¶7.

6. Statutes are interpreted to attain that purpose and end[24] championing the broad public policy purposes underlying them.[25] Only where the legislative intent cannot be ascertained from the statutory language, i.e. in cases of ambiguity or conflict, are rules of statutory construction employed.[26] However, where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities.[27]

7. The Credit for an investment in a QEMVP is provided by Section 2357.22 of Title 68,[28] which states in pertinent part, as follows, to-wit:

> A. For tax years beginning before January 1, 2009, there shall be allowed a one-time credit against the income tax imposed by Section 2355 of this title *for investments in qualified clean-burning motor vehicle fuel property placed in service after December 31, 1990,* **and** *for investments in qualified electric motor vehicle property placed in service after December 31, 1995*.
>
> B. As used in this section, "qualified clean-burning motor vehicle fuel property" means:
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> …
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> 2. A motor vehicle originally equipped so that the vehicle may be propelled by compressed natural gas, liquefied natural gas or liquefied petroleum gas, or propelled by methanol or "M-85" *but only to the extent of the portion of the basis of such motor vehicle which is attributable to the storage of such fuel, the delivery to the engine of such motor vehicle of such fuel, and the exhaust of gases from combustion of such fuel*;[29] or
>
> …
>
> C. As used in this section, *"qualified electric motor vehicle property"* means a motor vehicle originally equipped to be propelled only by electricity to the extent of the full purchase price of the vehicle; *provided, if a motor vehicle is also equipped with an internal combustion engine, then such vehicle shall be considered "qualified electric motor vehicle property" only to the extent of the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. . . .*
>
> D. The credit provided for in subsection A of this section shall be fifty percent (50%) of the cost of the qualified clean-burning motor vehicle fuel property or qualified electric motor vehicle property.

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[24] *Id.* at ¶7.

[25] *Id.* at ¶7.

[26] *Id.* at ¶7.

[27] *Id.* at ¶7.

[28] OKLA. STAT. ANN. tit. 68, § 2357.22 (West Supp. 2006).

[29] The Statute was originally enacted into law by the Legislature on July 1, 1990. The credit was for a "qualified clean-burning motor vehicle fuel property." 1990 Okla. Sess. Law Serv. 336 (West 1990). The Legislative amended the Statute to include a credit for an investment in a QEMVP during the 1996 Second Regular Session. 1996 Okla. Sess. Law Serv. Ch. 224 (S.B. 679) (West). The Statute as amended became effective November 1, 1996.

> E. In cases where no credit has been claimed pursuant to subsection D of this section and in which a motor vehicle is purchased by a taxpayer with *qualified clean-burning motor vehicle fuel property* or *qualified electric motor vehicle property installed by the manufacturer of such motor vehicle* and **the taxpayer is unable or elects not to determine the exact basis which is attributable to such property**, *the taxpayer may claim a credit in an amount not exceeding the lesser of ten percent (10%) of the cost of the motor vehicle or One Thousand Five Hundred Dollars ($1,500.00).*[30] (Emphasis added.)
>
> …

8. The Tax Commission Rule promulgated to administer the Credit,[31] in pertinent part, states as follows, to-wit:

> For vehicles placed in service after December 31, 1995, the credit shall also be available for qualified electric vehicle property. "Qualified electric vehicle property" means a motor vehicle originally equipped to be propelled only by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. *For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. . . .* (Emphasis added.)

9. It is the responsibility of the Tax Commission, and consequently the Administrative Law Judges, to "examine into the merits" of any protest and enter an order accordingly.[32] Further, although the taxpayer is required to set out in his protest the "argument and legal authority" upon which his protest is based, the statutes also provide the protestant "shall not be bound or restricted in [the] hearing, or on appeal, to the arguments and legal authorities" contained in the protest.[33]

10. The statutory mandate of the Tax Commission and the Administrative Law Judges is to determine the facts and the correctness or incorrectness under the law of the Tax Commission's prior action, and to affirm, modify, or vacate that action.[34] If the Tax Commission and the Administrative Law Judges are to accomplish this task, they cannot be bound or restricted in their considerations solely to the arguments of the parties. Stipulations between parties or their counsel cannot control the court's action in a matter of law.[35]

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[30] *See* Note 29.

[31] OKLA. ADMIN. CODE § 710:50-15-81(c).

[32] OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2006).

[33] OKLA. STAT. ANN. tit. 68, § 207(c) (3) (West 2001). *See* OKLA. STAT. ANN. tit. 68, § 221(C) (3) (West Supp. 2006) (Emphasis added).

[34] *See* Note 33.

[35] *First Nat. Bank of Cordell v. City Guar. Bank of Hobart*, 1935 OK 1105, ¶ 5, 51 P.2d 573, 577.

There does not appear to be any dispute between the parties that the Prius is a QEMVP as defined in the Statute. The dispute between the parties appears to be whether the Protestants can claim the Credit for an investment in a Prius because the Protestants are unable to determine the extent of the portion of the basis of the Prius which is attributable to the propulsion of the vehicle solely by electricity.

The Statute and the Rule have been amended several times since the Statute was originally enacted into law by the Legislature on July 1, 1990. In reviewing the legislative history of the Statute it does not appear that the Legislature intended to make any distinction between a taxpayer claiming the Credit for an investment in a "qualified clean-burning motor vehicle property" under Section 2357.22(B)(2) and a taxpayer claiming the Credit for an investment in a "qualified electric motor vehicle property" under Section 2357.22(C).

If the Division's interpretation of the Statute and the Rule are correct, no taxpayer could ever claim the Credit for either a "qualified clean-burning motor vehicle property" or for a QEMVP, unless the taxpayer could determine the "exact basis" (or as used by the Division in this matter, the percentage of time the vehicle operates or is propelled solely by electricity). This interpretation of the Statute and the Rule would render Section (E) of the Statute a nullity.

The plain language of the Statute indicates that the Legislature considered the likelihood that a taxpayer would be unable to determine the "exact basis" of the motor vehicle, or simply elect not to determine the "exact basis" for either type of vehicle, and provided the taxpayer an option to still be able to claim the Credit, but limiting the Credit "in an amount not exceeding the lesser of ten percent (10%) of the cost of the motor vehicle or One Thousand Five Hundred Dollars ($1,500.00)."[36]

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case that the protest should be sustained.

OKLAHOMA TAX COMMISSION

[36] OKLA. STAT. ANN. tit. 68, § 2357.22(E) (West Supp. 2006).