JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2008-01-24-02 / NON-PRECEDENTIAL**
ID: **P-06-129-K**
DATE: **JANUARY 24, 2008**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **PENDING OK S.CT. 105,601**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT is represented by REPRESENTATIVE, **FIRM**, and ATTORNEY 1 AND ATTORNEY 2, Attorneys at Law, **LAW FIRM**. The Audit Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY 1 and OTC ATTORNEY 2, Assistant General Counsels, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

An office audit of Protestant's Oklahoma corporation income tax returns, amended (1998 through 2001) and original and amended (2002 through 2004) was performed by the Division. As a result of the audit, the Division by letter dated January 24, 2003, denied as barred by the statute of limitations Protestant's refund claim for the 1998 tax year and by letter dated December 7, 2005, denied or adjusted the refund claim amounts for tax years 1999 through 2004. By letter dated April 24, 2006, Protestant timely protested the proposed denials and adjustments made to its refund claims for tax years 1999 through 2004. A hearing was requested in the letter of protest.

On August 1, 2006, the Division referred its file in this matter to the Office of the Administrative Law Judges ("ALJ's Office") for further proceeding pursuant to the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The protest was docketed as Case No. P-06-129-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled in this cause for September 26, 2006, by a *Notice of Prehearing Conference* issued August 22, 2006.[4] The pre-hearing conference was held on October 5, 2006, as rescheduled by the *Order Granting Motions for Rescheduling of Prehearing Conference* issued September 21, 2006. Pursuant to the conference, a *Scheduling Order and Notice of Hearing* was issued setting forth dates for exchanging preliminary witness lists and documents, conducting discovery, exchanging final witness lists and documents, and filing

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[1] 68 O.S. 2001, § 201 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*")

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-28.

factual stipulations and pre-trial briefs or position letters.[5] The *Order* scheduled the hearing for April 5, 2007.[6]

By *Status Report* filed November 20, 2006, the Division advised that a revision to the original office audit and adjustments to tax years 2002 through 2004 had been made and that pending the filing of a formal protest, the parties intended to file a joint motion to consolidate and request a new scheduling order. By letter dated October 12, 2006, the Division issued a revision to the audit and adjustments for tax years 2002 through 2004, which revision proposed the assessment of additional income taxes, interest and penalty for tax years 2002 and 2004 in the total aggregate amount of $897,687.00. Protestant timely protested the revision and proposed assessment by letter dated December 6, 2006.

A continuance of the procedural dates and hearing was granted upon *Motion for Continuance* of the parties by *Order* issued February 23, 2007. Upon *Joint Motion to Strike Hearing and Set Briefing Schedule* whereby the parties agreed that this cause could be submitted for decision without a hearing, an *Order* was issued setting forth dates for the filing of a joint stipulation of facts, a statement of the issues and briefs by the parties.[7]

A *Stipulation of Facts* was filed by the parties on July 27, 2007. Exhibits A through I, J-1 through J-5, K, and N through W were submitted with the *Stipulation*. Protestant's *Hearing Brief* was filed August 27, 2007. The Division's *Reply Brief* was filed September 18, 2007. A *Citation of Additional Authority to Reply Brief* was filed by the Division on September 25, 2007. Protestant's *Response Brief* was filed September 28, 2007, whereupon the record was closed and the protests were submitted for decision.[8]

FINDINGS OF FACT

Upon review of the file and records, including the *Stipulation of Facts*, exhibits and pleadings of the parties, the undersigned finds:

1. On March 6, 1998, DELAWARE COMPANY, a Delaware Corporation, purchased substantially all of the assets of a division of COMPANY, an Oklahoma corporation. The purchased division was known as the ABC division. Stipulation 1, Exhibit A – *Asset Purchase Agreement, Amendment No. 1 to Asset Purchase Agreement*.

2. As a condition to the *Asset Purchase Agreement*, COMPANY was required to change its corporate name to a name dissimilar to its then current name. Stipulation 1, Exhibit A.

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[5] *OAC*, 710:1-5-28(b).

[6] *OAC*, 710:1-5-29.

[7] *OAC*, 710:1-5-38.

[8] *OAC*, 710:1-5-39(a).

3. Subsequent to or simultaneously with the purchase of COMPANY, DELAWARE COMPANY formed Protestant, a Delaware corporation, and contributed the purchased assets: land, buildings, furniture and fixtures, machinery, computers and office equipment to Protestant. Stipulations 2, 4, 7, 8, 10 and 11, Exhibits B, E, G, H, I and J-1 through J-5.

4. Protestant's principal place of business in Oklahoma is located at BUSINESS ADDRESS in CITY where it is engaged in the remanufacturing of automotive drive-train components. Stipulations 2, 4, 7, 8, 10 and 11, Exhibits B, E, G, H, I and J-1 through J-5.

5. A *Manufacturer Sales Tax/Exemption Permit* effective March 5, 1998 was issued to Protestant for this location by the Oklahoma Tax Commission. Stipulations 2, 4, 7, 8, 10 and 11, Exhibits B, E, G, H, I and J-1 through J-5.

6. Pursuant to the *Asset Purchase Agreement*, Protestant agreed to "offer employment to all of the ABC Employees",* * * "hire all such ABC Employees" and "[t]hrough July 31, 1998, * * * continue to pay to all of the Hired ABC Employees wages and salaries and other forms of compensation at the same rates as were being paid by Seller as of the Closing Date, and * * * provide to the Hired ABC Employees the same level and value of employee benefit plans, programs and arrangements that Seller had been providing to the Hired ABC Employees as of the Closing Date". Stipulation 1, Exhibit A.

7. Protestant was also required to "recognize and credit the prior employment service of the Hired ABC Employees with Seller for purposes of eligibility and vesting with respect to [Protestant's] Benefit Plans." Stipulation 1, Exhibit A.

8. In 2002, Protestant became or was made aware of the Oklahoma Investment/New Jobs income tax credit available to manufacturing facilities in Oklahoma. Stipulation 2, Exhibit B, page 2.

9. On September 16, 2002, Protestant filed a 1998 amended Oklahoma corporation income tax return, Form 512X, claiming a new jobs credit in the amount of $258,000.00 of which $162,170.00 was used against the tax due (which had been previously paid) resulting in a refund claim of $162,170.00 and a carryover of $95,830.00. For purposes of the credit, Protestant claimed a net increase of full-time-equivalent employees engaged in manufacturing and support services of 516 which was calculated by comparing the fourth quarter monthly average of Protestant's full-time employees (516) for the 1998 tax year with the number of Protestant's full-time employees (0) in the prior base year (1997). Stipulation 2, Exhibit B, Form 506.

10. By letter dated January 24, 2003, the Division denied Protestant's claim to an income tax refund for the 1998 tax year on the basis that the 1998 amended return was barred by statute since the return was not filed within three (3) years from the date the income tax was paid. Stipulation 3, Exhibit C.

11. On March 14, 2003, Protestant filed a 1999 amended Oklahoma corporation income tax return, Form 512X, claiming a new jobs credit of $386,330.00; consisting of the 1998 credit carryover of $95,830.00, a 1998 second year new jobs credit of $258,000.00 and a 1999 first year

new jobs credit of $32,500.00, of which $295,817.00 was used against the tax due (which had been previously paid) resulting in a refund claim of $295,817.00 and a carryover of $90,513.00. The 1999 new jobs credit was based on a net increase of 65 full-time-equivalent employees. Stipulation 4, Exhibit D, Forms 506.

12. On March 25, 2003, Protestant responded by letter to the Division's refund denial letter of January 24, 2003, wherein Protestant agreed with the Division's position that the 1998 income tax refund was barred by statute, but asserted that since the amended return was filed within three (3) years of the filing date of the original return the base year for purposes of the investment/new jobs credit should be 1998. Protestant further asserted that an entity acquiring another entity in an asset acquisition should qualify as a new employer for purposes of the Oklahoma investment/new jobs credit. Stipulation 5, Exhibit E.

13. On June 13, 2003, the Division responded to Protestant's letter of March 25, 2003, and the 1999 amended income tax return, by asserting its disagreement with the utilization of zero (0) as the number of employees in the base year for purposes of determining the new jobs credit, and cited as authority therefor; ***TPQ Investment Corporation v. Oklahoma Tax Commission***, 1998 OK 13, 954 P.2d 139. The Division requested that Protestant provide certain information with respect to the calculation of the investment credit for its investment in depreciable property. Stipulation 6, Exhibit F.

14. On March 2, 2004, Protestant filed a 2000 amended Oklahoma corporation income tax return, Form 512X, claiming an investment/new jobs credit of $411,675.00; consisting of a recalculated 1999 credit carryover of $153,675.00 (utilizing a 1998 first and second year new jobs credit of $71,000.00 and $16,000.00, respectively and a 1999 first year investment credit of $8,662.00 attributable to REMANUFACTURING COMPANY less the previously taken 1999 first year new jobs credit of $32,500.00 attributable to Protestant), a 1998 third year new jobs credit of $258,000.00, of which $406,059.00 was used against the tax due (which had been previously paid) resulting in a refund claim of $406,059.00 and a carryover of $5,616.00. The 1998 first year new jobs credit of REMANUFACTURING COMPANY is based on a net increase of 142 full-time-equivalent employees calculated by comparing REMANUFACTURING COMPANY'S fourth quarter monthly average of full-time employees (142) for the 1998 tax year with REMANUFACTURING COMPANY'S full-time employees (0) in the prior base year (1997). The 1998 second year new jobs credit of REMANUFACTURING COMPANY is based on maintaining in 1999, 32 of the 142 employees. Stipulation 7, Exhibit G, Forms 506.

15. On March 2, 2004, Protestant filed a 2001 amended Oklahoma corporation income tax return, Form 512X, claiming an investment/new jobs credit of $463,968.00; consisting of a 2000 credit carryover of $5,616.00, a 1998 fourth year new jobs credit of $258,000.00, a 1999 first ($32,500.00), second ($12,500.00) and third ($12,500.00) year new jobs credit of $57,500.00, a 2000 first ($25,926.00) and second ($25,926.00) year investment credit of $51,852.00 and a 2001 first year new jobs credit of $91,000.00, of which $463,968.00 was used against the tax due resulting in a refund claim of $372,968.00 and zero (0) carryover. The 2001 new jobs credit was based on a net increase of 182 full-time-equivalent employees. Stipulation 8, Exhibit H, Forms 506.

16. On May 27, 2005, Protestant filed second amended income tax returns for tax years 1998 through 2001 and an amended income tax return for 2002. These returns were filed to claim the doubling of the new jobs and investment credits since the manufacturing facility located at BUSINESS ADDRESS is in an enterprise zone. Stipulation 11, Exhibits J-1 through J-5.

17. The 1998 second amended return claims an investment/new jobs credit of $587,000.00 (consisting of a 1998 first year new jobs credit of $516,000.00 attributable to Protestant and a 1998 first year new jobs credit of $71,000.00 attributable to REMANUFACTURING COMPANY), an income tax refund of $162,170.00 and a credit carryover of $424,830.00. Stipulation 11, Exhibit J-1.

18. The 1999 second amended return claims an investment/new jobs credit of $1,030,051.00 (consisting of the 1998 carryover of $424,830.00, a 1998 second year new jobs credit of $16,000.00 and a 1999 first year investment credit of $8,221.00 attributable to REMANUFACTURING COMPANY, a 1998 second year new jobs credit of $516,000.00 and a 1999 first year new jobs credit of $65,000.00 attributable to Protestant), an income tax refund of $295,817.00 and a credit carryover of $734,234.00. Stipulation 11, Exhibit J-2.

19. The 2000 second amended return claims an investment/new jobs credit of $1,327,086.00 (consisting of the 1999 carryover of $734,234.00, a 1998 third year new jobs credit of $516,000.00, a 1999 second year new jobs credit of $25,000.00 and a 2000 first year investment credit of $51,852.00 attributable to Protestant), an income tax refund of $406,059.00 and a credit carryover of $921,027.00. Stipulation 11, Exhibit J-3.

20. The 2001 second amended return claims an investment/new jobs credit of $1,695,879.00 (consisting of the 2000 carryover of $921,027.00, a 1998 fourth year new jobs credit of $516,000.00, a 1999 third year new jobs credit of $25,000.00, a 2000 second year investment credit of $51,852.00 and a 2001 first year new jobs credit of $182,000.00 attributable to Protestant), an income tax refund of $829,334.00 and a credit carryover of $775,545.00. Stipulation 11, Exhibit J-4.

21. The 2002 amended return claims an investment/new jobs credit of $1,550,397.00 (consisting of the 2001 carryover of $775,545.00, a 1998 fifth and final year new jobs credit of $516,000.00, a 1999 fourth year new jobs credit of $25,000.00, a 2000 third year investment credit of $51,852.00 and a 2001 second year new jobs credit of $182,000.00 attributable to Protestant), an income tax refund of $813,000.00 and a credit carryover of $565,665.00. Stipulation 11, Exhibit J-5.

22. On September 15, 2004, Protestant filed a 2003 Oklahoma corporation income tax return, Form 512, claiming an investment/new jobs credit of $824,517.00 (consisting of the 2002 carryover of $565,665.00, a 2001 third year new jobs credit of $182,000.00, a 2000 fourth year investment credit of $51,852.00 and a 1999 fifth and final year new jobs credit of $25,000.00 attributable to Protestant), an income tax refund of $479,500.00 and a credit carryover of $245,393.00. Stipulation 10, Exhibit I.[9]

[9] There is a slight discrepancy of approximately $443.00 in the calculation of the credit carryover primarily due to the recalculation of the carryover of the 1999 fourth year new jobs credit.

23. On September 14, 2005, Protestant filed a 2004 Oklahoma corporation income tax return, Form 512, claiming an investment/new jobs credit of $479,686.00 (consisting of the 2003 carryover of $245,393.00, a 2001 fourth year new jobs credit of $182,000.00 and a 2000 fifth and final year investment credit of $51,852.00), an income tax refund of $151,611.00 and zero (0) credit carryover. Stipulation 12, Exhibit K.

24. Excluding tax year 1998, Protestant claims an income tax refund in the total aggregate amount of $2,975,321.00 for tax years 1999 through 2004. Stipulations 10, 11 and 12, Exhibits I, J-1 through J-5 and K.

25. By letter dated December 7, 2005, Protestant was notified of the Division's proposed adjustments to its amended and original Oklahoma income tax returns for tax years 1998 through 2004, which adjustments resulted in the allowance of an income tax refund for all the years in the aggregate amount of $413,518.00, consisting of an income tax refund of $234,412.00 for tax year 2001 and $179,106.00 for tax year 2002. At issue in this cause is the Division's disallowance of Protestant's claims to the new jobs credits on each of the returns. The proposed refunds result from the allowance of investment credits on each of the returns for Protestant's investment in depreciable property as opposed to the new jobs credits. Stipulations 13, 20 and 21, Exhibit N and U.

26. Protestant timely protested the proposed adjustments. Stipulations 14 through 16, Exhibits O through Q.

27. By agreement of the parties hereto, a revision of the original audit and adjustments was performed by the Division with respect to two (2) matters not at issue herein as reflected in its July 17, 2007 revised notice of adjustments ("Revision # 1"), which revision proposes an additional income tax refund in the aggregate amount of $562,906.00 for the years at issue. Stipulation 22, Exhibit V.

28. The parties further agree that should it be determined that Protestant correctly claimed the new jobs credits on its amended and original Oklahoma corporation income tax returns as filed, Protestant shall be entitled to an income tax refund in the aggregate amount of $1,693,013.00; plus interest for the tax years at issue, rather than the amount reflected in Revision # 1. Stipulation 26 and Exhibit W.

29. However, the parties additional agree that should it be determined that Protestant incorrectly claimed the new jobs credits, neither shall any additional income taxes be due from nor shall any additional income tax refunds be paid to Protestant for the years at issue. Stipulation 27.

ISSUE AND CONTENTIONS

The issue presented for decision is whether the subsequent employment of the former employees of an acquired manufacturing facility constitutes "a net increase in the number of full-time-equivalent employees engaged in manufacturing * * * in this state including employees

engaged in support services" as contemplated by 68 O.S. Supp. 1997, § 2357.4[10], thus entitling the acquiring taxpayer to an income tax credit of $500.00 for each such employee.

Protestant contends that the Division's disallowance of the new jobs credits as claimed on its returns is erroneous. In support of this contention, Protestant argues that the version of § 2357.4 in effect at the time of its acquisition of the manufacturing facility required the determination of whether an employee was a new employee to be made by comparing the fourth quarter withholding tax reports for the taxable year with the reports for the prior year and since Protestant did not have any employees subject to Oklahoma withholding in the prior year, all of the its employees engaged in manufacturing and support services, and subject to Oklahoma withholding for the taxable year are new employees for purposes of the new jobs credit. Protestant further argues that the opinion of the Supreme Court of Oklahoma in ***TPQ Investment Corporation v. Oklahoma Tax Commission***, 1998 OK 13, 954 P.2d 139, is inapposite to this case not only because the language of credit provision has been changed to provide guidance in regard to the calculation of the credit, but because the facts are distinguishable.

Protestant further contends that the Division allowance of the investment credit for its investment in the depreciable property of the manufacturing facility under § 2357.4 is incongruent with its disallowance of the new jobs credit since both credits are governed by the same statute and are based on the same criteria. Finally, in response to the Division's citation of the decision of the Appellate Court of Tennessee in ***Weyerhauser Co. v. Chumley***, 2007 WL 2580025, slip op. (Tenn.Ct.App.), Protestant argues that any reliance on the decision is unfounded because the Oklahoma and Tennessee statutes are different and the language of the Oklahoma statute is clear and unambiguous, and provides an objective formula for determining whether an employee is a new employee, whereas the Tennessee statute does not provide for an objective formula and the Tennessee Court was required to look at definitions outside the statute to make its determination.

The Division contends that Protestant did not create any new jobs in the State of Oklahoma with respect to its acquisition of the manufacturing facility and therefore, Protestant's claims to the new jobs credits were properly disallowed. In support of this contention, the Division relies on the purpose of § 2357.4 as expressed by the Court of Appeals of Oklahoma in ***Oklahoma Fixture Co. v. Oklahoma Tax Commission***, 1998 OK CIV APP 106, ¶ 4, 966 P.2d 206, 207, quoting *TPQ Investment Corp. v. Oklahoma Tax Commission*, 1998 OK 13, ¶ 9, n. 9, 954 P.2d 139, 141-142. The Division also relies on ***Weyerhauser Co. v. Chumley***, 2007 WL 2580025, slip op. (Tenn.Ct.App.), wherein the Appellate Court of Tennessee in a factually similar case, affirmed the denial of the Taxpayer's claim to the Tennessee new jobs credit, holding that no new jobs were created.

CONCLUSIONS OF LAW

1. Jurisdiction of the parties and the subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2001, § 207(c).

[10] Laws 1997, c. 190, § 3, eff. July 1, 1997.

2. An Oklahoma income tax is "imposed on the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources with this state". 68 O.S. Supp. 1992, § 2355(C). The "Oklahoma taxable income" of a corporation is its "'taxable income' as reported (or as would have been reported by the taxpayer had a return been filed) to the federal government, and in the event of adjustments thereto by the federal government as finally ascertained under the Internal Revenue Code, adjusted further as hereinafter provided". 68 O.S. Supp. § 2353(12).

3. A credit against the tax imposed by § 2355 of the Oklahoma Income Tax Act ("Act")[11] is allowed for "investment in qualified depreciable property placed in service * * * for use in a manufacturing or processing facility or a qualified aircraft maintenance or manufacturing facility * * * or for a net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services." 68 O.S. Supp. 1997, § 2357.4(A). The allowed credit is the greater of either one percent (1%) of the cost of the qualified property or Five Hundred Dollars ($500.00) for each new employee. 68 O.S. Supp. 1997, § 2357.4(D). A new jobs credit is not allowed in any taxable year if the increase in employees is a result of an investment in qualified depreciable property for which an income tax credit has been allowed. Id. Any credit allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period. 68 O.S. Supp. 1997, § 2357.4(E).

4. Where the credit is based on an increase in the number of full-time-equivalent employees, it shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. 68 O.S. Supp. 1997, § 2357.4 (C). Subsection C further provides:

> In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars ($7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars ($7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars ($7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars ($7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

[11] 68 O.S. 1991, § 2351 et seq., as amended.

5. "Deductions [and credits against tax] are a matter of legislative grace rather than judicial intervention." ***Flint Resources Company v. Oklahoma Tax Commission***, 1989 OK 9, 780 P.2d 665, 673. In order to be allowed, authority for the deduction sought must be clearly expressed. ***Home-State Royalty Corporation v. Weems***, 1935 OK 1043, 175 Okla. 340, 52 P.2d 806 (1935). None may be allowed in absence of a statutory provision therefor. Id. See, ***New Colonial Ice Co. v. Helvering***, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934).

6. In ***Oklahoma Fixture Co. v. Oklahoma Tax Commission***, 1998 OK CIV APP 106, ¶ 4, 966 P.2d 206, 207, the Court of Appeals of Oklahoma, Division No. 4 citing *TPQ Investment Corp. v. Oklahoma Tax Commission*, 1998 OK 13, ¶ 9, n. 9, 954 P.2d 139, 142 held: "[t]he plain purpose [of the investment/new jobs credit] is 'to encourage the creation of *new jobs*,' to reward 'an *actual* increase in the number of employees' and to provide 'an incentive to companies to actually increase the number of employees * * * by companies creating *more jobs*.'"(Emphasis original). In ***TPQ***, the Supreme Court at n. 9 found that whether TPQ (the acquiring corporation) was an alter ego of Pro-Quip (the acquired company) or a new legal entity was irrelevant to its construction of § 2357.4, holding:

> [§ 2357.4] is not intended to reward a mere change in ownership in manufacturing or reprocessing companies. The statute was intended to be an incentive to companies to actually increase the number of employees in this state by companies creating more jobs. Under the construction of the statute by the dissent, new owners could lay off employees and still receive a tax credit for the number of remaining employees, even though that result would be a net decrease in the number of employees engaged in manufacturing or processing in the state.

7. Here, Protestant neither "created" any new jobs nor cause an "actual" increase the number of employees engaged in manufacturing or processing in this state through its acquisition of the manufacturing facility. See, ***Weyerhauser Co. v. Chumley***, 2007 WL 2580025, * 4, slip op. (Tenn.Ct.App.), where the Court found: "[t]he word "created" * * * implies that the job must not have previously existed." The jobs for which Protestant claims a new jobs credit existed prior to its acquisition of the manufacturing facility. Further, the Division allowance of the investment credit on Protestant's investment in the qualified depreciable property of the manufacturing facility is not incongruent with the Division's disallowance of the new jobs credit. The investment/new jobs credits are disjunctive. Further, while previous enactments of § 2357.4 required a net increase in the number of employees as a direct result of the investment in qualified depreciable property in order to qualify for the credit, the version of § 2357.4 at issue in this cause does not.[12] Accordingly, Protestant's claims to the new jobs credits on its Oklahoma corporation income tax returns for tax years 1998 through 2004 were properly disallowed by the Division.

[12] See, e.g. Laws 1980, c. 299, § 1.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.