JURISDICTION:	OKLAHOMA TAX COMMISSION DECISION
CITE:	2008-05-01-29 / NON-PRECEDENTIAL
ID:	P-06-205-K / P-06-218-K / P-07-008-K
DATE:	MAY 1, 2008
DISPOSITION:	SUSTAINED
TAX TYPE:	WASTE TIRE
APPEAL:	NO APPEAL TAKEN

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 27th day of February, 2008, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

STATEMENT OF THE CASE

Protestant filed requests for compensation from the Waste Tire Recycling Indemnity Fund ("Indemnity Fund") for the periods of August, 2006, October, 2006 and November, 2006. Also filing requests were ENTITY 1, ENTITY 2, ENTITY 3 and ENTITY 4, for the periods of August, 2006 and October, 2006; and, the aforementioned entities and ENTITY 5 for the period of November, 2006.

During the periods at issue, the Indemnity Fund contained insufficient funds to fully compensate all qualified applicants and the Division apportioned the funds whereby Protestant and ENTITY 1 received less than full compensation for each of the periods at issue, while ENTITY 3 and ENTITY 5 were fully compensated and ENTITY 2 and ENTITY 4 were fully compensated except for the October period. Protestant and ENTITY 1 protested each of the apportionments and distributions of funds for the periods at issue. By Order issued July 5, 2007, ENTITY 1's request to withdraw protests was granted.

A Joint Stipulation of Facts was filed on October 25, 2007. Protestant's Brief in Chief was filed December 20, 2007. Reply Briefs were filed January 15, 2008. Protestant's Response Brief was filed January 25, 2008. On January 27, 2008, the record was closed and the protests were submitted to the office of the Administrative Law Judge for decision.[1]

FINDINGS OF FACT

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

A. The parties stipulate to the following:

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

1. Reimbursement for eligible claims submitted under 27A O.S. Supp. 2005 §2-11-401.4, the Waste Tire Recycling Indemnity Fund Act (hereinafter the "Act"), is calculated as set forth in Exhibit "A", attached [to the Joint Stipulation of Facts].

2. For the month of August, 2006, Protestant, ENTITY 2, ENTITY 1 , ENTITY 3, and ENTITY 4 submitted claims for reimbursement under the Act as set forth in Exhibit "B", attached [to the Joint Stipulation of Facts].

3. For the month of August, 2006, total claims for reimbursement under the Act amounted to $392,291.98.

4. For the month of August, 2006, available funds under the Act totaled $381,768.29.

5. For the month of October, 2006, Protestant, ENTITY 2, ENTITY 1, ENTITY 3, and ENTITY 4 submitted claims for reimbursement under the Act as set forth in Exhibit "C", attached [to the Joint Stipulation of Facts].

6. For the month of October, 2006, total claims for reimbursement under the Act amounted to $483,633.87.

7. For the month of October, 2006, available funds under the Act totaled $333,263.80.

8. For the month of November, 2006, Protestant, ENTITY 2, ENTITY 1, ENTITY 3, ENTITY 4, and ENTITY 6 submitted claims for reimbursement under the Act as set forth in Exhibit "D", attached [to the Joint Stipulation of Facts].

9. For the month of November, 2006, total claims for reimbursement under the Act amounted to $409,794.82.

10. For the month of November, 2006, available funds under the Act totaled $379,008.59.

11. For the months of August, October, and November, 2006 (the "months under protest"), the funds available for reimbursement under the Act were insufficient to reimburse all eligible claims.

12. If funds available are insufficient to reimburse all eligible claims, claims are to be apportioned. 27A O.S. Supp. 2005 § 2-11-401.4(C)(5).

13. The Division used the procedures set forth in Exhibit "E," attached [to the Joint Stipulation of Facts], to apportion the funds available for reimbursement under the Act for the months under protest.

14. In calculating the compensation ratios as shown in Exhibit "E," the Division used only line "f," "Total Tons of tires collected, transported, and processes [sic] this period," from each party's Waste Tire Facility Request for Compensation From the Waste Tire Recycling Indemnity Fund form.[2] Each party's forms for the months under protest are a part of Exhibit "E."

15. Using the procedures to apportion funds as set forth in Exhibit "E," Protestant and ENTITY 1 received less than the amount requested for the month of August, 2006 [as reflected in Exhibit "F" to the Joint Stipulation of Facts].

16. Using the procedures to apportion funds as set forth in Exhibit "E," Protestant, ENTITY 2, ENTITY 1, and ENTITY 4 received less than the amount requested for the month of October, 2006 [as reflected in Exhibit "F" to the Joint Stipulation of Facts].

17. Using the procedures to apportion funds as set forth in Exhibit "E," Protestant and ENTITY 1 received less than the amount requested for the month of November, 2006 [as reflected in Exhibit "F" to the Joint Stipulation of Facts].

18. The issue to be decided in this matter is whether the Protestant has shown that the Division incorrectly apportioned and disbursed funds from the Waste Tire Recycling Indemnity Fund when funds were insufficient to cover all eligible reimbursement claims.

B. Additional findings of fact:

1. ENTITY 4 does not collect and transport waste tires. ENTITY 4 utilizes waste tires for erosion control. The Division converted the number of tires utilized by ENTITY 4 in erosion control to tons and included the tonnage in the apportionment formula. Exhibit E; Reply Brief of the Management Services Division, p. 4.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction of the parties and subject matter of this action.[3] 68 O.S. 2001, § 207(c); *OAC*, 710:95-5-15(b)[4] and (d)[5]; and 27A O.S. Supp. 2005, §§ 2-11-401.3 through 2-11-401.6.

---

[2] Contrary to the stipulation, Exhibit E shows ENTITY 4s requests for compensation were filed on the form "Erosion Control Bank Stabilization Entity Request for Compensation from the Waste Tire Recycling Indemnity Fund" and report under "Processing Activities and Compensation Request" the number of tires processed.

[3] See, *Order Determining Jurisdiction* issued June 26, 2007.

[4] This rule provides:

> **Protest procedure.** The following procedure shall apply when a request for compensation is denied by the Commission:
>
> (1) Any applicant whose request for compensation is denied may, within thirty (30) days after the mailing of the denial by the Commission, file a protest under oath, signed by the applicant or a duly authorized agent, setting out:
>
> (A) A statement of denial as determined by the Commission;

2. This proceeding is governed by the Oklahoma Waste Tire Recycling Act ("Act"), in particular § 2-11-401.4 of the Act. 27A O.S. Supp. 2005, § 2-11-401.1 et seq. as amended.[6]

3. The Indemnity Fund created by § 2-11-401.3 of the Act is a common source from which waste tire facilities, TDF[7] facilities and permitted or authorized erosion control persons or entities receive compensation for processed, collected and transported, or utilized waste tires and waste tires used for energy or fuel recovery or the production of crumb rubber. 27A O.S. Supp. 2005, § 2-11-401.4.

4. The Tax Commission is required to administer the Indemnity Fund; 27A O.S. Supp. 2005, § 2-11-401.3(A) and promulgate rules to carry out the provisions of the Act with respect to the allocation of monies accruing to the Indemnity Fund; 27A O.S. Supp. 2005, § 2-11-401.6(A)(1). During the periods at issue, the Tax Commission was required to prescribe forms to be used by a waste tire facility, TDF facility, or person, corporation or other legal entity authorized to receive reimbursement from the Indemnity Fund; 27A O.S. Supp. 2005, § 2-11-401.6(A)(2).

(B) A statement of the applicant's disagreement with such denial, and

(C) Supporting documentation relied on by the applicant in support of the request for compensation.

(2) The protest shall be filed with the Commission at its main offices at 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

[5] This rule provides:

> **Determination of protest and appeal procedure.** The following practice and procedure shall apply to the hearing of a protest of the denial of a request for compensation and appeal therefrom:
>
> (1) Applicants filing a protest to the denial of a request for compensation by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested compensation.
>
> (2) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. An applicant aggrieved by the order of the Commission must file, within ten (10) days of the mailing of the order, a notice of intent to appeal, with the Secretary of the Commission. The appeal must be perfected within thirty (30) days of the mailing of the order by simultaneously filing a petition in error with the Clerk of the Supreme Court of the State of Oklahoma, and a designation of the record with the Secretary of the Commission [**See:** 68 O.S. § 225]

[6] Renumbered form Title 27A, § 2-11-402 et seq. and amended or repealed by Laws 2005, c. 230, §§ 1 through 14, eff. July 1, 2005.

[7] An acronym for "Tire Derived Fuel". *See*, 27A O.S. Supp. 2005, § 2-11-401.1(14).

5. During the periods at issue, the Tax Commission was also responsible for the apportionment and disbursement of funds from the Indemnity Fund. 27A O.S. Supp. 2005, §§ 2-11-401.4(C)(5), (D)(5) and (E); 2-11-401.5 and 211-401.6(A)(1).

6. The provision of the Act at issue in this cause is § 2-11-401.4(C)(5) which provides:

> If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants under this subsection according to the percentage of waste tires processed, collected and transported, <u>or</u> utilized.

(Emphasis added).

7. The Division maintains in its *Reply Brief* at p. 9, the Legislature by use of the disjunctive term "or" rather than the conjunctive term "and" in § 2-11-401.4(C)(5), as set out above, has indicated that the apportionment of payments shall be based on only one of the three listed activities: either processed waste tires, or collected and transported waste tires or utilized waste tires. The Division states that its compensation ratio complied with the provisions of § 2-11-401.4(C)(5), since the ratio is "based on each applicant's waste tires that were collected and transported." However, the facts show that the Division's compensation ratio is based on two of the activities: collected and transported waste tires and utilized waste tires. It is admitted that ENTITY 4 did not collect and transport waste tires during the periods at issue; however, after converting the number of waste tires utilized by ENTITY 4 in erosion control to tons, the Division included the tonnage as collected and transported waste tires in the compensation ratio. The actual apportionment procedure utilized by the Division is contrary to the Division's interpretation of the requirements of the statute.

8. The Division focuses on the use of the word "or" to arrive at a finding of legislative intent that available money should be divided based on only one of the three categories of claims enumerated. This approach fails to consider the import of the words "among the qualified applicants" used in the sentence. This phrase indicates a legislative intent that all qualified applicants should share in the available money. The Division's interpretation would preclude applicants which submit a claim for waste tires processed and/or for waste tires utilized but not for waste tires collected and transported from receiving any of the apportioned money. This is an absurd result, and an interpretation of a statute which results in an absurd result should be avoided if at all possible. A more reasonable interpretation would find that the word "either" is implied in the sentence immediately prior to the word "processed." Such an interpretation would require that all claims for compensation from the fund would be given some consideration. This would be consistent with the approach taken by the courts of this state in statutory interpretation.

> In the interpretation of statutes, courts do not limit their consideration to a single word or phrase in isolation to attempt to determine their meaning, but construe together the various provisions of relevant legislative enactments to ascertain and give effect to the legislature's intention and will, and attempt to avoid unnatural and absurd consequences. *Lamfu v. Guideone Insurance Company*, 2006 OK CIV APP 19, 131 P.3d 712.

> The primary goal of statutory construction is to ascertain legislative intent; such intent is ascertained from the whole act in light of the general purpose and objective. *Knight v. Allied Signal*, 1999 OK CIV APP 21, 977 P.2d 373.

Black's Law Dictionary defines apportion as "to divide and distribute proportionately." In order to divide the payments proportionately "among the qualified applicants" as required by statute, the apportionment calculations must take into consideration all claims for compensation from the fund and not just claims for compensation based on a single activity for which claims are allowed.

The Oklahoma Tax Commission is the entity responsible for administering the Waste Tire Recycling Indemnity Fund.[8] Because of amendments to the controlling statutes the Commission no longer has the authority or responsibility for making final determinations regarding payments of money from the Fund. That responsibility and authority has been given to the Department of Environmental Quality.[9] The Commission takes judicial notice of the fact that the Department of Environmental Quality has adopted a rule pursuant to the Administrative Procedures Act for apportioning claims among eligible claimants for months in which there is insufficient monies in the fund to pay all eligible claims.[10] Such rule gives consideration to all claims for reimbursement from the fund. The Commission hereby directs the Management Services Division to recalculate the apportionment of funds disbursed from the Waste Tire Recycling Indemnity Fund for claims submitted for the months of August, October and November of 2006 using the rule promulgated by the Department of Environmental Quality. The Division is further directed to advise the Department of the results of such recalculation and how those amounts differ from the amounts actually paid to claimants for such months.

9. Protestant's protest to the apportionment and distribution of funds from the Indemnity Fund in the months of August, 2006, October, 2006, and November, 2006, should be and the same is hereby sustained.

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.

[8] 27A O.S. Supp. 2007, Section 2-11-401.3.
[9] 27A O.S. Supp. 2007, Section 2-11-401.6(B)(2).
[10] OAC 252:515-21-71(e)