JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2011-08-02-17 / NON-PRECEDENTIAL**
ID: **P-10-1647-H**
DATE: **AUGUST 2, 2011**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROTESTANT ("Protestant") appears pro se.[1] The Case Management Section, Account Maintenance Division ("Division") of the Oklahoma Tax Commission, appears through OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On December 7, 2010, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] This matter was assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-10-1647-H. On December 30, 2010, OTC ATTORNEY filed an Entry of Appearance as Counsel of record for the Division.

On April 12, 2011, the Division's Dispositive Motion: Claim Barred by 68 O.S. § 2357.22.G (Motion for Summary Disposition) ("*Motion")* was filed with the Court Clerk, with attachments thereto.[4] On April 19, 2011, a letter was mailed acknowledging the filing of the Division's *Motion* and advising the Protestant could file a response on or before May 4, 2011. On April 29, 2011, the Protestant filed a response ("*Response*") to the Division's *Motion.* The record in this matter was closed and the Division's *Motion* was submitted for ruling on April 29, 2011.

On May 4, 2011, the record in this matter was reopened in order for the Division to file verification to the *Motion.* On May 4, 2011, the Division filed a Verification of Respondent's *Motion* signed by OTC ATTORNEY.

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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. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

On June 15, 2011, the Division's "Supplemental" Verification was filed, with Exhibits attached thereto, which will be marked as Division's Exhibits A through D. The "Supplemental" Verification attached to the Division's *Motion* was duly sworn under oath, on behalf of the Division, by SUPERVISOR, Section Supervisor, Account Maintenance Division, Oklahoma Tax Commission.[5]

The record in this matter was closed and the Division's *Motion* was resubmitted for ruling on June 15, 2011.

FINDINGS OF MATERIAL FACTS AS TO WHICH THERE IS NO CONTROVERSY

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the protest, the Division's *Motion*, the Protestant's *Response*, and the Division's "Supplemental" Verification, the undersigned finds:

1. On April 1, 2010,[6] the Protestant filed his Oklahoma Resident Income Tax Return (Form 511), as "Married filing separate," for the 2009 Tax Year. On Line Seventeen (17) (Other Credits) the Protestant claimed the Credit for Investment in Qualified Electric Motor Vehicle Property ("Credits") (Form 567-B)[7] equal to fifty percent (50%) or $4,795.00 of the 2009 GEM eL ("LSV") placed in service on or about November 24, 2009.[8]

2. There is no dispute that the LSV purchased and placed in service constitutes a "qualified electric motor vehicle property,"[9] for purposes of the Credit authorized by Section 2357.22(D) of Title 68.[10]

3. There is no dispute that the Credit is $4,795.00.[11]

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[5] *See* OKLA. ADMIN. CODE § 710:1-5-38(b(1) (June 25, 2009).

[6] The court file contains an audit packet, which was forwarded by the Division as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

[7] OKLA. STAT. tit. 68, § 2357.22(C) (West Supp. 2008).

[8] Division's Exhibits A and B.

[9] OKLA. STAT. tit. 68, § 2357.22(D) (West Supp. 2008).

[10] *Id.* Division's *Motion* at 1.

[11] *Id.*

4. On August 23, 2010, the Division mailed an adjustment letter to the Protestant for the 2009 Tax Year,[12] as follows, to-wit:

FORM 511		REPORTED	ADJUSTED
LINE 17	OTHER CREDITS (511CR)	4,795.00	2,398.00
LINE 18	BALANCE	2,496.00	4,893.00
LINE 35	INCOME TAX DUE	336.00	2,733.00
LINE 38	TOTAL BALANCE DUE	336.00	2,733.00
BALANCE DUE AFTER ADJUSTMENTS			2,397.00
	PAYMENT WITH RETURN	336.00	336.00
	REMAINING BALANCE	0.00	2,397.00

A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS MAY EACH CLAIM ONLY 1/2 OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.

5. On September 17, 2010, the Division received a timely filed protest to the proposed adjustment for the 2009 Tax Year. The basis of the protest is stated in pertinent part: "We filed separately and our divorce was final in 2010. The electric car is mine, purchased with my money, and titled in my name. My ex-wife, EX-WIFE, does not live in Oklahoma. She did not file an Oklahoma return because she has no Oklahoma income."[13]

6. The Division does not dispute that the Protestant is entitled to one-half (1/2) of the credit or $2,397.50.[14]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[15]

2. A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact.[16] The procedures for such motion are as follows:

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[12] Division's Exhibit D.

[13] Division's Exhibit C. The Protestant was granted a Decree of Divorce March 16, 2010, in the District Court of COUNTY X County, Case No. FD-2010-XXX. *See* Copy attached to Division's *Motion*. *See also* Protestant's *Response.* The Protestant states, "She in fact never filed an Oklahoma tax return because she is a legal resident of STATE. Her home is in CITY, as is her business. We were in fact married for one year which was 2009, but she commuted back and forth from STATE to Oklahoma."

[14] *See* Division's *Motion* at 2.

[15] OKLA. STAT. ANN. tit. 68, § 207 (West 2001) and OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

[16] OKLA. ADMIN. CODE § 710:1-5-38(b) (June 25, 2009).

(1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judges.

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to

> *OAC* 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.
>
> (7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

3. The rules promulgated pursuant to the Administrative Procedures Act[17] are presumed to be valid and binding on the persons they affect and have the force of law.

4. Section 2357.22(G) of Title 68,[18] provides as follows, to-wit:

> A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half (1/2) of the tax credit that would have been allowed for a joint return.

DISCUSSION

The Protestant, being married during the 2009 Tax Year, could have filed a joint return with his spouse, but instead chose to file separately. Under the plain language of the Statute, the Protestant is entitled to only one-half (1/2) of the Credit or $2,397.50.

Based upon the record, there is no substantial controversy as to the material facts and the Division is entitled to a decision in its favor as a matter of law.

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the facts and circumstances of this case that the Division's *Motion* should be granted.

OKLAHOMA TAX COMMISSION

[17] OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002).

[18] OKLA. STAT. tit. 68, § 2357.22(G) (West Supp. 2008).

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.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."