

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-01-15-04 / NON-PRECEDENTIAL
ID: P-12-093-H
DATE: JANUARY 15, 2013
DISPOSITION: SUSTAINED
TAX TYPE: INCOME
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HUSBAND and WIFE (“Protestants”) appears through attorney, ATTORNEY, FIRM. The Account Maintenance Division (“Division”) of the Oklahoma Tax Commission appears through OTC ATTORNEY 1, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On May 7, 2012, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*¹ and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.² On May 22, 2012, the Court Clerk (“Clerk”)³ mailed a letter to Counsel of the case assignment to ALJ, Administrative Law Judge, docketed as Case Number P-12-093-H. The letter also advised that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴ On May 22, 2012, OTC ATTORNEY 1 and OTC ATTORNEY 2, Assistant General Counsels, filed an Entry of Appearance as Co-Counsel for the Division. On May 23, 2012, OTC ATTORNEY 2 filed a Withdrawal of Counsel.

On June 4, 2012, the Clerk mailed the Notice of Prehearing Teleconference to Counsel, setting the prehearing conference for June 28, 2012, at 9:30 a.m. On June 28, 2012, the prehearing teleconference was held as scheduled. On June 28, 2012, a letter was mailed to Counsel advising that a status report was to be filed on or before July 30, 2012, advising how the parties wished to proceed. If the parties were unable to resolve this matter, a proposed scheduling order was to be filed.

On July 30, 2012, Counsel filed the Status Report and Request for Scheduling Order with the Clerk. On July 31, 2012, the Scheduling Order issued as more fully set forth therein.

¹ OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2001).

² OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

³ OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

⁴ *Id.*

On September 24, 2012, Counsel filed Joint Stipulation of Facts and Statement of Issue, with Exhibits 1 through 7, attached thereto.

On October 8, 2012, the Protestants filed their *Hearing Brief*. On October 22, 2012, the Division filed its *Reply Brief*. On October 29, 2012, the Protestants filed their *Reply Brief*. The undersigned notified the parties by letter that the record closed and this matter submitted for decision on October 30, 2012.

**JOINT STIPULATION OF FACTS
AND
STATEMENT OF ISSUE**

[PREAMBLE]

On September 24, 2012, the parties filed Joint Stipulation of Facts and Statement of Issue, with Exhibits 1 through 7, filed on September 26, 2012,⁵ as follows, to-wit:

“...[Division] and the [Protestants] ...respectfully submit the following *Joint Stipulation of Facts and Statement of Issue* which, along with the attached exhibits, they agree shall constitute the entire record in this cause:”

STIPULATION OF FACTS

1. On March 19, 2012, Protestants filed a joint, original Oklahoma resident income tax return for 2011. During that tax year, HUSBAND was employed by The COMPANY, and WIFE was employed by AIRLINE, both corporations whose principal business activity involves the aerospace sector within the meaning of 68 O.S.2011, §2357.301. The return calculated \$5,087.00 in Oklahoma income tax due, and claimed a Line 17 Oklahoma income tax credit, the “Credit for Employees in the Aerospace Sector” in the amount of \$5,087.00 and a Line 23 credit for Oklahoma withholding in the amount of \$4,807.00. The return claimed a refund of \$4,807.00. The Schedule 511 CR Line 39 amount underlying the source of the Line 17 credit reported a total of \$10,000.00, the full amount of the credit for both Protestants’ employment during 2011. (Exhibit 1.)⁶

2. The return had attached two Forms 564 (one for each Protestant) making declarations to support the aerospace credit. HUSBAND’S Form 564 reported an unused carryover credit from 2010 of \$6,399.00, for a total available credit from 2010 of \$5,280.00, for a total available 2011 credit of \$10,280.00. (Exhibits 2 and 3.)

⁵ The text of the stipulated facts is set out *in haec verba*. “*in haec verba*” (in heek v<<schwa>>r-b<<schwa>>). [Latin] In these same words; verbatim. BLACK’S LAW DICTIONARY (9th ed. 2009).

⁶ The parties’ copy of Exhibit 1 is missing Lines fifteen (15) through eighteen (18). The Administrative Law Judge is taking judicial notice of a complete copy of Protestants’ Oklahoma Income Tax Return for the 2011 Tax Year contained in the court file to complete and confirm the facts in this matter. *See* Note 42, *infra*.

3. By letter dated March 23, 2012, the Division notified Protestants that it had adjusted the return to deny that portion of the credit attributable to HUSBAND'S employment in the aerospace sector for the reason that he had been employed in the aerospace sector in Oklahoma immediately preceding employment or contracting with a qualified employer. By this letter, the Division took no action either to assess additional tax due on the 2011 return or to deny the refund as claimed. (Exhibit 4.)

4. On March 23, 2012 the OTC issued the refund as claimed on the return in the amount of \$4,870.00, which was directly deposited in Protestants' bank account March 27, 2012. (Exhibit 5.)

5. On June 27, 2011, the Division received Protestants' verified letter of protest to the denial of the aerospace credit and any resulting adjustment. (Exhibit 6.)

6. HUSBAND'S educational and employment history is as follows:

a. From May 19, 2008 through August 22, 2008 while a student at the UNIVERSITY, HUSBAND was employed as an intern by COMPANY, as evidenced by the W-2 attached to his 2008 individual Oklahoma income tax return. (Exhibit 7.) The internship included assisting in the completion of various engineering tasks. It was intended for both parties (HUSBAND and COMPANY) to determine future permanent employment upon graduation.

b. From August 25, 2008 through May 8, 2009 after the internship, HUSBAND was employed by the UNIVERSITY as a computer technician.

c. On May 16, 2009, HUSBAND was awarded a Bachelor of Science degree in Aerospace Engineering from the UNIVERSITY, CITY, Oklahoma. The UNIVERSITY is an institution within the Oklahoma State System of Higher Education.

d. HUSBAND'S degree program was a "qualified program" within the meaning of 68 Okla. Stat. 2011, §2357.301.

e. Following graduation in May, 2009, HUSBAND was offered and accepted employment with COMPANY as an engineer. As of the date hereof, he remains employed by COMPANY as an engineer.

7. HUSBAND did not claim any "Credit for Employees in the Aerospace Sector" for tax year 2008.

8. HUSBAND claimed and was granted the "Credit for Employees in the Aerospace Sector" for tax years 2009 and 2010 by the OTC.

9. WIFE also received on May 16, 2009 a Bachelor of Science degree in Aerospace Engineering from the UNIVERSITY, CITY, Oklahoma, which was a “qualified program” within the meaning of 68 O.S.2011, §2357.301.

10. During the summer of 2008 WIFE was employed as an intern in the State of STATE, and not in the State of Oklahoma.

11. No disallowance or denial has been made by the OTC of the aerospace tax credit taken by WIFE for any of the tax years 2009, 2010 and 2011.

12. The only material fact that is different between HUSBAND’S and WIFE’S qualification for the aerospace tax credit is that HUSBAND’S internship was in Oklahoma during 2008 and WIFE’S internship was in STATE during 2008.

STATEMENT OF ISSUE

Whether HUSBAND is entitled to the aerospace tax credit pursuant to 68 O.S.2011, §2357.304, for the tax year 2011.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.⁷

2. 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.⁸

3. As used in the Aerospace Industry Act⁹ (“Act”):

1. “Aerospace sector” means a private or public organization engaged in the manufacture of aerospace or defense hardware or software, aerospace maintenance, aerospace repair and overhaul, supply of parts to the aerospace industry, provision of services and support relating to the aerospace industry, research and development of aerospace technology and systems, and the education and training of aerospace personnel;

⁷ OKLA. STAT. ANN. tit. 68, § 221(C) (West Supp. 2012). OKLA. ADMIN. CODE § 710:1-5-38(a) (June 25, 2009).

⁸ OKLA. STAT. ANN. tit. 75, § 250 *et seq.* (West 2002). *See Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

⁹ OKLA. STAT. ANN. tit. 68, §§ 2357.301 through 2357.304 (West Supp. 2012).

2. "Compensation" means payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid, wages subject to withholding tax paid to a part-time employee or full-time employee, or salary or other remuneration. Compensation shall not include employer-provided retirement, medical or health-care benefits, reimbursement for travel, meals, lodging or any other expense;
 3. "Institution" means an institution within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body;
 4. "Qualified employer" means a sole proprietor, general partnership, limited partnership, limited liability company, corporation, other legally recognized business entity, or public entity whose principal business activity involves the aerospace sector;
 5. "Qualified employee" means any person employed by or contracting with a qualified employer on or after January 1, 2009, who has been awarded an undergraduate or graduate degree from a qualified program by an institution, and who was not employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer;
 6. "Qualified program" means a program that has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET) and that awards an undergraduate or graduate degree; and
 7. "Tuition" means the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition shall not include the cost of books, fees or room and board.
4. The Act provides a "Credit for Employee Tuition Reimbursement," as follows,¹⁰ to-wit:
- A. Except as provided in subsection F of this section, for taxable years beginning after December 31, 2008, and ending before January 1, 2015, a qualified employer shall be allowed a credit against the tax imposed pursuant to Section 2355 of this title for tuition reimbursed to a qualified employee.
 - B. The credit authorized by subsection A of this section may be claimed only if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of commencing employment with the qualified employer.

¹⁰ OKLA. STAT. ANN. tit. 68, § 2357.302 (West Supp. 2012).

- C. The credit authorized by subsection A of this section shall be in the amount of fifty percent (50%) of the tuition reimbursed to a qualified employee for the first through fourth years of employment. In no event shall this credit exceed fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.
- D. The credit authorized by subsection A of this section shall not be used to reduce the tax liability of the qualified employer to less than zero (0).
- E. No credit authorized by this section shall be claimed after the fourth year of employment.
- F. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable. The provisions of this subsection shall cease to be operative on July 1, 2011. Beginning July 1, 2011, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2011, according to the provisions of this section.
5. The Act provides a “Credit for Compensation Paid to Employees,” as follows,¹¹
to-wit:
- A. Except as provided in subsection F of this section, for taxable years beginning after December 31, 2008, and ending before January 1, 2015, a qualified employer shall be allowed a credit against the tax imposed pursuant to Section 2355 of this title for compensation paid to a qualified employee.
- B. The credit authorized by subsection A of this section shall be in the amount of:
1. Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state; or
 2. Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.
- C. The credit authorized by this section shall not exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

¹¹ OKLA. STAT. ANN. tit. 68, § 2357.303 (West Supp. 2012).

- D. The credit authorized by this section shall not be used to reduce the tax liability of the qualified employer to less than zero (0).
- E. No credit authorized pursuant to this section shall be claimed after the fifth year of employment.
- F. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable. The provisions of this subsection shall cease to be operative on July 1, 2011. Beginning July 1, 2011, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2011, according to the provisions of this section.
6. The Act provides a “Credit for Employees,” as follows,¹² to-wit:
- A. Except as provided in subsection D of this section, for taxable years beginning after December 31, 2008, and ending before January 1, 2015, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of this title of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.
- B. The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).
- C. Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.
- D. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable. The provisions of this subsection shall cease to be operative on July 1, 2011. Beginning July 1, 2011, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2011, according to the provisions of this section.

¹² OKLA. STAT. ANN. tit. 68, § 2357.304 (West Supp. 2012).

7. Tax Commission Rule 710:50-15-109 provides in pertinent parts,¹³ as follows, to-wit:

(b) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

...

(5) "Qualified employee" is any person newly employed by or contracting with a qualified employer on or after January 1, 2009 employed in Oklahoma. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employees do not include person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

...

(f) Tax credit moratorium.¹⁴

...

(2) No credit may be claimed for compensation paid to a qualified employee for the period of July 1, 2010 through June 30, 2011, for which the credit would otherwise be allowable. For example:

...

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employee may receive an income tax credit for tax years 2011, 2012, 2013 and 2014. Employee shall not receive a tax credit for tax years 2010 due to the tax credit moratorium. Employee shall not receive a tax credit for tax year 2015, or subsequent tax years, due to the five (5) year limitation

(3) No credit may be claimed by a qualified employee for the period of July 1, 2010 through June 30, 2011, for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employee may receive an income tax credit for tax years

¹³ OKLA. ADMIN. CODE § 710:50-15-109 (June 25, 2012).

¹⁴ On April 4, 2011, Oklahoma Gov. Mary Fallin signed House Bill 1008, which removed the Aerospace Industry Engineer Tax Credit from the moratorium list that state lawmakers approved during the 2010 legislative session. The new law will allow new engineers who were hired by an Oklahoma aerospace company before July 1, 2010, to claim a state tax credit of up to \$5,000 for tax years 2010 and 2011 so long as they were still employed on or after July 1, 2011. See Note 42, *infra*.

2010, 2011, 2012, 2013 and 2014. Employee shall not receive an income tax credit for tax year 2015, or subsequent tax years, due to the five (5) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employee may receive an income tax credit for tax years 2011, 2012, 2013 and 2014. Employee shall not receive a tax credit for tax years 2010 due to the tax credit moratorium. Employee shall not receive a tax credit for tax year 2015, or subsequent tax years, due to the five (5) year limitation.

8. An exemption statute is strictly construed against the person asserting an exemption.¹⁵
9. The fundamental rule and primary goal of statutory construction is to ascertain and give effect to legislative intent.¹⁶ The starting point for any inquiry into legislative intent is the language of the statute.¹⁷ When the words of a statute are plain and unambiguous, no occasion exists to employ the rules of construction, and the statute will be accorded its clear and definite meaning.¹⁸
10. Only where the legislative intent cannot be ascertained from a statute's text, as when ambiguity or conflict with other statutes is shown to exist, may rules of statutory construction be invoked.¹⁹
11. The test for ambiguity in a statute is whether statutory language is susceptible to more than one reasonable interpretation.²⁰
12. In resolving an ambiguity in a statute, courts will look to the various provisions of the relevant legislative scheme to ascertain and give effect to the legislative intent and the public policy underlying that intent.²¹
13. 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

¹⁵ *Magnolia Petroleum Co. v. Oklahoma Tax Commission*, 1958 OK 124, 326 P.2d 821.

¹⁶ *Rogers v. Quiktrip Corp.*, 2010 OK 3, 230 P.3d 853.

¹⁷ *Redmond v. Cauthen*, 2009 OK CIV APP 46, 211 P.3d 233.

¹⁸ *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

¹⁹ *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, 136 P.3d 656.

²⁰ *Id.*

²¹ *Wilhoit v. State*, 2009 OK 83, 226 P.3d 682.

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.²²

14. It is important in construing the legislative intent behind a word in a statute to consider the whole act in light of its general purpose and objective, considering relevant portions together to give full force and effect to each.²³

15. The words of a statute will be given their plain and ordinary meaning unless it is contrary to the purpose and intent of the statute when considered as a whole.²⁴

16. The subject matter and purpose of a statute are material to ascertaining the meaning of a word or phrase used and that language should be construed to be harmonious with the purpose of the act, rather than in a way which will defeat it.²⁵

17. Tax statutes are penal in nature.²⁶ Penal statutes are to be strictly construed.²⁷ Strict construction with respect to a penal statute is that which refuses to extend the law by implication or equitable consideration and confines its operations to cases clearly within the letter of the statute, as well as within its spirit or reason.²⁸

18. Courts cannot enlarge the taxing act's ambit to make its provisions applicable to cases not clearly within the legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language.²⁹

19. Deductions [and credits against tax] are a matter of legislative grace rather than judicial intervention.³⁰ In order to be allowed, authority for the deduction sought must be clearly expressed.³¹ None may be allowed in absence of a statutory provision therefor.³²

²² *Tull v. Commissioner of Dept. of Public Safety*, 2008 OK CIV APP 10, 176 P.3d 1227.

²³ *Estes v. ConocoPhillips Co.*, 2008 OK 21, 184 P.3d 518.

²⁴ *Stump v. Cheek*, 2007 OK 97, 179 P.3d 606.

²⁵ See Note 22, *supra*.

²⁶ *Williams v. Smith & Nephew, Inc.*, 2009 OK 36, 212 P.3d 484. See *Globe Life and Accident Insurance Company v. Oklahoma Tax Com'n*, 1996 OK 39, 913 P.2d 1322.

²⁷ *Mid-Continent Pipeline Co. v. Crauthers*, 1954 OK 61, 267 P.2d 568.

²⁸ *State ex rel. Allen v. Board of Ed. of Independent School Dist. No. 74 of Muskogee County*, 1952 OK 241, 246 P.2d 368.

²⁹ See Note 26, *supra*.

³⁰ *Flint Resources Company v. Oklahoma Tax Com'n*, 1989 OK 9, 780 P.2d 665.

³¹ *Home-Stake Royalty Corp. v. Weems*, 1935 OK 1043, 52 P.2d 806.

³² *Id.* See *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 54 S.Ct. 788.

20. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.³³ A proposed assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.³⁴

DISCUSSION

The Protestants' position is that "HUSBAND was not employed in the aerospace sector immediately preceding employment with [COMPANY in 2009."³⁵ In support of their position, the Protestants state "HUSBAND was awarded an undergraduate degree in Aerospace Engineering from the UNIVERSITY on DATE, and thereafter employed by [COMPANY. The principle business activity of COMPANY, a qualified employer, was and is in the aerospace sector. Thus, HUSBAND was a 'qualified employee' pursuant to 68 Okla. Stat. § 2357.301(5). As a qualified employee, HUSBAND was and is entitled to the Employees in the Aerospace Credit."³⁶

The Division responds, "The Division denied Protestant's credit claim for the reason that HUSBAND was employed by COMPANY during the year preceding his full-time employment with that company."³⁷ The Division cites in support of its position, Section 2357.301(5) of Title 68,³⁸ which states as follows, to-wit:

"Qualified employee" means any person employed by or contracting with a qualified employer on or after January 1, 2009, who has been awarded an undergraduate or graduate degree from a qualified program by an institution, and

³³ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

"preponderance of the evidence" means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

³⁴ See *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

³⁵ Protestants' Hearing Brief at 3.

³⁶ *Id.*

³⁷ Division's Reply Brief at 2.

³⁸ See Note 9, *supra*. See also Division's Reply Brief at 3.

who was not employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer; (Emphasis added.)

The Protestants reply, “[Division] has stipulated and agreed that HUSBAND meets all of the requirements for the Employees in the Aerospace Sector Credit except the emphasized part above. [Division] claims that because HUSBAND interned³⁹ for COMPANY until August 24, 2008 that HUSBAND is not entitled to the Employees in the Aerospace Sector Credit. [Division] is claiming that such internship was employment in the aerospace sector ‘immediately preceding employment’ of HUSBAND by COMPANY over eight months later in DATE.”⁴⁰ The Protestants go on to state, “[Division] misreads the definition of ‘qualified employee’ in § 2357.301(5). The phrase, ‘and who was not employed in the aerospace sector in this state immediately preceding employment’ modifies ‘who has been awarded an undergraduate degree or graduate degree.’ In other words, the restriction in § 2357.301(5) that an employee cannot have preceding employment in the aerospace sector modifies and only applies to those persons who have degrees. The language does not apply to non-degreed interns such as HUSBAND in 2008.”⁴¹

As observed by the Tax Commission, “The public policy of Enrolled House Bill No. 3239 of the Second Regular Session of the 51st Oklahoma Legislature when taken as a whole is to promote the development of the aerospace industry in Oklahoma.”⁴²

The Protestants elaborate, “An obvious goal of the legislation is to not only attract graduate aerospace engineers to Oklahoma, but to also retain recent graduates in Oklahoma.”⁴³ The Protestants illustrate the effect of the Division’s interpretation of “Qualified Employee,” as follows,⁴⁴ to-wit:

³⁹ “Intern” is defined by Merriam-Webster as “an advanced student or graduate usually in a professional field (as medicine or teaching) gaining supervised practical experience (as in a hospital or classroom) available at <http://www.merriam-webster.com/dictionary/intern>. See Note 10, *supra*, for the employer credit against income tax for *tuition reimbursed* to a qualified employee.

⁴⁰ Protestants’ Hearing Brief at 4.

⁴¹ Protestants’ Hearing Brief at 6.

⁴² OTC Order No. 2012-08-28-05 (August 28, 2012). The Tax Commission took judicial notice of the Oklahoma Aeronautics Commission website at http://www.okgov.OAC/Aerospace_Industry/index.html. In this case the issue was whether a Taxpayer employed by a qualified employer prior to January 1, 2009 (effective date of the statute) was eligible for the credit. The Tax Commission ruled against the Taxpayer, stating in pertinent part, “The construction of the definition of ‘qualified employee’ urged by the protestant would result in tax credits being given to employees hired by a qualified employer prior to the effective date of the act and would be giving a credit for something that was happening anyway and would not be inducing anyone to take any particular action. Such construction would not promote the development of the aerospace industry in Oklahoma.” *Id.* at 10-11. See OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999).

⁴³ Protestants’ Hearing Brief at 7.

⁴⁴ *Id.*

A perfect example of this disparity is found in the present case. HUSBAND'S wife also received a degree in Aerospace Engineering from the of UNIVERSITY at the same time as HUSBAND. (Para. 9, Jt. Stip.) WIFE also claimed the Employees in the Aerospace Sector Credit in the 2011 tax return filed with HUSBAND. (Para. 2, Jt. Stip.) WIFE'S Employees in the Aerospace Sector Credit was allowed by [Division.] (Para. 11, Jt. Stip.)

The only fact that is different between HUSBAND and his wife is the fact that WIFE interned in the State of Kansas. (Para. 10, Jt. Stip.)

There is no rational basis for [Division] to differentiate between a person who interned in Oklahoma and a person who interned in another state.

Statutes are interpreted to attain that purpose and end⁴⁵ championing the broad public policy purposes underlying them.⁴⁶ 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.⁴⁷ However, where the statutory language is ambiguous or uncertain, a construction is applied to avoid absurdities.⁴⁸ Statutory construction presents a question of law.⁴⁹

Paraphrasing the Tax Commission's reasoning in another statutory interpretation case, since legislation is never read in isolation, nor applied in a vacuum, there is a duty when construing a statute to do so harmoniously with other provisions of the Act, it is reasonable to assume that an understanding and awareness of one provision of the Act would be influenced by awareness of the provisions of entire Act.⁵⁰ Such is the case in this matter; the Division's interpretation is read in isolation, so that the Division's interpretation of "Qualified Employee" does not promote the development of the aerospace industry in Oklahoma, but leads to absurd consequences, such as in this case.⁵¹

⁴⁵ *Keating v. Edmundson*, 2001 OK 110, 37 P.3d 882, ¶8. (Citations omitted).

⁴⁶ *Id.* at ¶8.

⁴⁷ *Id.* at ¶8.

⁴⁸ *Id.* at ¶8.

⁴⁹ *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

⁵⁰ See OTC (Precedential) Order No. 1990-05-08-006 (May 8, 1990). See also OTC Order No. 2012-02-21-05 (February 21, 2012).

⁵¹ See Notes 10 and 39, *supra*, to see how the Division's interpretation would interact with the credit available to Qualified Employers for tuition reimbursement to Qualified Employees.

DISPOSITION

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

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.”