JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2013-02-05-05 / NON-PRECEDENTIAL**
ID: **P-11-597-K**
DATE: **FEBRUARY 5, 2013**
DISPOSITION: **SUSTAINED**
TAX TYPE: **INCOME / CREDITS AND REFUNDS**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT is represented by ATTORNEY 1 and ATTORNEY 2 FIRM, Attorneys at Law. The Compliance Division ("Division") of the Oklahoma Tax Commission is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

On August 23, 2011, the Division received Protestant's claims to the Aerospace Industry Credit for the 2008 and 2009 fiscal years. The Division reviewed the claims and by letter dated August 24, 2011, denied the same as being untimely filed. Protestants timely protested the denial by letter dated October 13, 2011. An oral hearing was requested in the letter of protest.

On October 26, 2011, the protest was referred to the Office of Administrative Law Judges for further proceeding consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. The protest was docketed as Case Number P-11-597-K and assigned to ALJ, Administrative Law Judge.[3]

A pre-hearing conference was scheduled for December 11, 2011, by *Prehearing Teleconference Notice* issued November 15, 2011. Pursuant to the conference, the parties were directed to file a status report. Pursuant to a *Status Report* filed March 14, 2012, a *Scheduling Order* ("*Order*") was issued setting forth the procedure for the submission of the protest for decision.

Protestant's current representatives filed *Entr[ies] of Appearance* on May 11 and June 14, 2012. Pursuant to the *Interim Status Report and Request for Vacation of the Scheduling Order*, an *Order Granting Request for Vacation of Scheduling Order and Directing the Filing of a Status Report* was issued on May 16, 2012. Pursuant to the *Status Report and Request for Scheduling Order* filed June 15, 2012, a *Scheduling Order* was issued setting forth the procedure for the submission of the protest for decision.

A *Joint Stipulation of Facts and Statement of Issue* ("*Stipulation*") was filed July 27,

---

1 68 O.S. 2011, § 201 et seq., as amended.

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

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

2012 with Exhibits 1 through 7 attached thereto. Protestants' *Brief in Chief* was filed August 17, 2012. The *Compliance Division's Reply Brief* was filed August 31, 2012. *Protestant's Response Brief* was filed September 7, 2012. On September 10, 2012, the record was closed and the protest was submitted for decision.[4]

FINDINGS OF FACT

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

A. The parties stipulate to the following[5]:

1. Protestant is a domestic for-profit corporation and wholly-owned subsidiary of COMPANY. Protestant performs aerospace manufacturing services from its CITY, Oklahoma plant in the form of chem-milling, processing, and paint and polishing functions in support of its parent company's and certain affiliates manufacturing of aircraft parts, and these services performed by Protestant within Oklahoma meet those described in the North American Industry Classification System code of 336413.

2. On October 19, 2009, the Commission received Protestant's 2008 calendar-year Oklahoma Corporation Income Tax Return (Form 512) as part of the consolidated return of COMPANY. The return stated a tax liability of $32,250.00 and claimed an overpayment of $106,823.00, with $32,280.00 to be applied to 2009 estimated payments and $74,543.00 to be refunded.

3. On October 18, 2010 the Commission received Protestant's 2009 calendar-year Oklahoma Corporation Income Tax Return (Form 512) as part of the consolidated return of COMPANY The return claimed an overpayment of $32,280.00, to be applied to 2010 estimated payments.

4. The Commission prescribed Form 581 "Aerospace Industry Credit" for purposes of claiming the credit authorized by 68 O.S. 2011, §2357.202 [sic] (the "Credit") and for verifying eligibility for the Credit.

5. On August 23, 2011, Protestant filed and the Commission received Protestant's Forms 581 for fiscal years ending June 30, 2008 and June 30, 2009 (together, the "Forms 581"), submitted pursuant to 68 O.S. 2001, §2357.202 [sic].

---

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

5 The references to exhibits supporting the statements are omitted.

The FY 2008 Form 581 reported Qualified Expenditures of $373,797.47 and Qualified Wages of $4,048,061.69, which were substantiated by exhibits thereto, and claimed a resulting $150,000.00 Credit against 2008 Oklahoma income tax. The FY 2009 Form 581 reported Qualified Expenditures of $546,562.56 and Qualified Wages of $3,829,103.63, which were substantiated by exhibits thereto, and claimed a resulting $150,000.00 Credit against 2009 Oklahoma income tax. The cover letter accompanying the Forms requested that the 2008 tax liability of $32,250.00 be refunded, and that the balance of $267,750.00 also be refunded.

6. By letter dated August 24, 2011, the Division denied the Credits, stating that the reason for denial was that the claims for the Credits were not filed before the original due dates of the returns upon which the Credits were sought to be applied.

7. Protestant is a "qualified business enterprise" as that term is defined under 68 O.S. 2011, §2357.202 [sic].

8. The expenditures reported by Protestant on the Forms 581 are "qualified expenditures" as that term is defined under 68 O.S. 2011, §2357.202 [sic].

9. The wages reported by Protestant on the Forms 581 are "qualified wages" as that term is defined under 68 O.S. 2011, §2357.202 [sic].

10. On October 24, 2011 Protestant timely filed and the Division received Protestant's letter of protest (the "Protest") to the denial of the Credits. In that letter, Protestant asserted *inter alia* that the claims for Credits were timely filed because the 2008 Form 512 instructions stated that the Credits may be taken at any time, and the Forms 581 were filed within three years from the due date of the original return(s). In the Protest, Protestant reserved the right to raise and submit additional arguments and analysis regarding the matter at issue.

ISSUES AND CONTENTIONS

The issue as stipulated by the parties is:

Whether the Protestant's claims for the Credit under 68 O.S. 2011, §2357.202 [sic] for the 2008 and 2009 tax years were timely filed.

Protestants contend that it is entitled to the Aerospace Industry Credits for 2008 and

2009, and corresponding refunds of income taxes since Forms 581 and the refund claims were timely filed under the law. In support of this contention, Protestant argues that the Division's opinion as to the meaning of § 2357.202(E) cannot be used as authority to deny the credit since neither § 2357.202 nor the Oklahoma Tax Commission rule in respect of § 2357.202 contain a deadline for filing the claim for the credit. Protestant further argues that the inclusion of a filing deadline on Form 581 without following any rule-making procedures is not authorized under the Administrative Procedures Act, overrides the language of the statute and therefore, the instruction is null, void and unenforceable, citing 75 Okla. Stat. § 302.1(D). Protestant also asserts that the Division has been inconsistent in its construction of the statute, citing the language of the instructions to the 2008 Corporation Income Tax Return (Form 512) which provides that "[t]he Aerospace Industry Credit may be claimed by filing Form 581, at any time."

Protestant further argues that the Division's construction of § 2357.202 is erroneous and contrary to well-settled principles of statutory construction. In support of this argument, Protestant asserts that § 2357.202 does not contain a reference to the filing of the claim or any filing deadline. Protestant maintains that the legislature intentionally omitted a filing deadline requirement in § 2357.202 since the legislature clearly knows how to provide for a filing date requirement, citing § 2357.202(D). In the opinion of Protestant, "[t]he clear implication is that the legislature, in enacting Section 2357.202, intended to establish a date before which no claims could be filed but declined to limit a taxpayer's statutory right to claim a refund based on a refundable credit if timely filed under 68 Okla. Stat. § 2373."

Protestant further argues that the Division's construction of § 2357.202(E) ignores the introductory clause and makes the same superfluous. Protestant asserts that the introductory clause modifies and controls the subordinate clause and opines that the introductory clause "was included in the statute to limit the applicability of subsection 2357.202(E) solely for purposes of applying the limitation on the credit amount (the $150,000 limitation on the credit amount) and the <u>time period</u>[6] to which such limitation on the credit amount applies (each of the fiscal years ending June 30, 2007, June 30, 2008 and June 30, 2009)."

Protestant further argues that the Division's construction of § 2357.202 has the effect of denying the statutory right; in general, to amend an income tax return and/or claim a refund of income taxes within the three (3) year period authorized by 68 O.S., § 2373. Protestant asserts that such construction is discriminatory and violates the equal protection clause of the United States and Oklahoma Constitutions. Protestant maintains that it is similarly situated with all taxpayers entitled to file amended income tax returns and/or claims for refund within the statutory three (3) year period.

The Division contends that because Protestant's claims for the Aerospace Industry Credits were not filed by the original due date of the income tax returns for the years in question, the claims were untimely and the Division's denial of the same is correct. In support of this contention, the Division argues that "the introductory clause of § 2357.202(E) reveals *how*[7] the time limit is effective to bar a claim for the credit [as opposed to] erod[ing] the effectiveness of

[6] Emphasis original.

[7] Emphasis original.

the time limit." The Division maintains that "[i]f the credit is not timely claimed, the expenses incurred that would form the basis for the credit 'age out' and are no longer available to generate a credit amount."

The Division further contends that § 2357.202 does not mandate the promulgation of administrative rules to enforce the provisions thereof and that its action in denying the claims as untimely is based on the inherent time limit contained in § 2357.202(E), rather than the statement on Form 581. The Division argues that the statement contained on the form merely puts taxpayers on notice of the inherent time limit and does not rise to the level of an amendment, interpretation, repeal or limitation of the statute so as to run afoul of 75 O.S. 2011, § 302(D).

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207.

2. "Taxation is an exclusively legislative function that can be exercised only under statutory authority and in the manner specified by statute." ***State, ex rel. Oklahoma Tax Commission v. Texaco Exploration & Production, Inc.,*** 2005 OK 52, ¶ 7, 131 P.3d 705, 707. The basis for the Division's action and Protestants' protest thereto are governed by the provisions of the Oklahoma Income Tax Act ("Act")[8], in particular § 2357.202[9].

3. Section 2357.202 provides:

A. As used in this act:[10]

1. "Qualified business enterprise" means an entity:
   a. organized as a corporation, partnership, limited partnership, limited liability company, business trust or other entity, if such entity is registered to do business within the state, or is otherwise lawfully conducting business within the state,
   b. whose principal business activity in the state is described by the North American Industry Classification System by Industry No. 336413, as reflected in the 1997 edition of such publication, and is engaged in the manufacture of

[8] 68 O.S. 2001, § 2351 et seq., as amended.

[9] Added by Laws 2005, c. 458, § 2, eff. July 1, 2005. Enacted as part of the income tax credits extended to qualified business enterprises, 2005 Okla. Sess. Law Serv. Ch. 458 (H.B. 1667) and entitled "Aircraft Parts and Auxiliary Equipment Manufacturers."

[10] Footnotes omitted.

wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products, and

c. that makes at least seventy-five percent (75%) of its sales to out-of-state customers or buyers which shall be determined in the same manner as provided for purposes of determining eligibility for the incentive payment pursuant to the Oklahoma Quality Jobs Program Act;

2. "Qualified expenditures" means:

a. costs incurred by the qualified business enterprise during the taxable year for the acquisition of personal property used, or to be used, in business operations within the state, to the extent a depreciation deduction is allowed or allowable for federal income tax purposes with respect to such property pursuant to Section 167, Section 168 or Section 179 of the Internal Revenue Code of 1986, as amended, in the taxable year for which the credit authorized by this section is claimed, and

b. costs incurred during the taxable year to refurbish, repair or maintain any existing personal property located within the state whether or not such costs are capitalized by the taxpayer;

3. "Qualified wages" means gross compensation and benefits paid by the taxpayer during the taxable year, including any employer-paid health care benefits, to full-time or part-time employees of the qualified business enterprise, if such employees are full-time residents of this state as of the time the services for which such qualified wages are received are performed; and

4. "Qualified training expenses" means those costs, whether or not deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended, incurred during the taxable year to locate, interview, hire and train employees and prospective employees of the qualified business enterprise who:

a. have not previously been employed as employees by the qualified business enterprise, either full-time or part-time, at any time within the five (5) prior taxable years, and

b. are full-time residents of the state as of the end of the taxable year for which the credit authorized by this section is claimed.

B. For taxable years beginning after December 31, 2005, and ending not later than December 31, 2008, there shall be allowed as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, subject to the limitations imposed by subsection C of this section, an amount equal to fifteen percent (15%) of:

1. Qualified expenditures; or
2. Qualified wages; or
3. Qualified training expenses; or
4. The sum of any of the expenses identified in paragraphs 1 through 3 of this subsection, in any combination.

C. For purposes of computing the credit amount prescribed by subsection B of this section, the expenses described by paragraphs 1, 2 and 3 of subsection B of this section may be added together or combined in any order or considered independently, but the total credit amount shall not exceed One Hundred Fifty Thousand Dollars ($150,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

D. For purposes of the expenditures described by subsection B of this section a qualified business enterprise may incur expenditures beginning January 1, 2005, through December 31, 2008, for purposes of computing the credit amount. The claim for such credits earned for the fiscal year ending June 30, 2007, shall not be filed earlier than July 1, 2006, and the claims for each subsequent taxable year may be filed no earlier than July 1 of each of the two (2) succeeding years.

E. For purposes of the limitation on the credit amount that may be claimed by a qualified business enterprise, an extension of time for filing of an income tax return shall not extend the time period for purposes of claiming the credit authorized by this section.

F. If the amount of the credit allowable is in excess of the tax liability, the amount of the credit not used shall be refunded to the taxpayer subject to the total limit of One Hundred Fifty Thousand Dollars ($150,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

G. No credit for any fiscal year as otherwise authorized by this section shall be based upon any qualified expenditure used to compute a credit amount for any preceding taxable year.

> H. The credit authorized by the provisions of this section shall not be transferable.
>
> I. The Tax Commission may prescribe forms for purposes of claiming the credit authorized by this section and for verifying eligibility for the credit.

4. Pursuant to its authority to "administer and enforce each and every provision of any state tax law", the Oklahoma Tax Commission promulgated *OAC*, 710:50-15-100[11] with respect to § 2357.202. 68 O.S. Supp. 2003, § 203. *OAC*, 710:50-15-100 provides in part:

> (a) **General provisions.** A refundable credit is available for qualified capital expenditures, wages and training expenses incurred by a business enterprise whose principal activity is either:
>
> *** * * * ***
>
> (2) the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products.
>
> (c) **Credit for aircraft parts and auxiliary equipment manufacturers.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2009 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expense as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 581.
>
> * * * * *
>
> (2) Computation of the credit. The maximum credit allowed for the Fiscal Year ending June 30 2007 is One Hundred Fifty Thousand Dollars ($150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2008 is One Hundred Fifty Thousand Dollars ($150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2009 is One Hundred Fifty Thousand Dollars ($150,000.00). No additional credits are allowed after this time period.

5. Calendar year corporation income tax returns are due on or before the fifteenth day of March following the close of the taxable year. 68 O.S. Supp. 2007, § 2368(G)(3). Fiscal year corporation income tax returns are due on or before the fifteenth day of the third month following the close of the fiscal year. 68 O.S. Supp. 2007, § 2368(G)(5). "Except in the case of corporation income or franchise tax returns, if franchise tax returns are filed at the same time as the corporate income tax return, the time for filing any return may not extend in the aggregate

[11] Added at 23 Ok Reg 2830, eff 6-25-06. Amended at 26 Ok Reg 2330, eff 6-25-09.

later than one-half (½) the period of time for which any such return is filed under the particular state tax law involved[.]" 68 O.S. 2001, § 216. If the franchise and corporate income tax returns are filed at the same time, an extension not to exceed seven (7) months shall be allowed for the filing of the corporate income or franchise tax returns. Id.

6. The refund of state income taxes is governed by the provisions of § 2373 of the Act, which provides in pertinent part:

> [T]he amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund.

State income tax is due at the time of transmitting the return required under the Act, 68 O.S. Supp. 2007, § 2375(A); and is deemed paid on the original due date of the return. See 68 O.S. 2001, § 216.[12]

7. The fundamental rule and primary goal of statutory construction is to ascertain and give effect to legislative intent. ***Rogers v. Quiktrip Corp.***, 2010 OK 3, 230 P.3d 853. The starting point for any inquiry into legislative intent is the language of the statute. ***Redmond v. Cauthen***, 2009 OK CIV APP 46, 211 P.3d 233. 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. Id.

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. ***Rogers***, *supra*. The test for ambiguity in a statute is whether statutory language is susceptible to more than one reasonable interpretation. ***YDF, Inc. v. Schlumar, Inc.***, 2006 OK 32, 136 P.3d 656.

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. ***Wilhoit v. State***, 2009 OK 83, 226 P.3d 682, corrected. 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. ***Tull v. Commissioners of Dept. of Public Safety***, 2008 OK CIV APP 10, 176 P.3d 1227. It is important in construing the Legislative intent behind a word in a statute to consider the whole act in light of its general

[12] Section 216 provides in part: "[a]n extension shall not extend the date for payment of the state income or franchise tax due. In case an extension is granted, the taxpayer may file a tentative return on or before the date when the return is required by any state tax law showing the estimated amount of tax for the period covered by the return and may pay the estimated tax or the first installment thereof at the time of filing such tentative return and no interest or penalty shall attach or be payable on sums so paid in due course."

purpose and objective, considering relevant portions together to give full force and effect to each. ***Estes v. ConocoPhillips Co.***, 2008 OK 21, 184 P.3d 518. 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. ***Stump v. Check***, 2007 OK 97, 179 P.3d 606. The subject matter and purpose of a statute are material to ascertaining the meaning of a word or phrase used and that anguage should be construed to be harmonious with the purpose of the act, rather than in a way which will defeat it. ***Tull***, *supra*.

8. Tax statutes are penal in nature. ***Williams v. Smith & Nephew, Inc.***, 2009 OK 36, 212 P.3d 484; ***Globe Life and Accident Insurance Company v. Oklahoma Tax Commission***, 1996 OK 39, 913 P.2d 1322. Penal statutes are to be strictly construed. ***Mid-Continent Pipeline Co. v. Crauthers***, 1954 OK 61, 267 P.2d 568. 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. ***State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County***, 1952 OK 241, 206 Okla. 699, 246 P.2d 368. 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. ***Globe***, supra at 1327.

9. "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).

10. Whether language of statute is ambiguous presents questions of law. ***YDF, Inc.***, *supra*; ***State ex rel. Oklahoma Tax Commission v. Sun Co., Inc.,*** 2009 OK 11, 222 P.3d 1046.

ANALYSIS

As argued by Protestant, § 2357.202 does not contain an explicit deadline for filing the claim for the Aerospace Industry Credit. Subsection E of § 2357.202 provides that "an extension of time for filing of an income tax return shall not extend the time period for purposes of claiming the credit[.]" However, as argued by Protestant the cited phrase is modified by the introductory phrase of subsection E which references the "limitation on the credit amount that may be claimed[.]" No further indication of the meaning of the subjugated phrase appears in § 2357.202.

The Legislature limited the Aerospace Industry Credit to $150,000.00 per year for a three (3) year period and designated the fiscal year ending June 30th as the basis for the annual periods; starting with the 2007 fiscal year, and ending with the 2009 fiscal year. In computing the credit, the Legislature qualified the expenditures that could be used and quantified the same to those incurred "beginning January 1, 2005, through December 31, 2008[.]" The Legislature also

specified the earliest date that a claim for the credit could be filed for each fiscal year. Further, the Legislature recognized that a taxpayer's taxable year may not coincide with the fiscal year limitation of the credit.

Historically, the Tax Commission has held that an extension of time for filing an income tax return does not extend the time period for claiming a refund of income taxes, reasoning that income taxes are deemed paid on the original due date of the return and the three (3) year limitation period of § 2373 is triggered by the date of payment of the tax. Oklahoma Tax Commission Order Nos. 92-12-29-024 and 92-03-26-033. Considering the credit was made refundable, and the Legislature specifically addressed all of the above referenced aspects in granting for the credit, but did not explicitly provide for a deadline for claiming the credit, it is reasonable to conclude the Legislature intended that the general statute of limitation for claiming an income tax refund under the Act (§ 2373) would be applicable to claiming the credit.

The Division argues that "[i]f the credit is not timely claimed [by the original due date of the income tax return corresponding with the fiscal year of the credit], the expenses incurred that would form the basis for the credit 'age out' and are no longer available to generate a credit amount." Subsection G of § 2357.202 plainly addresses this argument and clearly shows it is erroneous. The only time that a qualified expenditure incurred during the period of January 1, 2005 through December 31, 2008, is not allowed to be used in computing the credit amount is when the expenditure was used to compute the credit amount for a preceding taxable year. In other words, a taxpayer may incur qualified expenditures during the entire period (January 1, 2005 through December 31, 2008) and claim the credit one time. The only time it would be necessary for the taxpayer to claim the credit more than once is if its qualified expenditure equaled One Million Dollars prior to the end of the allowable period, and at that point those expenditures could not be used to compute a subsequent credit amount.

Protestant's claims to the Aerospace Industry Credits for the 2008 and 2009 fiscal years were timely filed.

DISPOSITION

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