

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2013-11-13-02 / NON-PRECEDENTIAL
ID: P-11-149-H
DATE: NOVEMBER 13, 2013
DISPOSITION: SUSTAINED
TAX TYPE: INCOME, ELECTRIC CAR CREDIT
APPEAL: NO APPEAL TAKEN

ORDER

Protestants, TAXPAYER and SPOUSE appear pro se. The Account Maintenance Division of the Oklahoma Tax Commission (“Division”) is represented by OTC ATTORNEY, Senior Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

The Division audited Protestants’ 2009 Oklahoma income tax return, disallowed the credit for investment in qualified electric motor vehicle property in the amount of \$7,363.00 and by adjustment letter dated December 16, 2010, notified Protestants of the denial of their income tax overpayment in the amount of \$218.00 and the proposal to assess additional income tax in the amount of \$7,145.00. Protestants timely protested the proposed adjustment.

On February 8, 2011, the Division referred the protest file to 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 The protest was docketed as Case Number P-11-149-H and assigned to ALJ, Administrative Law Judge.³ The case was reassigned to the undersigned by *Order of Recusal and Reassignment of Case* issued September 25, 2013.

By letter dated March 11, 2011, the parties were notified that this case was stayed pending the outcome of the “test” electric car cases. A status teleconference was scheduled for May 20, 2013 pursuant to the *Respondent’s Request for Status/Dispositional Conference* filed May 2, 2013. Pursuant to the conference, the parties were directed to file a status report on or before June 19, 2013.

A *Status Report and Stipulation of Facts*, with Exhibits A through G, attached thereto were filed on June 14, 2013. The parties’ request for a briefing schedule was memorialized in the *Scheduling Order* issued June 18, 2013.

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).

The Division filed *Respondent's Opening Brief* on June 19, 2013. Protestants opening brief was filed July 1, 2013. The *Response Brief of Respondent, Account Maintenance Division, Oklahoma Tax Commission* was filed on July 3, 2013. On July 15, 2013, Protestants filed a response brief and verbally requested a hearing on their protest. A status conference was held on July 23, 2013. Pursuant to the conference, a hearing was scheduled for September 5, 2013.

An open hearing⁴ was held as scheduled. Opening Statements were made. TAXPAYER testified with respect to the purchase of the vehicle, and the events surrounding the delivery and the titling of the vehicle. The Division stood on the stipulations and its briefs. Exhibit 1, consisting of the *Status Report and Stipulation of Facts*, and Exhibits A through G were admitted into evidence. Closing statements were made. At the conclusion of the hearing, the record was closed and the protest was submitted for decision.⁵

FINDINGS OF FACT

Upon review of the file and records, including the recording of the hearing, the exhibit received into evidence and the pleadings of the parties, the undersigned finds:

A. The parties stipulate to the following:⁶

1. Protestants purchased an electric vehicle which qualified for the electric vehicle tax credit pursuant to 68 O.S. § 2357.22 (“subject credit”) on December 21, 2009. The Oklahoma Statute with regard to the subject credit, in effect on December 21, 2009, provided a tax credit for years beginning prior to January 1, 2010, for investments in qualified electric motor vehicle property placed in service after December 31, 1995.

2. 68 O.S. § 2357.22 was amended, effective January 1, 2010. Pursuant to that version of the statute, a tax credit was available for tax years beginning before January 1, 2015, for investment in qualified electric motor vehicle property placed in service after December 31, 1995.

3. At the time of purchase, and for a time thereafter, Protestants believed that their vehicle would be delivered on or before June 30, 2010, per the “Target Delivery Date”.

4. Protestants claimed the subject credit on their 2009 tax return, claiming that the vehicle was placed in service on December 21, 2009. But,

⁴ Confidentiality of the proceeding was waived. 68 O.S. 2011, § 205.

⁵ OAC 710:1-5-39(a).

⁶ References to the exhibits are omitted.

Protestants did not obtain possession of the vehicle on the date of purchase, and not until after July 1, 2010.

5. Protestants' dealer ceased business in early 2010. Protestants began earnest efforts to secure delivery of their vehicle. Despite Protestants' best efforts, Protestants were unable to secure title to and possession of the vehicle until after July 29, 2010. The vehicle was titled in Oklahoma on August 23, 2010, showing a date of 1st sale of July 29, 2010.

6. Effective *June 9, 2010*, 68 O.S. § 2357.22 was amended to provide tax credit for years beginning prior to January 1, 2015 for investments in qualified electric motor vehicle property placed in service after December 31, 1995 *and before July 1, 2010*.⁷

B. Additional findings of fact:⁸

1. Protestants filed their 2009 Oklahoma Resident Income Tax Return ("2009 Return") claiming the Credit for Investment in Qualified Electric Motor Vehicle Property ("Credit") in the amount of \$7,363.00 and an overpayment of income tax for the 2009 tax year in the amount of \$218.00.
2. The Division audited the 2009 Return, disallowed the Credit and by adjustment letter dated December 16, 2010, notified Protestants of the denial of their income tax overpayment and the proposal to assess additional income tax in the amount of \$7,145.00.
3. Protestants timely protested the proposed adjustment to their 2009 Return.

ISSUE AND CONTENTIONS

⁷ Emphasis original.

⁸ The Court is taking official notice of the following: Protestants' 2009 Oklahoma Resident Income Tax Return (Form 511) and attached schedules, in particular Form 511CR "Other Credits Form"; the Division's adjustment letter dated December 16, 2010 and Protestants' letter of protest dated January 6, 2011. OAC 710:1-5-36(a).

Although title to the vehicle reflects a date 1st sold of July 29, 2010, the Division does not question that Protestants purchased the vehicle on December 21, 2009. The issue is which version of the credit provision (68 O.S., § 2357.22) is applicable to the facts of this protest?

The Division contends that “[Protestants] do not qualify for the subject credit because their qualifying vehicle was not ‘placed in service’ on or before July 1, 2010.” *Respondent’s Opening Brief*, pp. 2. Although not specifically argued, the Division’s citation of the version of the statute effective June 9, 2010 for the disallowance of the credit, infers its belief that the operative event triggering the credit is possession of the vehicle or the placement of the same in service.

Protestants’ argument is relatively simple. Protestants argue that they are entitled to the credit because the version of the statute in effect when they purchased the vehicle did not have an outer limit time restriction for placing the vehicle in service. Protestants believe they fully complied with the requirements of the credit provision.

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, § 221.
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. Accordingly, the basis for assessing income tax must be found in the Oklahoma Income Tax Act (“Act”).⁹
3. A taxpayer’s income tax liability is determined in accordance with the law in effect at the time the income is received. *Affiliated Management Corp. v. Oklahoma Tax Commission*, 1977 OK 183, 570 P.2d 335; *Wootten v. Oklahoma Tax Commission*, 1935 OK 54, 170 Okla. 584, 40 P.2d 762.
4. The two (2) versions of the credit provision (§ 2357.22 of the Act) at issue in this proceeding provide in pertinent part:

68 O.S. Supp. 2009, § 2357.22

A. For tax years beginning before January 1, 2010, there shall be allowed a one-time credit against the income tax imposed by Section

⁹ 68 O.S. 2011, § 2351 et seq., as amended.

2355 of this title for investments * * * * * in qualified electric motor vehicle property placed in service after December 31, 1995.¹⁰

68 O.S. Supp. 2010, § 2357.22

A. For tax years beginning before January 1, 2015, there shall be allowed a one-time credit against the income tax imposed by Section 2355 of this title

* * * * *

2. For investments in qualified electric motor vehicle property placed in service after December 31, 1995, and before July 1, 2010.¹¹

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. Where a statute is unambiguous, statutory construction is unnecessary, and the terms of the statute must be given their plain meaning. *Blitz U.S.A., Inc. v. Oklahoma Tax Commission*, 2003 OK 50, ¶ 14, 75 P.3d 883, 888.
7. In amending a statute, the legislature may have intended either to effect a change in the existing law or to clarify that which previously appeared doubtful. *Blitz, supra*, at ¶ 19. See, *In re Protest of Betts Telecom Oklahoma, Inc.*, 2008 OK CIV APP 19, 178 P.3d 197. Amendments to a statute can be used to ascertain the meaning of the prior statute. *Quail Creek Golf and Country Club v. Oklahoma Tax Commission*, 1996 OK 35, ¶ 10, 913 P.2d 302, 304.
8. Statutes and statutory amendments are presumed to operate prospectively unless expressly declared otherwise, or retrospective effect is necessarily implied by the language of the statute. *Department of Human Services ex rel. Pavlovich v. Pavlovich*, 1996 OK 71, 932 P.2d 1080, 1082. Doubt as to whether a statute was intended to be prospective or retrospective must be resolved against retrospective application. *Fraternal Order of Police, Lodge No. 165 v. City of Choctaw*, 1996 OK 78, 933 P.2d 261,

¹⁰ Laws 2008, c. 126, § 1, eff. Jan. 1, 2009.

¹¹ Laws 2010, c. 418, § 3, emerg. eff. June 9, 2010. Section 2357.22 was also amended by Laws 2009, c. 308, § 1, eff. Jan. 1, 2010.

271. Express language will prevail over an effective date or emergency clause. *Cities Service Oil Co. v. Oklahoma Tax Commission*, 1942 OK 307, ¶ 15, 129 P.2d 597, 599.

9. “Where statute or a portion thereof is submitted by setting forth amended section in full, provisions of original statute which are repeated are to be considered as having been the law from the time they were first enacted, and the new provisions or changed portions are to be understood as enacted at the time the amended act takes effect and not to have any retroactive operation.” *Wilson v. Oklahoma Tax Commission*, 1979 OK 62, ¶ 6, 594 P.2d 1210, 1212.

ANALYSIS

Protestants claim to the credit for investment in qualified electric motor vehicle property falls squarely within the requirements of § 2357.22 in effect for the 2009 tax year. Protestants purchased the vehicle on or before December 31, 2009 and placed the same in service after December 31, 1995.

The Division’s citation to the 2010 version of § 2357.22 is mistaken. The outer limit time restriction of that provision did not take effect until June 9, 2010 or for tax years 2010 and thereafter.

DISPOSITION

Based on the above and foregoing findings and conclusions, it is ORDERED that the income tax protest of Protestants, TAXPAYER and SPOUSE 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.”