

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2014-09-16-05 / NON-PRECEDENTIAL  
**ID:** P-14-002-K  
**DATE:** SEPTEMBER 16, 2014  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME  
**APPEAL:** NONE

### 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, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 16<sup>TH</sup> day of June, 2014, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 16<sup>th</sup> day of June, 2014, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Protestants, HUSBAND AND WIFE appear pro se. The Account Maintenance Division of the Oklahoma Tax Commission (“Division”) is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

The Division audited Protestants’ 2012 Oklahoma income tax return, disallowed the carry forward of the credit for investment in qualified clean-burning motor fuel vehicle property in the amount of \$2,740.00 and by adjustment letter dated May 10, 2013, notified Protestants that their income tax refund in the amount of \$2,848.00 had been reduced to \$843.00. Protestants timely protested the proposed adjustment.

On January 8, 2014, the Division referred the protest to the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*<sup>1</sup> and the *Rules of Practice and Procedure before the Office of Administrative Law Judges*.<sup>2</sup> The protest was docketed as Case Number P-14-002-K.

---

<sup>1</sup> 68 O.S. 2011, § 201 et seq., as amended.

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* (“OAC”).

A pre-hearing teleconference was scheduled for February 26, 2014, by *Prehearing Teleconference Notice* issued January 10, 2014. Pursuant to the conference, a *Prehearing Conference Order and Notice of Alternative Hearing Date* was issued setting forth the procedure by which the protest would be submitted for decision. The order also scheduled a hearing for May 29, 2014, if the parties could not stipulate to a full and complete factual record.

A *Joint Stipulation of Issue and Facts* (“*Joint Stipulation*”) with Exhibits A through J attached thereto was filed April 11, 2014. By letter dated April 16, 2014, the alternative hearing was stricken.

*Protestant’s* [sic] *Brief in Chief* was filed April 23, 2014. The *Brief of the Account Maintenance Division* and Appendix A were filed May 5, 2014. Protestants’ *Response Brief to the Brief of the Account Maintenance Division* was filed May 15, 2014. On May 16, 2014, the record was closed and the protest was submitted for decision.<sup>3</sup>

### FINDINGS OF FACT

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

A. The parties stipulate to the following:<sup>4</sup>

1. On May 8, 2008, Protestants purchased a 2008 Honda Civic GX with a vehicle identification number of OMITTED (“Vehicle 1”).

2. On August 19, 2008, Protestants purchased a 2008 Honda Civic GX with a vehicle identification number of OMITTED (“Vehicle 2”).

3. Protestants filed a 2008 Oklahoma Resident Income Tax Return (“2008 Return”) on or about March 19, 2009.

4. On Protestants’ 2008 Return, they claimed a Credit for Conversion of Motor Vehicles to Clean Burning Fuel base upon their purchase of Vehicle 1 and Vehicle 2 (the “2008 Credit”).

---

<sup>3</sup> OAC 710:1-5-39(a).

<sup>4</sup> References to the exhibits are omitted.

5. On a schedule attached to Protestants' 2008 Return, Protestants calculated the total credit available as \$6,830.00.

6. On Protestant's 2008 Return, they claimed a Credit for Conversion of Motor Vehicles to Clean Burning Fuel in the amount of \$405.00 on line 3 of Form 511CR. As such, Protestants calculated that they had \$6,425.00 of the 2008 Credit remaining to carry forward to future years.

7. Protestants filed a 2009 Oklahoma Resident Income Tax Return ("2009 Return") on April 15, 2010.

8. On Protestants' 2009 Return, they claimed a Credit for Investment in Clean-Burning Motor Vehicle Fuel Property in the amount of \$222.00 on line 3a of Form 511CR. Protestants calculated that they had \$6,203.00 of the 2008 Credit remaining to carry forward to future years.

9. Protestants filed a 2010 Oklahoma Resident Income Tax Return ("2010 Return") on April 12, 2011.

10. On Protestants' 2010 Return, they claimed a Credit for Investment in Clean-Burning Motor Vehicle Fuel Property in the amount of \$39.00 on line 3a of Form 511CR. Protestants calculated that they had \$6,164.00 of the 2008 Credit remaining to carry forward to future years.

11. Protestants filed a 2011 Oklahoma Resident Income Tax Return ("2011 Return") on April 9, 2012.

12. On Protestants' 2011 Return, they claimed a Credit for Investment in Clean-Burning Motor Vehicle Fuel Property in the amount of \$3,424.00 on line 3a of Form 511CR. Protestants calculated that they had \$2,740.00 of the 2008 Credit remaining to carry forward to future years.

13. Protestants filed a 2012 Oklahoma Resident Income Tax Return ("2012 Return") on April 11, 2013.

14. On Protestants' 2012 Return, they claimed a Credit for Investment in Clean-Burning Vehicle Fuel Property in the amount of \$2,740.00 on line 3a of Form 511CR.

15. By letter dated May 10, 2013, the Division adjusted Protestants' 2012 return by disallowing the carryover 2008 credit claimed for Investment in a Clean-Burning Motor Vehicle Fuel Property in the amount of \$2,740.00.

16. By letter dated May 23, 2013, Protestants' timely protested the Division's adjustment to Protestants' 2012 return.

17. A summary of Protestants' reported application of the 2008 credit is attached [to the *Joint Stipulation*].

### ISSUE AND CONTENTIONS

The parties frame the issue as "whether Protestants may claim a credit under 68 O.S. § 2357.22 for Investment in Clean-Burning Motor Vehicle Fuel Property on their 2012 Oklahoma income tax return". As demonstrated by the facts, the issue is whether the unused amount of the 2008 credit for investment in clean-burning motor fuel vehicle property is allowed to be carried over to the 2012 tax year, and is dependent on the issue whether the 2009 amendment to § 2357.22 (effective January 1, 2010) changing the carry forward period from three (3) to five (5) years is applicable to Protestants' claim to the credit.

Protestants contend that the disallowance of the carry forward of the unused amount of their 2008 credit to offset their 2012 income tax is erroneous. In support of this contention, Protestants argue that the amendment to § 2357.22 effective January 1, 2010 granting a five (5) year carryover of the credit is applicable to their claim to the credit. In support of this argument, Protestants assert that the Division's allowance of the carryover of the 2008 credit to the 2011 tax year proves the five (5) year carryover period is applicable since the law at the time they became eligible for the credit only provided for a three (3) year carryover and the 2011 tax year was the fourth year of their 2008 credit. Protestants further assert that the amendment to allow a five (5) year carryover was effective prior to their eligibility for the credit running out, that the express language of the amendment removes any doubt the amendment is to be applied retrospectively since it provides it is applicable to tax years beginning "before" January 1, 2015, and that the amendment did not specifically provide the five (5) year carryover period was applicable to vehicles placed in service after January 1, 2010, but rather specifically provided the five (5) year carryover was applicable to vehicles placed in service during tax years before January 1, 2015.

Protestants further contend that the Division's position that the amendment is not applicable to their case is seriously weakened by the fact that the decision to claim the credit on their 2011 and 2012 tax returns was made by their CPA, a person well versed in the interpretation of Oklahoma tax law and the fact that when they called to protest the disallowance, the employee of the Division answering the call agreed that the amendment was applicable.

The Division contends that the disallowance of the 2008 credit claimed on Protestants'

2012 tax return was proper. In support of this contention, the Division argues that the last year Protestants could carryover any unused amount of the credit was 2011, since the law in effect when the credit was earned only permitted a three (3) year carryover of any unused amount of the credit. The Division further argues that the amendment to § 2357.22 is inapplicable to these proceedings because the amendment was not effective until January 1, 2010. In support of this argument, the Division asserts that the language of the statute prior to the amendment was clear and unambiguous and the amendment clearly changed the carryover period for any amount of unused credit from three (3) years to five (5) years. The Division further asserts there is no express language stating the amendment is to be applied retroactively.

With respect to Protestants' remaining contentions, the Division argues that all persons are charged with knowledge of the laws that affect them, citing Oklahoma Tax Commission (Precedential) Order No. 2006-03-23-07, citing *Ponder v. Ebey*, 1944 OK 271, 152 P.2d 268 and *Anderson Nat'l Bank v. Lueckett*, 321 U.S. 233, 244 (1994), and that statements made by a Commission employee are generally not binding upon the agency, citing *Reasor's, LLC v. Okla. Tax Comm'n.*, 2006 OK CIV APP 43, ¶ 14, 134 P.3d 918, 921-922; and the statements cannot alter the plain and ordinary meaning of a statute or enlarge its scope, citing *Ark. La. Gas Co. v. Travis*, 984 OK 33, ¶ 7, 682 P.2d 255, 227.

### 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. A taxpayer's income tax liability and eligibility to receive a credit or deduction are determined in accordance with the law in effect at the time the income is received and the credit or deduction is allowed. *Affiliated Management Corp. v. Oklahoma Tax Commission*, 1977 OK 183, 570 P.2d 335; *Wooten v. Oklahoma Tax Commission*, 1935 OK 54, 170 Okla. 584, 40 P.2d 762.

3. At issue in this case is the credit for investment in qualified clean-burning motor fuel vehicle property codified at § 2357.22 of the Oklahoma Income Tax Act<sup>5</sup>. The version of § 2357.22 in effect for the 2008 tax year<sup>6</sup> provided in pertinent part:

A. For tax years beginning before January 1, 2009, there shall be allowed a one-time credit against the income tax imposed by Section 2355 of this title for investments in qualified clean-burning motor vehicle fuel property placed in service after December 31, 1990, \* \* \* \* \* .

\* \* \* \* \*

---

<sup>5</sup> 68 O.S. 2001, §2351 et seq., as amended.

<sup>6</sup> Laws 2003, c. 186, § 1, eff. Nov. 1, 2003.

D. The credit provided for in subsection A of this section shall be fifty percent (50%) of the cost of the qualified clean-burning motor vehicle fuel property \* \* \* \* \*.

\* \* \* \* \*

F. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit not used as an offset against the income taxes of a taxable year may be carried forward as a credit against subsequent income tax liability for a period not to exceed three (3) years.

4. Section 2357.22 was amended in 2008 to extend the credit to tax years beginning before January 1, 2010.<sup>7</sup> No other substantive changes were made to the statute.

5. In 2009<sup>8</sup>, § 2357.22 was re-written to provide in pertinent part:

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 for investments in qualified clean-burning motor vehicle fuel property placed in service after December 31, 1990, \* \* \* \* \*.

\* \* \* \* \*

E. The credit provided for in subsection A of this section shall be as follows:

1. For the qualified clean-burning motor vehicle fuel property defined in paragraph 1 or 2 of subsection B of this section \* \* \* fifty percent (50%) of the cost of the qualified clean-burning motor vehicle fuel property \* \* \*;

2. For qualified clean-burning motor vehicle fuel property defined in paragraph 3 of subsection B of this section, a per-location credit of seventy-five percent (75%) of the cost of the qualified clean-burning motor vehicle fuel property; and

3. For qualified clean-burning motor vehicle fuel property defined in paragraph 4 of subsection B of this section, a per-location credit of the lesser of fifty percent (50%) of the cost of the qualified clean-burning motor vehicle fuel property or Two Thousand Five Hundred Dollars (\$2,500.00).

\* \* \* \* \*

---

<sup>7</sup> Laws 2008, c. 126, § 1, eff. Jan. 1, 2009. "2010" was substituted for "2009".

<sup>8</sup> Laws 2009, c. 308, § 1, eff. Jan. 1, 2010.

- G. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit not used as an offset against the income taxes of a taxable year may be carried forward as a credit against subsequent income tax liability for a period not to exceed five (5) years.
6. "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, ¶ 19, 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, ¶ 12, 175 Okla. 340, 52 P.2d 806, 808. 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). Tax exemptions are strictly construed against the claimant. *Blitz U.S.A., Inc. v. Oklahoma Tax Commission*, 2003 OK 50, ¶ 14, 75 P.3d 883, 888.
7. The primary goal of any inquiry into the meaning of a statute is to ascertain and follow the intention of the legislature. *TRW/Reda Pump v. Brewington*, 1992 OK 31, ¶ 5, 829 P.2d 15,
8. The plain meaning of a statute's language is conclusive except in the rare case when literal construction would produce a result demonstrably at odds with legislative intent. *Samman v. Multiple Injury Trust Fund*, 2001 OK 71 ¶ 13, 33 P.3d 302, 307. "A statute will be given a construction, if possible, which renders every word operative rather than one which makes some words idle and meaningless." *Stump v. Cheek*, 2007 OK 97, ¶ 14, 179 P.3d 606, 613.
9. Where a statute is plain and unambiguous, judicial construction is unnecessary, and the statute will be given the effect its language dictates. *Blitz, supra*, ¶ 14. "Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be employed." *Id.*
10. When the legislature amends a statute it might be changing the law or clarifying the law. *Blitz, supra*, at ¶ 19. See, *In re Protest of Betts Telecom Oklahoma, Inc.*, 2008 OK CIV APP 19, 178 P.3d 197. "The exact intent is ascertained by looking to the circumstances surrounding the amendment. If the earlier version of a statute definitely expresses a clear and unambiguous intent or has been judicially interpreted, a legislative amendment is presumed to change the existing law. Nonetheless, if the earlier statute's meaning is in doubt or uncertain, a presumption arises that the amendment is designed to clarify, i.e., more clearly convey, legislative intent which was left indefinite by the earlier statute's text." *Samman, supra*, at ¶ 13.
11. "Statutes (and statutory amendments) are generally presumed to be prospective in application. This presumption is rebutted when there is legislative intent 'expressly declared, or 'necessarily implied from the language used.' Doubt must be resolved against retrospective application." *Autry v. Multiple Injury Trust Fund*, 2001 OK 79, ¶ 14, 38 P.3d 213, 218 citing

*Fraternal Order of Police, Lodge No. 165 v. City of Choctaw*, 1996 OK 78, ¶¶ 13-15, 933 P.2d 261, 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.

12. “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.

13. “[E]stoppel is not ordinarily applicable to state agencies operating under statutory authority.” *In the Matter of Kenneth R. Strong v. State of Oklahoma, ex rel. The Oklahoma Police Pension and Retirement Board*, 2005 OK 45, ¶ 9, 76 O.B.A.J. 1400, citing *State ex rel. Bd. Of Regents of University of Oklahoma v. Greer*, 204 F.Supp.2d 1292 (W.D.Okla.2002); *Burdick v. Independent School Dist.*, 1985 OK 49, ¶ 7, 702 P.2d 48; *Board of Educ. v. Rives*, 1974 OK 153, ¶ 8, 531 P.2d 423. “Generally, estoppel is not imposed merely where a party is given incorrect information or a mistake occurs.” *Id.*, citing *Indiana Nat’l Bank v. State Dept. of Human Services*, 1993 OK 101, ¶ 15, 857 P.2d 53; *Ashland Oil, Inc. v. Corporation Comm’n*, 1979 OK 17, ¶ 22, 595 P.2d 423; *State ex rel. Comm’rs of Land Office v. Phillips Petroleum Co.*, 1953 OK 395, ¶ 0, 258 P.2d 1193.

### ANALYSIS

The carry forward provision of § 2357.22(F) in place for the 2008 tax year was neither ambiguous nor unclear. A 2008 credit under § 2357.22 could be carried forward to the 2011 tax year. The credit had to be in existence for it to be carried forward and the carry forward could not exceed a period of three (3) years.

Notwithstanding the express declaration in the 2009 amendment to § 2357.22(A) that the credit is available in tax years beginning before January 1, 2015 for investments placed in service after December 31, 1990, the legislature clearly changed the carry forward provision of § 2357.22(F) from a period of three (3) to five (5) years. “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, supra* at ¶ 6. Accordingly, the five (5) year carry forward of the credit did not take effect until January 1, 2010, and is not applicable to Protestants’ claim to the credit.

### RECOMMENDATIONS

Based on the above and foregoing findings and conclusions, it is recommended that the income tax protest of Protestants, HUSBAND AND WIFE be denied.

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. 2014) 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.”