

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2016-11-22-05 / NON-PRECEDENTIAL  
**ID:** P-16-059-K  
**DATE:** NOVEMBER 22, 2016  
**DISPOSITION:** DENIED  
**TAX TYPE:** INCOME / AEROSPACE CREDIT  
**APPEAL:** NONE TAKEN

### **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 19<sup>th</sup> day of October, 2016, appended hereto, together herewith shall constitute the Order of the Commission.

### **SO ORDERED**

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

NOW on this 19<sup>th</sup> day of October, 2016, the above styled and numbered cause comes on for decision pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Protestants, PROTESTANT AND SPOUSE appear pro se. The Compliance Division (“Division”) of the Oklahoma Tax Commission is represented by OTC ATTORNEY, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

### **STATEMENT OF THE CASE**

Protestants filed amended Oklahoma income tax returns for tax years 2011, 2012 and 2013, and an original Oklahoma income tax return for the 2014 tax year. Each of the returns claimed the Credit for Employees in the Aerospace Sector and refunds. These returns auto-processed and the refunds were paid. Upon audit of the returns, the Division disallowed the credits and by four (4) separate adjustment letters proposed the assessment of income taxes, interest and penalties against Protestants. Protestants timely protested the proposed assessments and remitted the taxes and interest assessed for each year under protest within the time allowed

to avoid the assessed penalties. In the letter of protest, Protestants specifically wrote, “[w]e do not request an oral hearing.” A waiver of interest was requested should the protest be dismissed or denied.

On April 25, 2016, the protest and concomitant records of the Division were referred to the Office of Administrative Law Judges to initiate appellate 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 No. P-16-059-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing conference was scheduled for June 23, 2016, by *Prehearing Teleconference Notice* issued April 27, 2016. Pursuant to the conference, a *Scheduling Order* issued setting forth the procedure by which the protest would be submitted for decision.

A *Joint Stipulation of Issue and Facts* (“*Joint Stipulation*”) with Exhibits A through J attached thereto were filed as directed. *Protestants’ Brief in Chief* and the *Division’s Response to Protestants’ Brief in Chief* were filed as directed. Protestants did not file a reply brief. On October 14, 2016, the record was closed and the protest was submitted for decision.<sup>4</sup>

### FINDINGS OF FACT

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

A. The parties stipulate to the following<sup>5</sup>:

1. On or about May 12, 2014, Protestants filed their amended 2011 Oklahoma income tax return, Form 511X, Form 511CR, and Form 564, claiming

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

<sup>2</sup> Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* (“OAC”).

<sup>3</sup> OAC 710:1-5-22(b).

<sup>4</sup> OAC 710:1-5-39.

<sup>5</sup> The references to the exhibits supporting the statements are omitted.

the Tax Credit.

2. On or about May 12, 2014, Protestants filed their amended 2012 Oklahoma income tax return, Form 511X, Form 511CR, and Form 564, claiming the Tax Credit.

3. On or about July 16, 2014, Protestants filed their amended 2013 Oklahoma income tax return, Form 511, Form 511CR, and Form 564, claiming the Tax Credit.

4. On or about March 6, 2015, Protestants electronically filed their 2014 Oklahoma income tax return, Form 511EF, Form 511CR, and Form 564, claiming carryover from previous years for the Tax Credit.

5. On or about March 24, 2016, the Division mailed an adjustment letter to Protestants for tax year 2011. The adjusted additional tax due was \$OMITTED. The Division disallowed the Tax Credit and adjusted Protestants' return to reflect the same.

6. On or about March 24, 2016, the Division mailed an adjustment letter to Protestants for tax year 2012. The adjusted additional tax due was \$OMITTED. The Division disallowed the Tax Credit and adjusted Protestants' return to reflect the same.

7. On or about March 24, 2016, the Division mailed an adjustment letter to Protestants for tax year 2013. The adjusted additional tax due was \$OMITTED. The Division disallowed the Tax Credit and adjusted Protestants' return to reflect the same.

8. On or about March 24, 2016,<sup>6</sup> the Division mailed an adjustment letter to Protestants for tax year 2014. The adjusted additional tax due was \$OMITTED. The Division disallowed the unused carryover from previous years for the Tax Credit and adjusted Protestants' return to reflect the same.

9. On or about April 18, 2016, Protestants timely responded to the adjustment letters via letter protesting the disallowance of the Tax Credit and carryover for years 2011, 2012, 2013, and 2014.

10. Protestant, PROTESTANT, graduated from the University of Oklahoma with a Bachelor of Science degree in Computer Engineering in May of 2006.

11. Protestant, PROTESTANT, admits that his date of hire with his current employer, EMPLOYER, was January 29, 2007.

12. Protestant, PROTESTANT, admits that he has been employed in Oklahoma for the duration of his employment with his current employer, EMPLOYER.

13. This protest is properly before the Administrative Law Judge.

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<sup>6</sup> The adjustment letter for tax year 2014 is dated March 30, 2014.

B. Additional facts:

1. The Division concedes that Protestant, PROTESTANT is employed by a qualified employer, was not employed in the aerospace sector in Oklahoma prior to employment with his current employer, and was awarded a qualifying degree. *Division's Response to Protestants' Brief in Chief*, pp. 4.

2. Protestants have remitted the income taxes and interest assessed for the tax years in the aggregate amount of \$OMITTED.

3. Protestants request a waiver of interest should the protest be dismissed or denied.

### ISSUES AND CONTENTIONS

The issue as stipulated by the parties is “[w]hether Protestant, PROTESTANT, qualifies as a “Qualified Employee” as defined under 68 O.S. Supp. 2014, § 2357.301 as claimed on Protestants’ income tax returns for years 2011, 2012, 2013, and 2014, so that Protestants may claim the Credit for Employees in the Aerospace Sector (“the Tax Credit”).”

The Division contends that Protestants do not qualify for the Tax Credit because PROTESTANT’S hire date in Oklahoma with his current employer was prior to January 1, 2009, and he was not newly employed in Oklahoma on or after January 1, 2009. The Division argues that had the legislature intended the word “employed” to mean “working for” as Protestants assert, then there is no reason to include an effective start date in the Tax Credit. The Division further argues that to the extent the definition of “qualified employee” is ambiguous, the ambiguity must be resolved in its favor, citing *Phillips Petroleum Co. v. Oklahoma Tax Commission*, 1975 OK 146, 542 P.2d 1303.

Protestants contend that they qualify for the Tax Credit. To support this contention, Protestants argue that due to the phrase “regardless of the date of hire” PROTESTANT’S hire date is immaterial. They further argue that had the legislature intended to exclude people whose employment in the aerospace sector in Oklahoma began before January 1, 2009, the statute could

have been written to clearly express this intention; but as it stands, the statute plainly only requires that the person is working for a qualified employer on or after January 1, 2009. They further argue that the Tax Credits should have been denied outright if PROTESTANT'S hire date made them ineligible for the Tax Credits since that information was submitted with each of the returns.

### CONCLUSIONS 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. The basis for the Division's action and Protestants' protest thereto are governed by the Aerospace Development Act ("Act")<sup>7</sup> of the Oklahoma Income Tax Code<sup>8</sup>.

3. A taxpayer's income tax liability is determined under the law in effect when 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. A credit of up to \$5,000.00 per year, but not to exceed five (5) years is allowed against the tax imposed by § 2355 of the Income Tax Code to a qualified employee for taxable years beginning after December 31, 2008. 68 O.S. 2011, § 2357.304(A).<sup>9</sup> The credit is a non-

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<sup>7</sup> Sections 2357.301 through 2357.304 of the code, as amended. Added by Laws 2008, c. 417, § 1, eff. Jan. 1, 2009. 2008 Okla.Sess.Laws Ch. 417 (H.B. 3239).

<sup>8</sup> 68 O.S. 2011, § 2351 et seq., as amended.

<sup>9</sup> A moratorium was placed on the allowance of the credit for the time period from July 1, 2010, through June 30, 2012. Laws 2010, c. 327, § 1, eff. July 1, 2010. Amended at Laws 2011, c. 5, § 3, to provide an end date for the credit of "before January 1, 2015" and lifting the moratorium as of July 1, 2011. Amended at Laws 2014, c. 30, § 4, to substitute "January 1, 2018" for "January 1, 2015".

refundable credit and, if not used, may be carried over, in order, to each of the five (5) subsequent taxable years. 68 O.S. 2011, § 2357.304(B) and (C).

5. A “qualified employee” under the Act was originally defined to mean “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[.]” 68 O.S. Supp. 2008, § 2357.301(5).

6. Pursuant to its authority to facilitate the administration, enforcement and collection of any taxes levied by the tax laws of the State of Oklahoma, the Tax Commission contemporaneous with the enactment of the Act promulgated *OAC 710:50-15-109* which provides in pertinent part at *710:50-15-109(b)(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 included person [sic] employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

Added at 26 Ok Reg 2330, eff 6-25-09.

7. In 2014, the aerospace credits were extended through the 2017 tax year and the definition of “qualified employee” was amended to provide (with the amended language underscored) as follows, to-wit:

“Qualified employee” means any person, regardless of the date of hire, employed in this state by or contracting in this state 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. Provided, the definition shall not be interpreted to exclude any person who was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution or any person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and

assigned to work in the aerospace sector in this state[.]

Amended by Laws 2014, c. 30, § 1, eff. Nov. 1, 2014. 2014 Okla.Sess.Laws Ch. 30 (H.B. 2509).

8. Contemporaneous with the statutory amendment of the definition of qualified employee, the Tax Commission amended the language of *OAC 710:50-15-109(b)(5)* to provide as follows, to-wit:

“Qualified employee” is any person, regardless of the date of hire by the qualified employer, newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer. Qualified employee may include a person who was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution or any person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by a professional staffing company and assigned to work in the aerospace sector in this state.

Amended at 32 Ok Reg 1354, eff 8-27-15.

9. 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 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 interpreting statutes, courts do not limit their consideration to a single word or phrase in isolation to determine their meaning, but construe together the 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 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 language should be construed to be harmonious with the purpose of the act, rather than in a way which will defeat it. *Tull, supra*. Statutes are interpreted to attain that purpose and end championing the broad public policy purposes underlying them. *Keating v. Edmondson*, 2001 OK 110, ¶ 8, 37 P.3d 882 (citations omitted).

10. Tax statutes are penal. *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 regarding 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.

11. “Statutes exempting property from taxation are to be strictly construed against the claimant.” *American Airlines, Inc. v. Oklahoma Tax Commission*, 2014 OK 95, ¶ 30, 341 P.3d 56, 64, citing *Blitz U.S.A., Inc. v. Oklahoma Tax Commission*, 2003 OK 50, ¶ 14, 75 P.3d 883, 888. “Claims of exemption must be by express grant.” *Id.*, citing *In re Noble’s Estate*, 1938 OK 324, ¶ 7, 183 Okla. 148, 80 P.2d 243, 245. “An exemption cannot exist by implication and a doubt is fatal to the claim of exemption.” *Id.*, citing *Oklahoma City v. Shields*, 1908 OK 195, ¶ 10, 22 Okla. 265, 100 P. 559

Tax exemption, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction or credit. *TPQ Investment Corporation v. Oklahoma Tax Commission*, 1998 OK 13, ¶ 8, 954 P.2d 139, 141. 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).

“The rule of strict construction comes into play only when the language, after analysis and subsection to the ordinary rules of interpretation, presents ambiguity.” *Colcord v. Granzow*, 1928 OK 211, ¶ 18, 137 Okla. 194, 278 P.2d 654, 660, citing *Ruling Case Law*, Volume 25, p. 1076. “Tax exemptions must be construed sensibly in order to give effect to the governing legislative scheme.” *American Airlines, supra* at ¶ 31, citing *Blitz, supra* at ¶ 16.

12. Rules promulgated under the Administrative Procedures Act<sup>10</sup> are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2011, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2011, § 308.2(C). The legislature is deemed to have adopted an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such

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<sup>10</sup> 75 O.S. 2011, § 250 et seq., § 301 et seq.

construction. *Branch Trucking Co. v. Oklahoma Tax Commission*, 1990 OK 41, 801 P.2d 686.

The rules and regulations of an administrative agency which implement a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, *Arkansas Louisiana Gas Co. v. Travis*, 1984 OK 33, 682 P.2d 225; *Boydston v. State*, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. *Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission*, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party must prove the contrary by competent and convincing evidence. *State ex rel. Hart v. Parham*, 1966 OK 9, 412 P.2d 142.

Great weight is accorded an agency's construction of a statute when the administrative interpretation is made contemporaneously with the enactment of the statute and the construction is longstanding and continuous by the agency charge with its execution. *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65. Where the Legislature is made repeatedly aware of the operation of the statute according to the construction placed upon it by an agency and the Legislature has not expressed its disapproval with the agency's construction, the Legislature's silence may be regarded as acquiescence in the agency's construction, *R.R. Tway, Inc. v. Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972; and the agency's construction is given controlling weight and will not be disregarded except in cases of serious doubt, *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272.

13. The informal interpretations of a statute by the administrative agency charged with its implementation and enforcement are not entitled to deference, but are of assistance in ascertaining the purpose, policy, and meaning of a statute. *Laws v. State ex rel. Oklahoma Dept. of Human Services*, 2003 OK CIV APP 97, 81 P.3d 78, certiorari denied. To have persuasive value, the administrative interpretation must be reasonable and not clearly wrong. *Keating*, *supra* at ¶ 15.

The Oklahoma Aeronautics Commission, the agency charged with promoting and developing the aerospace industry in Oklahoma, provides information concerning the aerospace income tax credits.<sup>11</sup> The interpretations advanced by the Aeronautics Commission are similar to informal interpretations or program statements, and while the interpretations are not entitled to deference, they may be considered if the same are well-reasoned and have power to persuade. *Hunnicut v. Hawk*, 229 F.3d 997 (C.A. 10<sup>th</sup>, Okla. 2000).

In the frequently asked questions section to the Aeronautics Commission's website, the Commission in part opines that "[a] 'qualified employee' is any person hired by or contracting with a 'qualified employer' after December 31, 2008" in response to the question "[w]ho qualifies for these tax credits".

14. Estoppel generally does not apply against the state acting in its sovereign capacity because of unauthorized acts of its officers, *State ex rel. Cartwright v. Dunbar*, 1980 OK 15, 618 P.2d 900; or because of mistakes or errors of its employees, *State ex rel. Cartwright v. Tidmore*, 1983 OK 116, 674 P.2d 14; *State ex rel. Oklahoma Tax Commission v. Emery*, 1982 OK CIV APP 13, 645 P.2d 1048. Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the facts and circumstances implicate the interposition of estoppel would further some prevailing principal of public policy or interest. *Tice v. Pennington*, 2001 OK CIV APP 95, 30 P.3d 1164; *Burdick v. Independent School District*, 1985 OK 49, 702 P.2d 48, 26 Ed. Law Rep. 486. Where there is no power to act, a public official cannot bind a government entity even if he or she mistakenly or falsely asserts such authority. *Hiland Dairy Foods Company, LLC v. Oklahoma Tax Commission*, 2006 OK CIV APP 68, ¶ 11, 136 P.3d 1072, citing *Indiana Nat'l Bank v. State Dept. of Human Services*, 1993 OK 101, 857 P.2d 53, 64.

15. In administrative proceedings, the burden of proof is on the taxpayer to show in what respect the action or proposed action of the Tax Commission is incorrect. *OAC 710:1-5-47; In*

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<sup>11</sup> [http://www.ok.gov/OAC/Aerospace\\_Industry/index.html](http://www.ok.gov/OAC/Aerospace_Industry/index.html).

*re Adway Properties, Inc.*, 2006 OK CIV APP 14, 130 P.3d 302; *Geoffrey, Inc. v. Oklahoma Tax Commission*, 2006 OK CIV APP 27, 132 P.3d 632. Failure to provide evidence which is sufficient to show an adjustment to the action of the Division is warranted will result in the denial of the protest. *Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Commission*, 1988 OK 91, 768 P.2d 359, 362, citing *Continental Oil Co. v. Oklahoma State Bd. of Equalization*, 1976 OK 23, 570 P.2d 315, 317.

### ANALYSIS

1. A taxpayer's income tax liability is determined under the law in effect when the income is received. Conclusions of Law, ¶ 3. The version of the definition of "qualified employee" prompting Protestants to claim the credit does not apply to the 2011, 2012 and 2013 tax years. The definition was amended in 2014 with an effective date of November 1, 2014. The amendment to the definition applies to the 2014 tax year and subsequent tax years.

2. Regarding the 2008 version of the definition of "qualified employee", the Tax Commission has determined that a degreed engineer hired by a qualified employer prior to January 1, 2009 is not a "qualified employee". Oklahoma Tax Commission Order No. 2012 08 28 05. There, the Commission concluded that the definition of "qualified employee" was ambiguous because the word "employ" had more than one accepted meaning by definition. The Commission construed the word "employed" as used in the definition to mean "hired"; citing with approval, conformity with the Oklahoma Aeronautics Commission website as to who qualifies for the credit, the public policy or purpose of the Act as being contrary to an all-encompassing definition and its own rule which had been in effect for three regular sessions of the Legislature at the time and no action had been taken to repeal the rule.

3. Regarding the 2014 version of the definition, the Tax Commission has determined that a degreed engineer hired by a qualified employer in the aerospace sector of Oklahoma prior to January 1, 2009 is not a "qualified employee". Oklahoma Tax Commission Order No. 2015 03 05 04. There, the Commission concluded that the legislative purpose of the amendment is

clear when read in context and allows an employee working for or contracting with a qualified employer in a state other than Oklahoma to claim the credit as a qualified employee on or after January 1, 2009, when employed in the Oklahoma aerospace sector. This conclusion is buttressed by the predicate implied by the second sentence of the amended definition of qualified employee. The implication is when could a non-full-time engineer have been employed in the aerospace sector or an engineer have been assigned to work in the aerospace sector in this state and not be excluded from the definition. The only date referenced in the definition is “on or after January 1, 2009”. Accordingly, a person could have been employed in the aerospace sector prior to January 1, 2009, but not as a full-time engineer and still qualify for the credit after obtaining the required degree. Similarly, an engineer could be assigned to work in the aerospace sector in this state on or after January 1, 2009, and not be excluded from the definition. However, any person employed in the aerospace sector in this state as a full-time engineer prior to January 1, 2009, is excluded from the definition.

4. Protestants contend that the Tax Credits should be allowed because the Tax Commission after review of the submitted information accepted the returns and granted the Credits. The Tax Credit may not be extended by equitable considerations to include persons not clearly within the language of the credit. Conclusion of Law, ¶ 9. Estoppel does not apply against the state because of mistakes or errors of its employees. Conclusion of Law, ¶ 12. Further, upon disclosure from any source other than the return, the Tax Commission is not precluded from making further adjustment, correction or assessment of a return. 68 O.S. 2011, § 221(B).

#### **INTEREST WAIVER REQUEST**

Whether Protestants should receive a waiver of the interest assessed is not addressed since the undersigned may not waive penalty and/or interest. The authority to waive penalty and interest or any portion thereof lies with the three (3) members of the Oklahoma Tax Commission or their designees. 68 O.S. 2011, § 220(A).

**RECOMMENDATION**

Based on the above and foregoing findings of fact and conclusions of law, the income tax protest of Protestants, PROTESTANT AND SPOUSE should 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 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).