

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2020-01-14-05 / NON-PRECEDENTIAL
ID: P-19-088-H
DATE: JANUARY 14, 2020
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 30th day of December, 2019, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 30th day of December 2019, the above-styled and numbered cause comes on for consideration under assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. TAXPAYER and SPOUSE (“Protestants”) appear pro se. The Account Maintenance Division (“Division”), Oklahoma Tax Commission, appears through AGC 1, Assistant General Counsel, and AGC 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On May 8, 2019, the Office of Administrative Law Judges received the protest file for further proceedings consistent with the *Uniform Tax Procedure Code*¹ and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.² On May 8, 2019, the Court Clerk

¹ 68 O.S.2011, § 201 *et seq.*

² OAC §§ 710:1-5-20 through 710:1-5-49.

mailed the Introductory Letter to the Protestants that ALJ, Administrative Law Judge (“ALJ”) had been assigned to this matter, and docketed as Case Number P-19-088-H.

On July 2, 2019, the ALJ issued the Scheduling Order for the parties to submit this matter on stipulations and briefs.³ On August 9, 2019, the parties filed Joint Stipulation of Issue, Facts, and Exhibits, with Joint Exhibits 1 through 5.

On September 3, 2019, the Protestants filed their Brief-In-Chief, with attachments. On September 20, 2019, the Division filed its Brief. The Protestants did not file a Response Brief. The ALJ closed the record and submitted this matter for decision.

STATEMENT OF THE CASE

The Division contends that Protestant, TAXPAYER, is not eligible to claim the Aerospace Credit, because Protestant’s degree was not from a “Qualified Program.” Protestant received a BS Degree in Computer Engineering from Prairie View A&M University before ABET accreditation.

Protestants contend that the Division should allow the Aerospace Credit. Protestants do not dispute that Prairie View A&M University’s BS Degree in Computer Engineering was not accredited by ABET, when Protestant was awarded the degree December 31, 2008, but the degree received accreditation as of October 1, 2009. Protestants argue that the BS Degree in Computer Engineering is the same program accredited by ABET as of October 1, 2009.

STIPULATED

STATEMENT OF THE ISSUE

Whether Protestant TAXPAYER’S undergraduate degree is a “Qualified Program” as defined under 68 O.S. Supp. 2014, § 2357.301(6) as claimed on Protestants’ 2017 Oklahoma

³ OAC § 710:1-5-38.

income tax return, so Protestants may claim the Credit for Employees in the Aerospace Sector (“Aerospace Credit”).

STIPULATED

STATEMENT OF THE FACTS

1. On June 20, 2018, the Division received Protestants’ amended 2017 Form 511NR Oklahoma Nonresident/Part-Year Income Tax Return (“Amended 2017 Return”) on which Protestants claimed the Aerospace Credit.⁴

2. The 2017 Form 564 filed by Protestants lists Protestant Tajare D. Taylor’s College or University as Prairie View A&M University located in Prairie View, Texas with a graduation date of December 13, 2008. The Qualified Program listed on the Form 564 is Computer Engineering.

3. In a letter dated August 8, 2018, the Division adjusted the Protestants’ 2017 Return, disallowing the Aerospace Credit claimed on the Amended 2017 Return, Form 511-CR (“2017 Adjustment Letter”). The 2017 Adjustment Letter reduced Protestants’ refund from \$4,170.00 to \$0.00.

4. The 2017 Adjustment Letter stated that “[d]ocumentation was not provided and/or completed to verify 511-CR credit” and “there [was] a mathematical error on line 23-DISALLOWED OK564 as it appears that the degree was obtained (12/13/2008) before it became a Qualified Program authorized by ABET (10/01/2009).”

5. On September 26, 2018, the Division received Protestants’ letter protesting the Division’s 2017 Adjustment Letter (“Protest Letter”).

6. The Protest Letter was a timely protest to the 2017 Adjustment Letter.

⁴ The ALJ omits references to Joint Exhibits.

7. The Protest Letter states “The Prairie View A&M University Computer Engineering B.S. Program that I graduated under was the same program for which ABET collected, analyzed, and reviewed data to grant their accreditation less than a year later.”

8. Protestants provided the Division with a copy of Protestant TAXPAYER’S degree from Prairie View A&M University and an Official Transcript of Academic Record.

9. The Prairie View A&M University Bachelor of Science (BS) Computer Engineering degree became accredited by the Engineering Accreditation Commission of ABET on October 1, 2009.

10. Protestants’ 2017 Form 564 states that Protestant TAXPAYER began employment with EMPLOYER on May 22, 2017.

11. EMPLOYER meets the definition of a “qualified employer” under 68 O.S. Supp. 2014, § 2357.301(4).

12. The protest for the 2017 tax year is properly before the Administrative Law Judge.

CONCLUSIONS OF LAW

I. JURISDICTION AND BURDEN OF PROOF

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

2. The taxpayer has the burden of proof, to show the action or proposed action of the Oklahoma Tax Commission is incorrect, and in what respect. OAC § 710:1-5-47. *In re Adway Properties, Inc.*, 2006 OK CIV APP 14, ¶9, 130 P.3d 302, 304; *Geoffrey, Inc. v. Oklahoma Tax Com’n*, 2006 OK CIV APP 27, ¶2, 132 P.3d 632, 634. If the taxpayer fails to prove a prima facie case, the protest may be denied solely on the grounds of failure to prove sufficient facts, which would entitle the taxpayer to the requested relief. OAC § 710:1-5-47; *Enterprise Management*

Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n, 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.

3. The burden of proof standard is “preponderance of evidence.” 2 Am.Jur.2d *Administrative Law* § 357. “Preponderance of the evidence” means “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” BLACK’S LAW DICTIONARY 1431 (11th ed. 2019). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the existence of the facts supporting the claim are more probable than their nonexistence. 2 Am.Jur.2d *Administrative Law* § 357.

4. An order of the Tax Commission must be supported by substantial evidence. *Dugger v. State ex rel. Oklahoma Tax Com'n*, 1992 OK 105, 834 P.2d 964, 968. Likewise, the audit upon which a portion of the record is formed and order issued, must be supported by substantial evidence. OTC Order No. 2003-07-22-09, 2003 WL 23471117.

5. An audit is supported by substantial evidence when an evidentiary foundation for the audit has been established. Usually the evidentiary foundation will be established by the records reviewed by the auditor. Where an evidentiary foundation has been established, the taxpayer must prove the action of the Tax Commission in assessing the tax is incorrect, and in what respect. OAC § 710:1-5-47; *Enterprise Management Consultants, Inc.*, *supra*. However, where an evidentiary foundation has not been laid or the records upon which the audit is based establish no basis for assessing a tax, the audit and assessment in the initial instance cannot be sustained as supported by substantial evidence. *Dugger*, *supra*.

II. AEROSPACE EMPLOYEE INCOME TAX CREDIT

6. 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.Supp.2014, § 2357.304(A).⁵ The Aerospace Credit is a non-refundable credit and, if not used, may be carried over, in order, to each of the five (5) subsequent taxable years. 68 O.S.Supp.2014, § 2357.304(B) and (C).⁶

7. A “Qualified Employee” under the Aerospace 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).

8. The definition of “Qualified Employee” was amended in 2014. 68 O.S.Supp.2014, § 2357.301(5).⁷ The part of the definition pertinent to this protest provides:

“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. *Id.*

9. Both the 2008 and 2014 definitions of “Qualified Employee” require the award of “an undergraduate or graduate degree from a qualified program by an institution.” A “Qualified Program” under the Aerospace Act is “a program that has been accredited by the Engineering

⁵ Substituted “January 1, 2018” for “January 1, 2015” as the ending date of the credit. Laws 2014, c. 30, § 4, eff. Nov. 1, 2014. Amended at Laws 2017, c. 153, § 2, to provide an end date for the credit of “before January 1, 2026.”

⁶ See OAC § 710:50-15-109. See also 75 O.S.2011, § 306(C) and *Branch Trucking Co. v. State, ex rel. Oklahoma Tax Com’n*, 1990 OK 41, 801 P.2d 686.

⁷ Laws 2014, c. 30, § 2, eff. Nov. 1, 2014.

Accreditation Commission of the Accreditation Board of Engineering and Technology (“ABET”).” 68 O.S.Supp.2014, § 2357.301(6). An “institution” under the Aerospace Act is “an institution within the Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.” 68 O.S.Supp.2014, § 2357.301(3).

III. STATUTORY CONSTRUCTION AND OPERATION

10. “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 Com’n v. Texaco Exploration & Production, Inc.*, 2005 OK 52, ¶7, 131 P.3d 705, 707. The basis for the Division’s action and the protest thereto are governed by the Aerospace Development Act (“Aerospace Act”)⁸ and Oklahoma Income Tax Code (“Income Tax Code”).⁹

11. 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, 337; *Wootten v. Oklahoma Tax Com’n*, 1935 OK 54, 170 Okla. 584, 40 P.2d 762.

12. 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, ¶11, 230 P.3d 853, 859. The starting point for any inquiry into legislative intent is the language of the statute. *Redmond v. Cauthen*, 2009 OK CIV APP 46, ¶5, 211 P.3d 233, 235. When the words of a statute are plain and unambiguous, no occasion exists to employ rules of construction, and the statute will be accorded its clear and definite meaning. *Id.*

⁸ Sections 2357.301 through 2357.304 of the code, as amended. Added by Laws 2008, c. 417, § 1, eff. Jan. 1, 2009.

⁹ 68 O.S.Supp.2011, § 2351 *et seq.*

13. 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* ¶11. 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, ¶6, 136 P.3d 656, 658.

14. 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, ¶11, 226 P.3d 682, 685, 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 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, ¶7, 176 P.3d 1227, 1229. 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, ¶16, 184 P.3d 518, 525 (citations omitted). 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. Cheek*, 2007 OK 97, ¶9, 179 P.3d 606, 611 (citations omitted). 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, 886 (citations omitted).

15. Tax statutes are penal. *Williams v. Smith & Nephew, Inc.*, 2009 OK 36, ¶8, 212 P.3d 484, 486; *Globe Life and Acc. Ins. Co. v. Oklahoma Tax Com'n*, 1996 OK 39, 913 P.2d 1322, 1327 (citations omitted). Penal statutes are to be strictly construed. *Mid-Continent Pipeline Co. v. Crauthers*, 1954 OK 61, 267 P.2d 568, 570. 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 Ed. 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* 1327.

16. "Statutes exempting property from taxation are to be strictly construed against the claimant." *American Airlines, Inc. v. State, ex rel. Oklahoma Tax Com'n*, 2014 OK 95, ¶30, 341 P.3d 56, 64, *citing Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 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, 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, 22 Okla. 265, 100 P. 559, 571.

17. "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, 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* ¶31, *citing Blitz*, *supra* ¶16.

18. 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. State, ex rel. Oklahoma Tax Com'n*, 1994 OK 103, 882 P.2d 65, 68. 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. *United Airlines, Inc. v. State Bd. of Equalization*, 1990 OK 29, 789 P.2d 1305, 1311-1312 (citations omitted); 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, 279 (citations omitted).

19. Every statute is deemed constitutionally valid until a court of competent jurisdiction declares otherwise. *State ex rel. York v. Turpen*, 1984 OK 26, 681 P.2d 763, 765. The Tax Commission is not empowered to decide the constitutional validity of a taxing statute. *Dow Jones & Company, Inc. v. State, ex rel. Oklahoma Tax Com'n*, 1990 OK 6, 787 P.2d 843, 845. However, the Tax Commission is vested with the power under Okla. Const. art. 7, § 1 to resolve, on a case-by-case basis, questions regarding the constitutional or unconstitutional application of a statute to a particular party in a proceeding before it with the decision binding only on the parties to the case. *Robinson v. Fairview Fellowship Home for Senior Citizens, Inc.*, 2016 OK 42, ¶12, 371 P.3d 477, 483 (citations omitted).

20. The Legislature, through tax statutes may "classify persons and the origin of their incomes, and may apportion deductions or exemptions." *Fent v. State ex rel. Oklahoma Tax Com'n*, 2004 OK 59, ¶9, 99 P.3d 241, 245, rehearing denied, citing *Walker v. Oklahoma Tax*

Com'n, 1945 OK 264, 196 Okla. 207, 164 P.2d 242, 243. The classifications and apportionment must be reasonable, relate to the object of taxation, and operate with reasonable uniformity or equality on the classes created. *Id.*, citing *McCutchan v. Oklahoma Tax Com'n*, 1942 OK 416, 191 Okla. 578, 132 P.2d 337, 339. Large leeway is afforded states in making classifications for income tax purposes and drawing lines under their system of taxation, and the fact that it may favor a certain class does not demonstrate the arbitrary nature of the distinction if the distinction is reasonable or based on a difference in state policy. *Oklahoma Tax Commission v. Smith*, 1980 OK 74, 610 P.2d 794, 805. A state may select its subjects of taxation and classify them, taxing one subject or class and exempting other subjects or classes. *Fent*, *supra* ¶10, citing *In re Assessment of Sales Tax Against Knapp*, 1939 OK 428, 185 Okla. 584, 95 P.2d 92, 93-94.

21. The Equal Protection Clause requires only that a classification rationally relate to a legitimate state interest. *EOG Resources Marketing, Inc. v. Oklahoma State Board of Equalization*, 2008 OK 95, ¶34, 196 P.3d 511, 525 (citations omitted). Unless a classification jeopardizes the exercise of a fundamental right or is based on an inherently suspect characteristic, a classification which rationally furthers a legitimate state interest will withstand an equal protection challenge. *Oklahoma Ass'n for Equitable Taxation v. City of Oklahoma City*, 1995 OK 62, 901 P.2d 800, 806 (citations omitted). A tax classification is invalid only if it discriminates between persons or property in like situations, or is arbitrary, illusory or has no fair or substantial relation to the purpose for which it is made. *Fent*, *supra* ¶18, citing *Suglove v. Oklahoma Tax Commission*, 1979 OK 168, 605 P.2d 1315, 1320 (citations omitted).

22. Classifications made by the legislature are presumed to be valid and constitutional. *Fent*, *supra* ¶10, citing *Knapp*, *supra* 94, citing *In Re Gross Production Tax Of Wolverine Oil Co.*, 1915 OK 792, 53 Okla. 24, 154 P. 362, 367. “In cases where the constitutionality of a state

tax statute is at issue, the taxpayer bears the heavy burden of proving the statute is unconstitutional.” *CDR Systems Corp. v. Oklahoma Tax Comm’n*, 2014 OK 31, ¶10, 339 P.3d 848, 85, citing *EOG Marketing*, *supra* ¶13. An equal protection challenge to an income tax statute will be decided in reference to the general classification, rather than by the chance incidents of the tax in a particular situation on a certain taxpayer, for inequalities that result not from hostile discrimination but occasionally in applying a system that is not arbitrary will not invalidate the act. *Smith*, *supra* 805-806. “Every presumption is to be indulged in favor of the constitutionality of a statute.” *CDR*, *supra* ¶10, citing *Thomas v. Henry*, 2011 OK 53, ¶8, 260 P.3d 1251, 1254.

ANALYSIS

The definitions of “Qualified Employee” using identical language plainly and unambiguously require the employee to have an undergraduate or graduate degree from a “Qualified Program.” Only those programs accredited by ABET are “Qualified Programs.”

The stipulated issue is not a case of first impression. In OTC Order No. 2019-01-08-035, the Commission concluded that the Taxpayer was not a “Qualified Employee” because the degree was not ABET accredited at the time of graduation. Later, the degree was ABET accredited retroactively, but not back to the date the Taxpayer graduated. The Division’s adjustment to the Protestants’ 2017 Return is statutorily correct and proper.

CONCLUSION

The Protestants have failed to meet their burden of proof, by preponderance of the evidence, that the Division's disallowance of the Aerospace Credit claimed by the Protestants on their 2017 Return is incorrect, and in what respect.

RECOMMENDATIONS

The ALJ recommends denying the protest, as set forth.

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).