

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2020-04-14-04 / NON-PRECEDENTIAL
ID: P-19-203-K
DATE: APRIL 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 28th day of January, 2020, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 28th day of January, 2020, the above styled and numbered cause comes on for decision under assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Protestants, PROTESTANT and SPOUSE appear pro se. The Account Maintenance Division (“Division”), Oklahoma Tax Commission is represented by AGC, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Protestants filed an Oklahoma Nonresident/Part-Year Income Tax Return for the 2016 tax year claiming the \$5,000.00 Credit for Employees in the Aerospace Sector (“Tax Credit”) and a refund of \$4,187.00. Protestant (PROTESTANT) also filed Oklahoma Nonresident/Part-Year Income Tax Returns for the 2017 and 2018 tax years claiming the Tax Credit and the carryforward of any unused portion of the Tax Credit from the previous year and refunds of \$8,903.00 and

\$11,685.00, respectively. Upon audit of the returns, the Division disallowed the Tax Credits and by letters dated June 6, 2019, notified Protestants or Protestant that the refund for 2016 had been adjusted to zero with a tax due of \$77.00, and the refunds for 2017 and 2018 had been reduced to \$3,167.00 and \$6,685.00, respectively. Protestant timely protested the proposed adjustments by letter dated July 14, 2019.

On September 25, 2019, the protest and Division records were referred to the Office of Administrative Law Judges to initiate proceedings under 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 No. P-19-203-K.

A pre-hearing teleconference was scheduled for November 13, 2019. A *Joint Proposed Scheduling Order* filed October 17, 2019, which proposed procedure and dates were adopted as the *Scheduling Order* of the Court issued October 22, 2019. A *Joint Stipulation of Issue, Facts, and Exhibits* (“*Joint Stipulation*”) filed October 31, 2019, with Joint Exhibits 1 through 10 attached thereto. [*Protestant’s*] *Brief* and the *Brief of the Account Maintenance Division* were filed as instructed. On December 18, 2019, the record closed and the protest submitted for decision.³

FINDINGS OF FACT

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

A. The parties stipulate to the following:⁴

1. On April 14, 2017, the Division received Protestants’ 2016 Form 511NR Oklahoma Nonresident/Part-Year Income Tax Return (“2016 Return”) on which Protestants claimed the Aerospace Credit.

2. On April 14, 2018, the Division received Protestants’ [sic]⁵ 2017 Form

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

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

³ OAC 710:1-5-38 and 710:1-5-39(a).

⁴ References to exhibits in support of the statements are omitted.

⁵ Protestant, PROTESTANT’S filing status for the 2017 and 2018 tax years was “single”.

511NR Oklahoma Nonresident/Part-Year Income Tax Return (“2017 Return”) on which Protestants [sic]⁶ claimed the Aerospace Credit.

3. On February 18, 2019, the Division received Protestants’ [sic] 2018 Form 511NR Oklahoma Nonresident/Part-Year Income Tax Return (“2018 Return”) on which Protestants [sic] claimed the Aerospace Credit.

4. The 2016 Form 564 filed by Protestants lists Protestant, PROTESTANT’S College or University as University of Illinois (Urbana-Champaign) with a graduation date of May 21, 1982. The Qualified Program listed on the Form 564 is Computer Science Engineering.

5. The 2018 Form 564 filed by Protestants [sic] lists Protestant, PROTESTANT’S College or University as University of Illinois (Urbana-Champaign) with a graduation date in 1982. The Qualified Program listed on the Form 564 is Computer Science Engineering.

6. In a letter dated March 12, 2019 (Letter ID: L1604358016), the Division requested additional information to process Protestants’ [sic] 2018 return [sic]. The letter stated “provide completed Form(s) “Form 564 and diploma with major shown or degree transcript.”

7. Protestants [sic] provided the Division with a copy of Protestant, PROTESTANT’S degree from the University of Illinois (Urbana-Champaign). The degree lists a B.S. in Computer Science with a graduation date of May 16, 1982.

8. In a letter dated June 6, 2019 (Letter ID: L1320378240) (“2016 Adjustment Letter”), the Division adjusted the Protestants’ 2016 Return by disallowing the Aerospace Credit. The 2016 Adjustment Letter reduced Protestants’ refund from \$4,187.00 to \$0.00.⁷

9. The 2016 Adjustment Letter stated that “511CR form line 28 (Bachelor of Computer Science degree was not accredited until 2000. TP graduated in 1982) has been changed.”

10. In a letter dated June 6, 2019 (Letter ID: L1720172416) (“2017 Adjustment Letter”), the Division adjusted the Protestants’ [sic] 2017 Return by disallowing the Aerospace Credit. The 2017 Adjustment Letter reduced Protestants’ [sic] refund from \$8,903.00 to \$3,167.00.

11. The 2017 Adjustment Letter stated that “511CR form line 23 (Bachelor of Computer Science degree was not accredited until 2000. TP graduated in 1982) has been changed.”

12. In a letter dated June 6, 2019 (Letter ID: L1496969088) (“2018 Adjustment Letter”), the Division adjusted the Protestants’ [sic] 2018 Return by disallowing the Aerospace Credit. The 2018 Adjustment Letter reduced Protestants’ [sic] refund from \$11,685.00 to \$6,685.00.

⁶ See, note 5.

⁷ The 2016 Adjustment Letter assessed a tax due of \$77.00. Joint Exhibit 6.

13. The 2018 Adjustment Letter stated that “511CR form line 20 (Bachelor of Computer Science degree was not accredited until 2000. TP graduated in 1982) has been changed.”

14. On July 22, 2019, the Division received Protestants’ letter protesting the Division’s 2016, 2017, and 2018 Adjustment Letters (“Protest Letter”).

15. The Protest Letter was a timely protest to the 2016, 2017, and 2018 Adjustment Letters.

16. The Protest letter states “The 564 form states that the institution must have the ABET Accreditation not that the accreditation had to occur prior to awarding the degree. Note that a program’s ABET accreditation includes an evaluation of the history of the program’s rigor from prior years for its qualification.”

17. The University of Illinois (Urbana-Champaign) Bachelor of Science (BS) Computer Science degree became accredited by the Computing Accreditation Commission of ABET on October 1, 2000.

18. Protestants’ 2016 Form 564 states that Protestant began employment with Boeing Company on June 2, 2017.

19. Protestants’ [sic] 2018 Form 564 states that Protestant began employment with Boeing on June 3, 2016.

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

21. The protest for the 2016, 2017, and 2018 tax years is properly before the Administrative Law Judge.

B. Additional findings:

1. The Computer Engineering program at the University of Illinois (Urbana-Champaign) has been accredited by the Engineering Accreditation Commission of ABET since October 1, 1978. Joint Exhibit 10.

ISSUES AND CONTENTIONS

The stipulated issue is “[w]hether Protestant, PROTESTANT’S undergraduate degree is a ‘Qualified Program’ as defined under 68 O.S. Supp. 2014, § 2357.301(6) as claimed on Protestants’ 2016, 2017, and 2018 Oklahoma income tax returns, so that Protestants may claim the Credit for Employees in the Aerospace Sector (‘Aerospace Credit’).”

The Division contends that Protestants are not eligible to claim the Credit, because PROTESTANT is not a “qualified employee”. In support, the Division argues that the degree awarded to PROTESTANT was not from a “qualified program” because the degree was awarded

prior to ABET accreditation.

Protestant contends that the Credit should be allowed. In support, Protestant argues that the law only requires ABET accreditation, not ABET accreditation at the time of the awarding of the degree.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter 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(c) and 221(D).⁸

2. The taxpayer must 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 Commission*, 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 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).

3. The burden of proof standard is “preponderance of evidence.” 2 Am.Jur.2d *Administrative Law* § 357. “Preponderance of evidence” means “[e]vidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not * * * evidence which is more credible and convincing to the mind * * * that which best accords with reason and probability.” BLACK’S LAW DICTIONARY 1064 (5th ed. 1979). Each element of the claim must be supported by reliable, probative, and substantial evidence of sufficient quality and quantity as to show the existence

⁸ Although the audit of Protestants’ Oklahoma income tax returns resulted in an adjustment to each of the returns, the adjustment to the 2017 and 2018 returns did not result in the assessment of tax, whereas the adjustment to the 2016 return resulted in the assessment of income tax and therefore, different applicable jurisdictional provisions.

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 Commission**, 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. Oklahoma Tax Commission Order No. 2003-07-22-09, 2003 WL 2347117.

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 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 the Division's action, the audit in the initial instance cannot be sustained as supported by substantial evidence. **Dugger**, supra.

II. AEROSPACE EMPLOYEE INCOME TAX CREDIT

1. "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 the protest thereto are governed by the Aerospace Development Act ("Act")⁹ and Oklahoma Income Tax Act ("Code")¹⁰.

2. 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 Code to a qualified employee for taxable years beginning after December 31, 2008. 68 O.S.Supp.2014, § 2357.304(A).¹¹ The Tax Credit is a non-

⁹ 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).

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

¹¹ 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

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).

3. For the years at issue, a “qualified employee” under the Act is defined at 68 O.S.Supp.2014, § 2357.301(5) which provides in pertinent part:

“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.

4. The definition of “qualified employee” requires the award of “an undergraduate or graduate degree from a qualified program by an institution”. A “qualified program” under the Act is “a program that has been accredited by the Engineering Accreditation Commission of the Accreditation Board of Engineering and Technology (ABET)”. 68 O.S.Supp.2014, § 2357.301(6). An “institution” under the 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. 2011, § 2357.301(3).

III. STATUTORY CONSTRUCTION AND OPERATION

1. 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.*

2. 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

date for the credit of “before January 1, 2026”.

susceptible to more than one reasonable interpretation. *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, ¶ 6, 136 P.3d 656, 658.

3. 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. Check*, 2007 OK 97, ¶ 9, 179 P.3d 606, 611. 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).

4. Tax statutes are penal. *Williams v. Smith & Nephew, Inc.*, 2009 OK 36, ¶ 8, 212 P.3d 484, 486; *Globe Life and Accident Insurance Company v. Oklahoma Tax Commission*, 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 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* 1327.

5. “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, 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).

6. “The rule of strict construction comes into play only when the language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity.” *Colcord v. Granzow*, 1928 OK 211, 137 Okla. 194, 278 P. 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).

ANALYSIS

1. The definition of “qualified employee” plainly and unequivocally requires the employee to have an undergraduate or graduate degree from a qualified program. A program is a “qualified program” only if it “has been accredited” by the Engineering Accreditation Commission of ABET. The Legislature’s use of the present perfect tense (“has been accredited”) to define a “qualified program” shows the intent that the program be accredited at the time the degree is awarded.

2. Protestant has the burden of proof. *OAC 710:1-5-47*. Protestant failed to show his degree is from a qualified program. The evidence shows the Computer Science program at the University of Illinois (Urbana-Champaign) was not ABET accredited at the time he was awarded

his degree.¹² Further, the Computer Science program at the University of Illinois (Urbana-Champaign) is accredited by the Computing Accreditation Commission of ABET, not the Engineering Accreditation Commission of ABET. Protestant is not a “qualified employee” under the Act.

RECOMMENDATION

The protest to the disallowance of the Aerospace Credit and the resulting proposed adjustments to the 2016, 2017 and 2018 Oklahoma returns 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).

¹² In comparison, the Computer Engineering program at the University of Illinois (Urbana-Champaign) has been ABET accredited since October 1, 1978.