

08-2247
AUDIT
SIGNED 08-11-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-2247 Account No. ##### Tax Type: Income Tax Year: 2005 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 4, 2009 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5.

On February 29, 2008, Auditing Division of the Utah State Tax Commission (“Division”) issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to PETITIONER 1 & PETITIONER 2 (“Taxpayers”). In the Statutory Notice, the Division indicated that the Taxpayer owed \$\$\$\$ in additional tax and \$\$\$\$ in interest as of the date of the notice as a result of the Division’s disallowance of a clean fuel vehicle tax credit for the 2005 tax year. The Division maintains that the Toyota Prius for which the Taxpayer claimed a credit was not eligible for a credit under Utah law. The Division supported its denial with an analysis of Utah law including, among other factors, a lack of an “incremental cost” for a Toyota Prius because Toyota Motor Company has not offered for sale a non-hybrid Toyota Prius. The Taxpayer filed this appeal, claiming that the Toyota Prius is the most fuel-efficient car in America in its class and that credit should be allowed because the federal government has certified the Toyota Prius as eligible for the federal clean-burning fuel deduction.

APPLICABLE LAW

1. Utah Code Ann. §59-10-127¹ (2005) provides for a clean fuel vehicle tax credit, as follows in pertinent part:

- (1) As used in this section:
 - (a) "Board" means the Air Quality Board created in Title 19, Chapter 2, Air Conservation Act.
 - (b) "Certified by the board" means that:
 - (i) a motor vehicle on which conversion equipment has been installed meets the following criteria:
 - (A) before the installation of conversion equipment, the vehicle does not exceed the emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51, Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle;
 - (B) the motor vehicle's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(b), is less than the emissions were before the installation of conversion equipment; and
 - (C) a reduction in emissions under Subsection (1)(b)(i)(B) is demonstrated by:
 - (I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board;
 - (II) testing the motor vehicle, before and after installation of the conversion equipment, in accordance with 40 C.F.R. Part 86, Control Emissions from New and In-use Highway Vehicles and Engines, using all fuels the motor vehicle is capable of using; or
 - (III) any other test or standard recognized by board rule; or
 - (ii) special mobile equipment on which conversion equipment has been installed meets the following criteria:
 - (A) the special mobile equipment's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(c), is less than the emissions were before the installation of conversion equipment; and
 - (B) a reduction in emissions under Subsection (1)(b)(ii)(A) is demonstrated by:
 - (I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board; or
 - (II) any other test or standard recognized by the board.
 - (c) "Clean fuel grant" means a grant the taxpayer receives under Title 19, Chapter 1, Part 4, Clean Fuels Conversion Program Act, for reimbursement of a portion of the incremental cost of the OEM vehicle or the cost of conversion equipment.

¹ The 2005 version of Utah law is cited, unless noted otherwise. In 2006, Section 59-10-127 was amended and renumbered to Utah Code. Ann. §59-10-1009.

(d) "Conversion equipment" means equipment referred to in Subsection (2)(b) or (2)(c).

(e) "Incremental cost" has the same meaning as in Section 19-1-402.

(f) "OEM vehicle" has the same meaning as in Section 19-1-402.

(g) "Special mobile equipment":

(i) means any mobile equipment or vehicle not designed or used primarily for the transportation of persons or property; and

(ii) includes construction or maintenance equipment.

(2) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2005, a taxpayer may claim a tax credit against tax otherwise due under this chapter in an amount equal to:

(a) 50% of the incremental cost of an OEM vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum tax credit of \$3,000 per vehicle, if the vehicle:

(i) is fueled by propane, natural gas, or electricity;

(ii) is fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(a)(i); or

(iii) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.;

.....

(3) An individual shall provide proof of the purchase of an item for which a tax credit is allowed under this section by:

(a) providing proof to the board in the form the board requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) retaining the written statement described in Subsection (3)(b).

.....

2. For purposes of the clean fuel vehicle tax credit, Utah Code Ann. §19-1-402 defines "incremental cost" and "OEM vehicle," as follows:

.....

(7) "Incremental cost" means the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.

(8) "OEM vehicle" means a vehicle manufactured by the original vehicle manufacturer or its contractor to use a clean fuel.

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3. Instructions concerning the clean fuel vehicle tax credit are provided on page 10 of the 2005 Instruction Booklet for the TC-40 (Individual Income Tax form), as follows:

(05) Clean Fuel Vehicle Credit (UC §59-10-127)

Complete form TC-40V, Clean Fuel Vehicle Tax Credit, with the Division of Air Quality approval stamp, verifying the credit has been approved. Do not send form

TC-40V with your return. Keep the form and all related documents with your records.

To qualify you must have:

- Purchased a vehicle which is registered in Utah, for which this credit has not been taken, that was manufactured to use propane, natural gas, or electricity, or
- Purchased and installed equipment to convert a vehicle registered in Utah to use propane, natural gas, or electricity.

Note: A hybrid vehicle qualifies only if the same vehicle model is manufactured without the clean-fuel fueling system and the hybrid vehicle otherwise meets the requirements for a clean fuel vehicle.

Contact the Division of Air Quality, 150 N 1950 W, SLC, UT 84116, telephone (801) 536-4026 to obtain form TC-40V, approval, and for additional information.

4. UCA §59-1-1417 (2009) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
 - (a) required to be reported; and
 - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

5. Under Utah law, “tax credit statutes are to be strictly construed against the taxpayer.” *MacFarlane v. State Tax Comm’n*, 2006 UT 18, ¶11.

DISCUSSION

In 2005, Utah law provided a tax credit for certain vehicles. The statute enacting that credit provided that “a taxpayer may claim a tax credit against tax otherwise due under this chapter in an amount equal to . . . 50% of the incremental cost of an OEM vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum tax credit of \$\$\$\$ per vehicle.” Utah Code Ann. §59-10-127(2) (2005). The phrase “incremental cost,” as it is used in this statute, is defined under Utah Code Ann. §19-1-402(7) (2005) as

“the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.”

Assuming that a hybrid system in a Toyota Prius qualifies as a clean fuel system, a literal reading of Utah Code Ann. §19-1-402(7) (2005) would indicate that a Toyota Prius has no incremental cost because Toyota Motor Company has not offered a Toyota Prius in a non-hybrid model. The Taxpayer acknowledges that Toyota has not offered for sale a non-hybrid Prius. Nevertheless, the Taxpayer urges the Commission to make a broad reading of Utah statutes to create an incremental cost for a Toyota Prius. The Taxpayer argues that this would be consistent with federal law, which has found an incremental cost sufficient to support a \$\$\$\$ federal tax credit. The Taxpayer also argues that a broad reading would be consistent with the spirit of Utah’s clean fuel vehicle credit, because fuel economy for the Toyota Prius exceeds other vehicles that have qualified for Utah’s tax credit.

The problem with the broad statutory reading that the Taxpayer urges is that the code section at issue is a tax credit statute. The Utah Supreme Court has provided instruction that “tax credit statutes are to be strictly construed against the taxpayer.” *MacFarlane v. State Tax Comm’n*, 2006 UT 18, ¶11. Strict construction of Utah law requires that the Commission allow a credit only if the plain language of a statute allows the credit, even though a broader interpretation in the spirit of the law or a different federal statute may allow the credit.

DECISION AND ORDER

On the basis of the foregoing, the Commission denies the taxpayers’ appeal and sustains the Division’s assessment in its entirety. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2009

Clinton Jensen, Administrative Law Judge

Appeal No. 08-2247

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _____ day of _____, 2009

Pam Hendrickson
Commissioner Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay any balance due as a result of this order within the thirty days from the date hereon may result in an additional penalty. If you do not plan to request a Formal Hearing but wish instead to submit an Offer in Compromise due to financial hardship or other reason or to discuss payment arrangements, please telephone Taxpayer Services Division at (801) 297-6922.

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