

08-2512  
INCOME  
TAX YEAR: 2005  
SIGNED: 08-09-2010  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON  
EXCUSED: D. DIXON  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1 & PETITIONER 2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No.    08-2512  Account No.   ##### Tax Type:    Income Tax Year:    2005  Judge:        Chapman
---	---

---

**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 29, 2009.

PETITIONER 1 and PETITIONER 2 (the “Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of individual income tax for the 2005 tax year. On November 17, 2008, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest (as of December 17, 2008), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The Division states that it imposed the assessment to disallow a \$\$\$\$ “clean fuel vehicle tax credit” that the taxpayers claimed for a Toyota Prius they purchased in 2005. The Division claims that a Toyota Prius does not qualify for a 2005 credit, even though it is an “electric-hybrid vehicle.” First, the Division states that the credit is based on the “incremental cost” of a qualifying vehicle. Because there is no model of the Toyota Prius that is manufactured without a clean fuel fueling system, the Division contends that an “incremental cost” is unavailable for this vehicle. Second, the Division states that a vehicle may qualify for the credit only if the Utah Air Quality Board (“Board”) certifies that the vehicle qualifies for the credit. The Board has determined that a Toyota Prius does not qualify for the 2005 credit and has not signed a Form TC-40V certifying that the vehicle is eligible for the credit. For these reasons, the Division asks the Commission to sustain its assessment.

The taxpayers believe that the Toyota Prius should qualify for the credit because the vehicle gets higher gas mileage than most other vehicles, including some other electric-hybrid vehicles that qualify for the 2005 credit. The taxpayers admit that under 2005 law, as written, it appears that the Toyota Prius does not qualify for the credit for the reasons stated by the Division. However, the taxpayers believe that in order to be fair, the Commission should allow them to receive a credit for their Toyota Prius. The taxpayers point out that the Legislature has recently passed legislation to allow a vehicle such as a Toyota Prius to receive a \$\$\$\$ credit. For these reasons, the taxpayers ask the Commission to allow the \$\$\$\$ credit that they took for the 2005 tax year and to overturn the Division’s assessment.

APPLICABLE LAW

1. Utah Code Ann. §59-10-127<sup>1</sup> (2005) provides for a clean fuel vehicle tax credit, as follows in pertinent part:

(1) As used in this section:

---

<sup>1</sup> 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.

- (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.
- (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, UCA §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.

....

3. The Utah Air Quality Board adopted rules concerning the clean fuel vehicle tax credit.

The rules cited herein are the ones in effect for the 2005 tax year. The rules have since been amended. In Utah Admin. Rule R307-121-1, the Board explains that the purpose of the rule is to provide “taxpayers with the criteria and procedures to obtain certification from the board that a vehicle is eligible for a credit under 59-7-605 and 59-10-127.”

4. In Utah Admin. Rule R307-121-4, the Board provides guidance for providing proof and obtaining certification that a vehicle is eligible for the credit, as follows:

To obtain certification from the board that a vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:

- (1) (a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle, or  
(b) if within a county with an inspection and maintenance (I/M) program, a copy of the vehicle inspection report from an approved I/M station showing that the vehicle meets emission standards for all installed fuel systems, or  
(c) a signed statement by an American Service Excellence (ASE) certified technician that includes the vehicle identification number and states that the vehicle is an eligible OEM vehicle, or  
(d) if the vehicle is a government agency fleet vehicle, documentation from the appropriate motorpool or government agency representative that sold the vehicle that the vehicle is an OEM vehicle, and
- (2) an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN).

5. Utah Admin. Rule R307-121-9 provides that "[t]he executive secretary will acknowledge receipt of proofs specified in R307-121 by signing the relevant written statement provided on forms prescribed by the State Tax Commission."

6. Instructions concerning the clean fuel vehicle tax credit are provided on page 10 of the 2005 Instruction Booklet for the TC-40 (Utah 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.

7. 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.

#### DISCUSSION

The Legislature has amended the clean fuel vehicle tax credit several times in the past few years. For the 2006 tax year, Section 59-10-1009 (which had been numbered as Section 59-10-127 in 2005) was amended to preclude all electric-hybrid vehicles from receiving a clean fuel vehicle tax credit. For the 2009 tax year, Section 59-10-1009 was amended to allow vehicles meeting certain requirements, including electric-hybrid vehicles, to receive the credit.

However, the law in effect for the 2005 tax year at issue is different from the law subsequently enacted. In 2005, Section 59-10-127 did not specifically address electric-hybrid vehicles. Instead, Section 127(2),(3) provided that a clean fuel vehicle could receive a credit of up to 50% of its “incremental cost,” as defined in Section 19-1-402(7), if the taxpayer received a written statement from the Air Quality Board. For the 2005 tax year, the parties agree that the Board would not approve and provide a written statement showing that a Toyota Prius qualified for the credit. The Division explained that the Board would not approve the

Appeal No. 08-2512

Toyota Prius for a credit because the vehicle is not manufactured without a clean fuel fueling system, thus preventing one from determining the incremental cost of a model with a clean fuel fueling system.

The Division admits that for 2005, the Board approved the credit for two other electric-hybrid vehicles, specifically the Toyota Highlander and the Honda Civic. However, both of these vehicle models are manufactured without clean fuel fueling systems. As a result, the incremental cost of these vehicles could be determined.

The taxpayers state that the TurboTax program they used to determine their 2005 tax liability did not indicate that some electric-hybrid vehicles qualified for the credit while others did not. In addition, they state that TurboTax did not indicate that they had to obtain a Form TC-40V from the Board to qualify for the credit. However, in the Tax Commission's Instruction Booklet for 2005 Individual Income Taxes, the Commission informed all taxpayers that "[a] hybrid vehicle qualifies only if the same vehicle model is manufactured without the clean-fuel fueling system" and that they should contact the Division of Air Quality to obtain the TC-40V approval form in order to verify that the credit has been approved.

The taxpayers also state that they determined that a tax credit of \$\$\$\$ would be reasonable for their 2005 Toyota Prius based on a comparison of the price of a Toyota Prius and the price of a Toyota Camry, a vehicle model without a clean fuel fueling system. They determined that the price difference between the two vehicles was approximately \$\$\$\$ and used this amount as a substitute for "incremental cost." Because the credit allowed in 2005 is 50% of "incremental cost," they took a tax credit of \$\$\$\$\$. The Commission, however, does not find this methodology to be appropriate when determining the "incremental cost" of a Toyota Prius. "Incremental cost" is defined in Section 19-1-402 to mean "the difference between the cost of the OEM vehicle and the *same vehicle model* manufactured without the clean fuel fueling system" (emphasis added). The definition does not provide for "incremental cost" to be determined by comparing the difference in costs between two *different vehicle models*.

Appeal No. 08-2512

The Division also proffered evidence concerning Toyota's costs associated with acquiring and installing the electric motor and related equipment in a Toyota Prius. A vice president of Toyota Motor Sales, U.S.A, Inc. signed an October 7, 2004 statement indicating that the costs to acquire and install such equipment on a 2005 Toyota Prius exceeded \$\$\$\$\$. However, the Commission finds this information insufficient to show that a Toyota Prius qualifies for the 2005 credit. As explained earlier, the "incremental cost" of a Toyota Prius cannot be calculated in accordance with Section 19-1-402(7) because the vehicle is not manufactured without a clean fuel fueling system. Furthermore, in accordance with Section 59-10-127(3)(b) and Rule 307-121-9, the Air Quality Board is required to sign a written statement, Form TC-40V, certifying that a vehicle qualifies for the credit. For the 2005 tax year, the Board has determined that a Toyota Prius does not qualify for the credit and has not signed the required documentation. For these reasons, the Commission finds that the taxpayers do not qualify for the 2005 clean fuel vehicle tax credit that they took for their Toyota Prius.

DECISION AND ORDER

Based on 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



Appeal No. 08-2512

---

Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Pam Hendrickson  
Commission 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.

KRC/08-2512.int