

10-2442
INCOME TAX
YEAR: 2007
SIGNED: 01-10-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-2442 Account No. ##### Tax Type: Income Tax Tax Year: 2007 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Judge

Appearances:

For Petitioner: PETITIONER 1, *Pro Se*
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5, on May 3, 2011. Taxpayer is appealing an audit of his 2007 income tax return. He was assessed additional tax in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ through September 16, 2010. Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

A clean fuel vehicle tax credit is allowed pursuant to Utah Code Ann. §59-10-1009(2)¹, as follows:

- (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2010, a claimant, estate, or trust may claim a nonrefundable tax credit against tax otherwise due under this chapter in an amount equal to:
 - (ii) 50% of the cost of equipment for conversion, if certified by the board, of a motor vehicle registered in Utah minus the amount of any clean fuel conversion grant

¹ The Commission cites to the 2007 version of the Individual Income Tax Act.

- received, up to a maximum tax credit of \$2,500 per vehicle, if the motor vehicle:
- (A) Is to be fueled by propane, natural gas, or electricity;
 - (B) Is to be 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)(ii)(A); or
 - (C) Will meet the federal clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec 7521 et. Seq.; and

Subsection (4) of Utah Code Ann. §59-10-1009 places certain limitations on the clean fuel vehicle tax credit, as follows:

- Except as provided by Subsection (5), the tax credit under this section is allowed only:
- (a) against any Utah tax owed in the taxable year by the claimant, estate, or trust;
 - (b) in the taxable year in which the item is purchased for which the credit is claimed; and
 - (c) once per vehicle.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Division issued a Notice of Deficiency and Audit Change on August 17, 2010 on Taxpayer’s individual income tax return for the 2007 tax year. The Taxpayer had claimed a clean fuel vehicle tax credit in the amount of \$\$\$\$\$, which the Division reduced to \$\$\$\$\$. Taxpayer was assessed tax in the amount of \$\$\$\$\$ and interest in the amount of \$\$\$\$\$ through September 16, 2010.

The Taxpayer submitted a copy of his form TC-40V, claiming the clean fuel vehicle credit for the 2007 tax year. The form includes certification from the Department of Environmental Quality (“DEQ”); however, DEQ did not complete “part B” of the form indicating which fuel the vehicle uses, whether it met the federal Clean Air Act, or if the vehicle was converted or OEM. The Taxpayer filled in “qualifying expenditures” in the amount of \$\$\$\$\$, and determined he was entitled to claim a credit of \$\$\$\$\$ for a converted vehicle. Taxpayer stated that in order for DEQ to certify that the vehicle qualifies for the credit, the requirements of Administrative Rule R307-121-5 must be met. Taxpayer stated that he met all of the requirements except (5)(d), which is the name, address, and phone number of the person that converted the motor vehicle. He stated he did not have that information because he purchased the vehicle from someone who had purchased it from the individual who converted the vehicle. Taxpayer testified that he was told by DEQ that he would still qualify for the credit if he got an estimate of the cost to convert. He stated that the Division requested additional information, and he obtained estimates from someone at DEALERSHIP who estimated the cost of a system with performance similar to the Taxpayer’s vehicle at \$\$\$\$\$.

The Division’s representative argued that the common sense reading of the statute would limit Taxpayer’s credit to costs actually incurred by the Taxpayer. The Division’s representative noted that the costs to convert the vehicle to clean fuel were incurred by two owners prior to the Taxpayer. He noted that the

Division will allow the credit if it has not previously been taken for a specific vehicle. However, the Division's representative argued that a credit should necessarily involve amounts paid by the Taxpayer claiming the credit. The Division allowed a credit in the amount of \$\$\$\$\$, or 50% of the Taxpayer's cost of the vehicle. The Division's representative noted that this specific issue has not been before the Commission, and asked for guidance.

In rebuttal, the Taxpayer stated that the credit has been amended and is now limited to 35% of the purchase price or 50% of conversion costs, up to \$\$\$\$\$. He stated that in 2007, statute did not limit the credit with regard to purchase price of the vehicle, nor to the owner who converted the vehicle. He noted that the Division cited to Utah Code Ann. §59-10-127 in its Answer, which was not applicable to the tax year at issue. The Taxpayer stated that it appears the Division is arguing that he does not meet the requirements under the statute, but he maintains that he does. The Division acknowledged that they cited to the incorrect statute in the Answer, but they do not dispute that the vehicle qualifies as a clean fuel vehicle, and that the credit was not taken with regard to the vehicle in a prior tax year. The Taxpayer stated that the reason for the credit is to encourage the use of alternative fuels and improve the air quality along the Wasatch Front. He stated that he has owned the car for four years, put 60,000 miles on it, and has put a lot of money into the car to maintain. He argued that he is doing exactly what the law was designed to encourage. Finally he argued that the Division is trying to limit the credit to 50% of the purchase price, but that limitation does not exist anywhere in the 2007 statute for a converted vehicle.

There is no dispute that the Taxpayer is entitled to claim the clean fuel vehicle tax credit for the 2007 tax year. Rather, the issue is whether the amount of the credit is limited to 50% of the Taxpayer's cost or 50% of the amounts paid to convert the vehicle to clean fuel. The Court in *MacFarlane v. Utah State Tax Comm'n*, 134 P.3d 1116, 1121 (Utah 2006), found that tax credit statutes are to be strictly construed against the party claiming the credit. The Court went on to note that, "the rule of strict construction should not be utilized to defeat the intent of the legislative body' ...[t]he best evidence of that intent is the plain meaning of the statute." *Id.* citing *State Dep't of Assessments and Taxation v. Belcher*, 553 A.d2 561 (Md. 1989) and *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903 (Utah 1984). Subsection (2) of Utah Code Ann. §59-10-1009 allows a credit for "50% of the cost of equipment for conversion...up to a maximum of \$2,500". The Taxpayer has claimed a \$\$\$\$\$ credit, and in support of that amount provided a letter from EMPLOYEE at DEALERSHIP estimating a cost of about \$\$\$\$\$ for a system with similar performance to the Taxpayer's vehicle. Taxpayer's calculation of the credit ignores Subsection (4) of Utah Code Ann. §59-10-1009, which allows the credit only "in the taxable year in which the item is purchased for which the credit is claimed". Taxpayer claimed the credit in the 2007 tax year, the year he purchased the vehicle, with the equipment already installed, for a total purchase price of \$\$\$\$\$. A reasonable interpretation of this statutory language is that the

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Taxpayer's credit is limited to 50% of the amount he paid in 2007, the tax year in which he took the credit. The Division's audit assessment should be sustained.

Jan Marshall, Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment of additional tax and interest on the Taxpayer's individual income tax return for the 2007 tax year. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner