

10-2568
INCOME TAX
TAX YEAR: 2008
SIGNED: 12-12-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
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.	INITIAL HEARING ORDER Appeal No. 10-2568 Account No. ##### Tax Type: Income Tax Tax Year: 2008 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER 1, Taxpayer
 PETITIONER 2, Taxpayer
 For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 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 November 28, 2011.

PETITIONER 1 and PETITIONER 2 (the “Petitioners” or “taxpayers”) are appealing Auditing Division’s (the Division”) assessment of individual income tax for the 2008 tax year. On August 26, 2010, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest (calculated through September 25, 2010), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In the assessment, the Division imposed additional tax in regards to two issues: 1) the state tax refund deduction; and 2) the clean fuel vehicle tax credit (“clean fuel credit”). The taxpayers agree that they owe the additional tax the Division imposed concerning the state tax refund deduction. Remaining at issue is the clean fuel credit. Specifically at issue is whether the taxpayers qualify for a \$\$\$\$ clean fuel credit, as they claimed on their 2007 and 2008 returns,¹ or whether they qualify for a \$\$\$\$ clean fuel credit, as the Division claims in its assessment.

The taxpayers purchased a 2004 Honda Civic GX in 2007. The Honda Civic GX is a compressed natural gas (“CNG”) vehicle. For taxpayers purchasing clean fuel vehicles such as the 2004 Honda Civic GX, Utah law allows a credit equal to 50% of its “incremental cost,” or \$\$\$\$\$, whichever amount is lower. Utah Code Ann. §59-10-1009(2)(a)(i). To claim the credit, the taxpayers completed a Utah State Tax Commission Form TC-40V (“Form TC-40V”), which indicates that “incremental cost is the difference between the cost of a new vehicle and the cost of the same model without the clean fuel system.”

The taxpayers determined the incremental cost of their 2004 Honda Civic GX as follows. First, they obtained a September 23, 2003 letter from a local DEALERSHIP indicating that the “total dealer invoice” cost (including delivery and handling charges of \$\$\$\$\$) for a 2004 Honda Civic GX (with CVT, ABS & SSRS)² was \$\$\$\$\$. Second, they obtained information from an Internet website, www.consumerguideauto.com, showing the “invoice” cost of a 2004 Honda Civic HX (which they considered to be the most similar model to their GX vehicle) to be \$\$\$\$\$. The difference between the \$\$\$\$\$ and the \$\$\$\$\$ costs described above is \$\$\$\$\$, which they determined to be the “incremental cost” of their vehicle. 50% of \$\$\$\$\$ is \$\$\$\$\$. Because

1 The taxpayers purchased the vehicle at issue in 2007 and claimed a portion of the clean fuel credit against their 2007 tax liability. In accordance with Utah Code Ann. §59-10-1009(5), the taxpayers claimed the remainder of tax credit in 2008. The Division agrees that the amount of the clean fuel credit the taxpayers claimed in 2007 is correct.

2 “CVT” refers to continuously variable transmission, while “ABS” refers to anti-lock brakes. From the information provided at the Initial Hearing, it is not known what “SSRS” refers to.

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\$\$\$\$\$ is greater than the \$\$\$\$\$ maximum credit, the taxpayers claimed a clean fuel credit in the amount of \$\$\$\$\$ for the 2007 and 2008 tax years. The taxpayers ask the Commission to find that they properly determined “incremental cost” as directed on the Form TC-40V and to reverse that portion of the Division’s assessment relating to the clean fuel credit.

The Division asserts that the “incremental cost” of a 2004 Honda Civic GX is \$\$\$\$\$, 50% of which is \$\$\$\$\$. Because \$\$\$\$\$ is less than the maximum credit of \$\$\$\$\$, the Division contends that the taxpayers are limited to a clean fuel credit of \$\$\$\$\$ on the purchase of their 2004 Honda Civic GX. The Division points out that the “sticker price” of a 2004 Honda Civic GX specifically indicates that the “incremental cost” of the “CNG” is \$\$\$\$\$. The Division also contends that it is unknown whether the costs used by the taxpayers are comparing “apples to apples” (i.e., whether the costs are for vehicles with the exact same features and options, excluding the CNG components). For these reasons, the Division asks the Commission to sustain its assessment.

The taxpayers acknowledge that the “sticker price” of a 2004 Honda Civic GX has information expressly showing the incremental cost of their vehicle to be \$\$\$\$\$. They also acknowledge that the September 2003 letter they received from a DEALERSHIP includes the following information: “Remember, pricing (including the (X) label) will show a \$\$\$\$\$ “Incremental Cost” for the CNG components. This is useful for local or state tax or other incentive programs that directly reduce the added or “Incremental Cost” of the CNG components.” However, they believe that they properly followed the Form TC-40V instructions by obtaining a \$\$\$\$\$ cost new for their vehicle and a \$\$\$\$\$ cost of the most similar model without the clean fuel system and determining an “incremental cost” of \$\$\$\$\$ from these costs.

APPLICABLE LAW

Utah Code Ann. §59-10-1009³ (2008) provides for a clean fuel vehicle tax credit, as follows in pertinent part:

- (1) As used in this section:
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 - (f) "Incremental cost" has the same meaning as in Section 19-1-402.
 - (g) "OEM vehicle" has the same meaning as in Section 19-1-402.
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- (2) (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:
 - (i) 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:
 - (A) is fueled by propane, natural gas, or electricity;
 - (B) 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)(A); or
 - (C) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.;
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- (5) If the amount of a tax credit claimed by a claimant, estate, or trust under this section exceeds the claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability may be carried forward for a period that does not exceed the next five taxable years.

For purposes of the clean fuel credit, UCA §19-1-402 defines "incremental cost" and "OEM vehicle," as follows:

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- (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 The 2008 version of Utah law is cited, unless noted otherwise. Section 59-10-1009 was identical in both 2007, the year in which the taxpayers purchased the vehicle at issue and first claimed a portion of the tax credit, and in 2008, the year in which the taxpayers claimed the remainder of the tax credit and the tax year at issue in this appeal. Section 59-10-1009 was substantively amended in 2009. However, the 2009 amendments

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Instructions concerning the clean fuel credit are provided on Form TC-40V. The 2007 and 2008 versions of Form TC-40V both indicate that “incremental cost is the difference between the cost of a new vehicle and the cost of the same model without the clean fuel system.”

UCA §59-1-1417 (2011) 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 “incremental cost” of the CNG components of the taxpayers’ 2004 Honda Civic GX is \$\$\$\$\$, as evidenced by the sticker for the GX model and by the September 23, 2003 letter from a DEALERSHIP. For reasons explained below, this evidence is more persuasive than the methodology the taxpayers used to determine an “incremental cost” of \$\$\$\$\$.

“Incremental cost” is defined in Section 19-1-402(7) to be “the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.” This definition is also reflected in the instructions found on Form TC-40V. Although the 2004 Honda Civic HX is the model that the taxpayers believe to be “most similar” to their GX model, they do not know whether the HX and GX models of the 2004 Honda Civic are identical, excluding the CNG components. Without such information, it

have no effect on this decision, which relates to the 2007 and 2008 tax years.

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is unknown whether the cost they obtained for the HX model is the cost of the “same vehicle model manufactured without the clean fuel fueling system,” which is necessary to determine “incremental cost” in accordance with Section 19-1-402(7) and Form TC-40V. For this reason, the taxpayers have not met their burden of proof to show that the Division’s assessment (and the \$\$\$\$ incremental cost on which it is based) is incorrect. For these reasons, the Division’s assessment should be sustained in its entirety.

Kerry R. Chapman
Administrative Law Judge

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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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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