

11-1406
INCOME TAX
TAX YEARS: 2006, 2007, 2008
SIGNED: 05-02-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-1406</p> <p>Account No. #####-1</p> <p>Tax Type: Income Tax</p> <p>Tax Years: 2006, 2007, 2008</p> <p>Judge: Jensen</p>
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Presiding:
Clinton Jensen, Administrative Judge

Appearances:
For Petitioner: PETITIONER, Taxpayer
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 on August 11, 2011 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Taxpayer”) is appealing audits by the Auditing Division of the Utah State Tax Commission (the “Division”) reducing the amounts of claimed clean fuels tax credits. The credits claimed, the Division’s audit allowances, and additional taxes claimed in the audits are as follows:

Tax Year	Taxpayer Credit Claimed	Division Credit Allowed	Additional Audit Tax
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In addition to the above-listed amounts, the Division assessed interest, which continues to accrue on any unpaid balance.

APPLICABLE LAW

Utah Code Ann. §59-10-1009(2)(a)¹ provides for a cleaner burning fuels tax as follows, in

pertinent part:

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

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 Notices of Deficiency and Audit Change on February 15, 2011 for the Taxpayer’s individual income tax returns for the 2006, 2007, and 2008 tax years. The Taxpayer had claimed a clean fuel vehicle tax credit for each year in the amount of \$\$\$\$\$, which the Division reduced as indicated above.

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 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 credits in the amount 50% of the Taxpayer’s purchase price of each vehicle.

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 is doing exactly what the law was designed to encourage. 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 statutes for an OEM vehicle.

There is no dispute that the Taxpayer is entitled to claim the clean fuel vehicle tax credit for the

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

tax years at issue. Rather, the issue is whether the amount of the credit is limited to 50% of the Taxpayer's cost or 50% of the amount of the CNG option when the vehicle was new. 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 [and that the] 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.2d 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 incremental cost of an OEM vehicle . . . up to a maximum of \$3,000." The Taxpayer claimed \$\$\$\$ credits, and in support of the claimed credit amounts provided stickers showing the costs for the compressed natural gas option for the vehicles when new.

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 2006, 2007, and 2008 tax years, the years he purchased the vehicles with the equipment already installed. A reasonable interpretation of this statutory language is that the Taxpayer's credit is limited to 50% of the amount he paid in each of the years at issue, the tax years in which he took the credit. The Division's audit assessment should be sustained.

Clinton Jensen
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 2006, 2007, and 2008 tax years. 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.

Appeal No. 11-1406

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner