2018 WL 7197506 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

LOTT OIL COMPANY, INC, PETITIONER
v.
SECRETARY, DEPARTMENT OF REVENUE, RESPONDENT

Docket No. 11384D
November 7, 2018

JUDGMENT

***1** This case came before the Board for hearing on the Motion for Summary Judgment filed by the Secretary, Department of Revenue (the "Department") on October 9, 2018, with Judge Tony Graphia (Ret.), Chairman, presiding, and Board Members Cade R. Cole and Francis J. "Jay" Lobrano present, and no member absent. Participating in the hearing were Gary L. Conlay on behalf of Petitioner Lott Oil Company, Inc. (the "Petitioner"), and Aaron Long on behalf of the Department. After the hearing, the Board took the case under advisement. For the written reasons attached hereto, the Board now unanimously renders judgment as follows.

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by the Department is GRANTED, Judgment is Rendered in favor of the Department and against the Petitioner, and the Petition of the Petitioner BE AND IS HEREBY DISMISSED.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 7 day of November, 2018.

WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on the Motion for Summary Judgment filed by the Secretary, Department of Revenue (the "Department") on October 9, 2018, with Judge Tony Graphia (Ret.), Chairman, presiding, and Board Members Cade R. Cole and Jay Lobrano present, and no member absent. Participating in the hearing were Gary L. Conlay on behalf of Petitioner Lott Oil Company, Inc. ("Petitioner"), and Aaron Long on behalf of the Department. After the hearing, the Board took the case under advisement. The Board now issues Judgment for the following written reasons.

Petitioner timely filed its 2014 Louisiana Corporation Income and Franchise Tax return for the calendar year ending December 31, 2014. On its return, Petitioner claimed the Alternative Fuel Tax Credit provided for in R.S. 47:6035 (the "AFTC") in the amount of $209,436.00. Petitioner's AFTC claim included $201,086.00 for the purchase of three new 2015 Freightliner Cascadia 113 vehicles, originally manufactured and equipped to operate exclusively on alternative fuels, such as Compressed Natural Gas ("CNG"). Petitioner claims that it made a business decision to purchase these vehicles in reliance on the availability of the AFTC.

The Department initially denied Petitioner's AFTC claim in its entirety, supposedly due to a lack of supporting documentation. Whether the Department's initial denial was proper is in dispute. However, for the reasons explained below, that dispute is not material. In any event, on December 22, 2015, the Department issued to Petitioner a refund check in the amount of $160,154.73, representing a refund of $155,734.00 plus interest in the amount of $4,420.73.

Nearly two and a half years later, on June 13, 2018, the Department issued to the Petitioner a notice titled "Adjustment of Refund," which stated that the amount of the AFTC allowed for 2014 had been reduced from $209,436.00 to $154,471.00. Accordingly, Petitioner's refund was reduced from $155,734.00 to $100,769.00. Petitioner appealed from the Adjustment of Refund by filing the instant petition on July 18, 2018. On August 14, 2018, the Department filed a Motion for Summary Judgment, contending that it properly reduced the AFTC by denying the credit for the costs of the vehicles' engines. According to the Department, R.S. 47:6035(B)(2)(b), as it existed in 2014, did not allow the AFTC for the cost of an engine installed in a new motor vehicle originally equipped to be propelled by an alternative fuel.

***2** Before addressing the substance of the Motion for Summary Judgment, the Board will grant the Department's Motion to Strike and Motion in Limine, filed October 3, 2018. The Department moves to strike certain portions of the affidavit of Daniel J. Broderick, Petitioner's CPA, submitted along with Petitioner's Opposition to the Motion for Summary Judgment. Specifically, the Department objects to Mr. Broderick's statements relating to the Department's handling of tax filings that are not related to the Petitioner's 2014 return and corresponding AFTC claim. Petitioner offers these statements in support of its assertion that the Department frequently makes mistakes in processing tax returns. Whether the Department makes mistakes when handling tax returns has nothing to do with the determinative issue in this case. As explained below, that issue is whether the APTC applies to the costs of an engine. The Board therefore agrees with the Department that Mr. Broderick's statements, specifically those concerning the Department's alleged errors in handling returns, have no bearing on the material facts pertinent to this case. Accordingly, any such statements are deemed stricken and not considered. Furthermore, the Board will not consider Mr. Broderick's statements explaining his interpretation of statutes to the extent that these statements express conclusions of law. *See UTELCOM, Inc. v. Bridges*, 2010-065A (La. App. 1 Cir. 9/12/11), 77 So.3d 39, 54, *writ denied*, 2011-2632 (La. 3/2/12), 83 So.3d 1046.

The AFTC is found in R.S. 47:6035. During 2014, R.S. 47:6035(A) provided:

> The intent of this section is to provide an incentive to persons or corporations to invest in qualified clean-burning motor fuel property. Any person or corporation purchasing such property as specified in this Section shall be allowed a credit against income tax liability as determined pursuant to Subsection C of this Section.

Petitioner claimed the AFTC under R.S. 47:6035(C)(1), which provided:

> The credit provided for in Subsection A of this Section shall be allowed against individual or corporate income tax for the taxable period in which the property is purchased and installed, if applicable, and shall be equal to fifty percent of the cost of the qualified clean-burning motor vehicle fuel property.

R.S. 47:6035(B)(2)(b) defined the "cost of qualified clean-burning motor fuel property" as:

> The cost to the owner of a new motor vehicle purchased at retail originally equipped to be propelled by an alternative fuel for the cost of that portion of the motor vehicle which is attributable to the storage of the alternative fuel, the delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel, provided the motor vehicle is registered in this state.

Petitioner relies on R.S. 47:6035(B)(3), which provided:

> "Qualified clean-burning motor fuel property" shall mean equipment necessary for a motor vehicle to operate on an alternative fuel and shall not include equipment necessary for operation of a motor vehicle on gasoline or diesel.

***3** The Department argues that R.S. 47:6035(B)(2)(b) provides a complete list of costs to which the APTC applies, and does not include the costs of an engine. Petitioner, counter-argues that R.S. 47:6035(B)(2)(b) is not exhaustive and does not explicitly exclude the cost of an engine. Petitioner also maintains that R.S. 47:6035(A) demonstrates a legislative intent that the AFTC incentivize investment in alternative fuels, such as CNG. According to Petitioner, the engines at issue in this case meet the definition of "[q] ualified clean-burning motor fuel property" set forth in R.S. 47:6035(B)(3). Petitioner concludes that since the engines meet this definition, and given the legislative intent articulated in R.S. 47:6035(A), the cost of the engines should be included in determining the allowable amount of the AFTC.

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of civil actions. La. C.C.P. art. 966(A)(2). In ruling on a motion for summary judgment, the Board's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. *See Hines v. Garrett*, 2004-0806 (La. 6/25/04); 876 So.2d 764, 765.

The mover bears the burden of proving that it is entitled to summary judgment. La. C.C.P. art. 966(D)(1). All factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. *Willis v. Medders*, 2000-2507 (La. 12/8/00); 775 So.2d 1049, 1050. However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, it need only demonstrate the absence of factual support for one or more essential elements of the opponent's claim, action, or defense. La. C.C.P. art. 966(D)(1). The burden then shifts to the nonmoving party to produce factual support sufficient to satisfy its evidentiary burden at trial. *Id.*

This case presents a question of statutory interpretation. The Board is guided in its inquiry by Louisiana's canons of statutory construction. The starting point in the interpretation of any law is the language of the law itself. *Mi. Farms, Ltd v. Exxon Mobil Corp.*, 07-2371, p. 13 (La. 7/1/08), 998 So.2d 16, 27; *see also Kelly v. State Farm Fire & Cas. Co.*, 14-1921, p. 10 (La. 5/5/15), 169 So.3d 328, 335. Moreover, "when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." La C.C. art. 9; La. R.S. 24:177. The legislature's choice to use, or not use, certain language in drafting statutes is presumed to be deliberate. *Malus v. Adair Asset Mgmt.*, LLC, 2016-0610 (La. App. 1 Cir. 12/22/16), 209 So.3d 1055, 1060. Whenever possible, the Board must construe statutes on the same subject matter so as to avoid creating a conflict. *M.J. Farms, Ltd. v. ExxonMobil Corp.*, 07-2371, pp. 13-14, 998 So.2d 16, 27.

***4** Furthermore, under Louisiana law, it is well settled that statutes establishing credits that relieve a tax burden are strictly construed in favor of the Department. *Barfield v. Bolotte*, 2015-0847 (La. App. 1 Cir. 12/23/15), 185 So.3d 781, 785, *writ denied*, 2016-0307 (La. 5/13/16), 191 So.3d 1058. The taxpayer must clearly, unequivocally, and affirmatively establish its entitlement to the credit. *Id.* Accordingly, the Board cannot stretch the scope of a tax credit statute in favor of a taxpayer. *See Cajun Elec. Power Co-op., Inc. v. McNamara*, 452 So.2d 212, 217 (La. Ct. App. 1984), *writ denied sub nom. Cajun Elec. Power Co-op Inc. v. McNamara*, 458 So.2d 123 (La. 1984) (strictly construing exemption available to electricity cooperative against that same cooperative when it engaged in a joint venture).

Both parties cite to *Barfield v. Bolotte*, 2015-0847 (La. App. 1 Cir. 12/23/15), 185 So.3d 781, *writ denied*, 2016-0307 (La. 5/13/16), 191 So.3d 1058. *In Bolotte*, the First Circuit held that the purchase of a Flex Fuel Vehicle ("FFV") was eligible for the AFTC until January 1, 2014. The taxpayers in that case purchased an FFV capable of running on either gasoline or a gasoline and ethanol mixture. The taxpayers later learned of the AFTC and claimed it for the purchase of their FFV on an amended return. The taxpayers in *Bolotte* claimed the AFTC under R.S. 47:6035(D).

R.S. 47:6035(D) allows a taxpayer to claim the AFTC without determining the cost of the "[q]ualified clean-burning motor vehicle fuel property." The amount of the AFTC allowed under the version of Subsection D at issue in *Bolotte* was limited to the lesser of ten percent of the cost of the motor vehicle or three thousand dollars. *Id.* at 787. The Department denied the credit under LAC 61:1. 1913, which provided, "[i]f the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel[.]" The Department claimed that its regulation was a valid interpretation of R.S. 47:6035(B)(3), which states that "[q]ualified clean-burning motor vehicle fuel property" does not include "equipment necessary for operation of a motor vehicle on gasoline or diesel."

The First Circuit held that in promulgating LAC 61:1.1 913, the Secretary had misinterpreted R.S. 47:6035. The Court found no explicit statutory requirement in R.S. 47:6035(B)(3) that the vehicle have any "additional" or ""separate" fuel storage and delivery system necessary to run on alternative fuels. *Id.* at 789. The Court then upheld the Board's finding that the taxpayers had met the pertinent requirements for claiming the AFTC under Subsection D. Specifically, the taxpayers had shown that their vehicle contained "[q]ualified clean-burning motor vehicle fuel property," and had "opted to not determine the exact cost attributable to such equipment and instead ... claim[ed] the $3,000.00 credit allowed by the statute in Paragraph (D)." *Id.* at 789-90.

***5** However, the AFTC provided in R.S. 47:6035(C), claimed by the Petitioner here, is different from R.S. 47:6035(D). The allowable amount of the AFTC under R.S. 47:6035(C) was, during the relevant tax period, "fifty percent of the cost of the qualified clean-burning motor vehicle fuel property." R.S. 47:6035(B)(2)(b) defines "the cost of the qualified clean-burning motor vehicle fuel property" as the costs attributable to "storage of the alternative fuel... delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel ...." Subsection C determines the allowable AFTC based on the cost attributable to qualifying equipment. Subsection D, on the other hand, is based on the cost of the *motor vehicle*, or a fixed sum, whichever is less. Therefore, Subsection D does not reference or depend on the cost of the qualifying property, but Subsection C does.

Because the Petitioner here claimed the AFTC under Subsection C, the critical issue is whether the costs attributable to an engine meet any of the three criteria in R.S. 47:6035(B)(2)(b). As a matter of law, such costs do not fit within the scope that provision. An engine cannot "deliver" alternative fuels to itself. An engine does not "store" alternative fuels; it consumes them to power the vehicle. An engine also does not "exhaust" gases from combustion. Rather, ah engine combusts fuel in a manner that produces gases which are removed via an exhaust system.

R.S. 47:6035(B)(3) does not provide additional criteria for costs that may be used to determine the allowable amount of the AFTC. R.S. 47:6035(B)(3) defines the property that must be present in a vehicle in order to qualify for the AFTC as a threshold matter. Thus, if a vehicle contains property that meets the definition of "qualified clean-burning motor vehicle fuel property," under R.S. 47:6035(B)(3), a taxpayer may be entitled to claim the AFTC. The taxpayer then has two options for determining the amount of credit to claim. The taxpayer may elect not to determine the costs of the qualifying property, in which case a limited credit may be claimed under Subsection D. Alternatively, the taxpayer may attempt to claim a potentially more lucrative credit under Subsection C, but must prove the exact costs of the qualifying property. The criteria for determining the cost of such property is specifically defined in R.S. 47:6035(B)(2)(b). R.S. 47:6035(B)(2)(b) would be rendered superfluous if the taxpayer could determine costs by circling back to the threshold criteria of R.S. 47:6035(B)(3). The Board cannot accept such a construction.

The foregoing construction furthers the legislature's intent in enacting the AFTC as stated in R.S. 47:6035(A). Subsection A provides that a person or corporation purchasing "qualified clean-burning motor fuel property" shall be allowed a credit "as determined pursuant to Subsection C of this Section." The amount of the credit allowed is therefore limited by the provisions of Subsection C. Petitioner purchased "qualified clean-burning motor fuel property." Petitioner also did, in fact, receive a credit for its purchases. The amount of the credit to which Petitioner was entitled, was to be ""determined pursuant to Subsection C." As explained above, the cost of an engine is not considered when determining the allowable credit under Subsection C. By disallowing those costs, the Department determined the amount of the credit in accordance with Subsection C. This is exactly what Subsection A calls for.

***6** The Board is not without sympathy for the Petitioner. The Department's decision to reduce the credit came two and a half years after initial approval. Petitioner's surprise and frustration, detailed in the affidavit of Mr. Broderick, is understandable. Nevertheless, the Board is constrained to apply the law as written and follow Louisiana's canons of statutory construction. R.S. 47:6035(C) does not permit the AFTC for costs that do not meet the criteria set forth in 47:6035(B)(2)(b). The cost of an engine does not meet any of those criteria. Accordingly, the Motion for Summary Judgment will be granted, and the Petition will be dismissed.

Baton Rouge, Louisiana this 7 **day of** November, **2018**.

Judge Tony Graphia (Ret.)
Chairman

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