

2017 WL 8315350 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

GLENN H. WOODS, PETITIONER

v.

LOUISIANA DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

JIMMIE M. WOODS, PETITIONER

v.

LOUISIANA DEPARTMENT OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket Nos. 9,905 D, 9,907 D

November 7, 2017

**WRITTEN REASONS FOR JUDGMENT**

\*1 On May 9, 2017, this matter came before the Board for a trial on the merits in the appeal by Petitioner Glenn H. Woods and Petitioner Jimmie M. Woods (the “Petitioners”) of the denial of Petitioners' claims for refund by the Secretary, Louisiana Department of Revenue and Taxation (the “Secretary”), with Judge Tony Graphia (Ret.), Chairman, presiding. Participating in the trial were: Robert Angelico, attorney for Petitioners; and Miranda Conner, attorney for the Secretary. After the hearing, the case was taken under advisement, and the parties were instructed to file post-trial memoranda. The Board now renders Judgment for the following written reasons:

Petitioners, Glenn and Jimmie Woods, appeal denials of refunds based on the Alternative Fuel Tax Credit (“AFTC”) for their amended 2012 Louisiana individual income tax returns by the Secretary. At trial, the parties disputed: (1) whether Petitioners have a right of action to claim the AFTC; and (2) whether Petitioners have demonstrated that the AFTC is applicable to the property at issue. With respect to the first issue, the Department filed an Exception of No Right of Action on May 1, 2017, which was referred to the merits and argued at the trial.

Petitioners are brothers who each own a 50% interest in Metro Service Group, Inc. (“Metro”). Metro is an S corporation engaged in the waste hauling business. Metro originally claimed the credit at issue on its 2012 Louisiana corporation income and franchise tax return. Metro originally claimed the credit in the amount of \$1,044,524 for the purchase of a fleet of twenty Compressed Natural Gas (“CNG”) vehicles and for the construction of a CNG filling station to service the fleet. Petitioners allege that the amount originally claimed represents 50% of the cost to acquire the vehicles and to construct the filling station. By letter dated December 5, 2013, the Department denied \$689,323.00 of the amount claimed, and allowed the remainder of \$355,201.00. Metro did not appeal the Department's partial denial of the credit.

In November of 2015, Metro filed an amended 2012 return, reducing the amount claimed from \$1,044,524.00 to \$355,201.00; *i.e.* the amount previously allowed. Petitioners simultaneously filed amended Louisiana individual income tax returns for the same period, each claiming the credit in the amount of \$344,661.50 (a combined total of the \$689,323.00). The Department issued denial letters to Petitioners, stating: “Based upon review of the record, the [AFTC] as provided for in R.S. 47:6035 has already been granted.” Petitioners filed respective appeals from that denial with the Board, which were subsequently consolidated in this action.

\*2 At trial, Petitioners introduced a memorandum from Tracy Stillman, an employee of the vendor of the vehicles, detailing the difference in cost between CNG propelled and diesel propelled rear loader waste vehicles. Petitioners also

introduced twenty invoices evidencing the purchase of the vehicles in question. According to the evidence introduced by Petitioners, the alleged cost of equipment attributable to the exhaust gases from the combustion of the CNG vehicles is \$10,482 per vehicle, and the cost of the equipment attributable to the storage and delivery of the alternative fuel is \$35,360 per vehicle. Thus, the asserted cost of qualified clean-burning motor fuel property is \$45,842 per vehicle for a total of \$916,840 for the entire fleet of 20 vehicles.

Petitioners also introduced a Schedule of Values from Vocational Energy detailing the \$1,172,189 price Metro paid for the CNG filling station, as well as four invoices evidencing payment of that amount. Petitioner Glenn Woods testified that Metro contracted with Vocational Energy to design and construct the filling station. Glenn Woods further testified that the entire amount of \$1,172,189 represented the necessary cost for Metro to have a fully operational, safe, and efficient facility for fueling the vehicles. The Secretary did not introduce any countervailing evidence. Instead, the Secretary argued that Petitioners do not have a right of action to claim the credit, and that the evidence presented was insufficient to establish Petitioners' entitlement to relief.

**(1) Do Petitioners have a right of action to claim the AFTC on their amended 2012 Louisiana individual income tax returns?**

The Secretary argues that Petitioners have no right of action under La. R.S. 47:6035. An exception of no right of action tests whether the plaintiff is “a member of the class of persons legally entitled to assert the cause of action in the suit.” *State in Interest of K.C.C.*, 2015-1429 (La. 1/27/16), 188 So. 3d 144, 146; *see* LA. C.C.P. art. 927. The burden of proof for establishing the exception of no right of action is on the exceptor. *Succession of Sylvester*, 16-372 (La. App. 5 Cir. 12/14/16), 215 So. 3d 368, 371, *writ denied*, 2017-00265 (La. 4/13/17), 218 So. 3d 119, *and writ not considered*, 2017-0265 (La. 5/26/17), 221 So. 3d 858. When considering an exception of no right of action, the Board assumes that the petition states a valid cause of action for some person and questions whether the plaintiff in this case “is a member of the class that has a legal interest in the subject matter of the litigation.” *See, Miller v. Thibeaux*, 2014-1107 (La. 1/28/15), 159 So. 3d 426, 430, *reh'g denied* (Mar. 13, 2015). For this purpose, all well-pleaded facts in the petition are treated as true. *Id.*

The Secretary bases its argument on the language of La. R.S. 47:6035(D). “The starting point in the interpretation of any statute is the language of the statute itself,” as this is, the best evidence of legislative intent. *Gulley v. Hope Youth Ranch*, 2016-1112 (La. 3/15/17), 221 So. 3d 21, 26. In interpreting the language of a statute, “it is presumed that every word, sentence, or provision in a law was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provisions were employed.” *Shane v. Par. of Jefferson*, 2014-2225 (La. 12/8/15), 209 So. 3d 726, 736.

\*3 Prior to June 9, 2013,<sup>1</sup> Section 6035 provided:  
§ 6035. Tax credit for conversion of vehicles to alternative fuel usage

A. The intent of this Section is to provide an incentive to persons or corporations to invest in qualified clean-burning motor vehicle 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.

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D. In cases where no previous credit has been claimed pursuant to Subsection C of this Section for the cost of qualified clean-burning motor vehicle fuel property in a new motor vehicle purchased by a taxpayer with qualified clean-burning motor vehicle fuel property installed by the vehicle's manufacturer and the taxpayer is unable to, or elects not to determine the exact cost which is attributable to such property, the taxpayer may claim a credit against individual or corporate income tax for the taxable period in which the motor vehicle is purchased equal to ten percent of the cost of the motor

vehicle or three thousand dollars, whichever is less, provided the motor vehicle is registered in this state. LA. R.S. 47:6035(A), (D).

The Secretary interprets the prefatory language in the first sentence of Subsection D, “where no previous credit has been claimed,” as preclusive of Petitioners' claims because the credit was previously claimed by Metro. As an initial matter, Petitioners elected to claim the credit under Subsection C. Moreover, the Secretary's interpretation is not supported by the canons of statutory construction. Subsection D provides a means of calculating the appropriate amount of the credit in the event that the taxpayer elects not to claim the credit “pursuant to Subsection C ....” Under Subsection D, a taxpayer may claim the credit without determining the extra cost attributable to the subject property, but the amount of the credit is limited to “ten percent of the cost of the motor vehicle or three thousand dollars, whichever is less, provided the motor vehicle is registered in this state.” On the other hand, a taxpayer who elects to claim the credit under Subsection C would be required to determine the cost of the qualified property, but would also be entitled to a more lucrative credit; “fifty percent of the cost of the qualified clean-burning motor vehicle fuel property.” It would be illogical to permit the taxpayer to claim the fifty percent credit under Subsection C and then an additional ten percent credit under Subsection D. The purpose of the language quoted by the Secretary is to prevent the taxpayer from doing just that. Consequently, the Secretary's reliance on Subsection D is misplaced.

The relevant provision of the statute for determining whether Petitioners have a right of action to claim the credit is found in Subsection A. Subsection A provides that the credit is available against income tax to any person or corporation purchasing qualifying property. Petitioners allege that they are entitled to claim the credit on their amended 2012 Louisiana individual income tax return because Metro purchased qualifying property during the 2012 tax period, was entitled to a claim the credit, and elected to pass the credit through to its shareholders. Considering the proper standard for an exception of no right of action, Petitioners fit within the class of persons that have a legal interest in the matter asserted. Accordingly, the Department's Exception of No Right of Action is overruled.<sup>2</sup>

## **(2) Have Petitioners demonstrated that the AFTC is applicable to the vehicles and filling station?**

\*4 Under La. R.S. 47:6035 as it existed during 2012 tax period, an individual or corporation is entitled to a refundable credit against the individual or corporate income tax equal to 50% of the “cost of the qualified clean-burning motor vehicle fuel property.” For purposes of this statute, the clean-burning motor vehicle fuel includes CNG. LA. R.S. 47:6035(B)(1). The “cost of the qualified clean-burning motor vehicle fuel property” is defined as:

(b) 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, provided the motor vehicle is registered in this state. (c) The (cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, provided the property is installed and located in this state and no credit has been previously claimed on the cost of such property. The cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel shall not include costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

LA. R.S. 47:6035(B)(2)(b), (c).

A taxpayer claiming a credit must clearly demonstrate its entitlement to relief. *See Crawford v. Duhon*, 2001-0193 (La. App. 4 Cir. 11/7/01), 799 So. 2d 1273, 1277. Petitioners assert that the total cost of qualified clean-burning motor fuel property was \$916,840 for the fleet of 20 vehicles, and for \$ 1,172,189 for the filling station. As described above,

Petitioners have supported their assertions through testimony and documentary evidence introduced at trial. The Secretary does not challenge Petitioners' evidence but nevertheless argues that Petitioners have not established their entitlement to the credit. The Board can discern no articulable reason why Petitioners' evidence should be deemed insufficient. The Board accordingly finds, based on the evidence introduced at trial, that Petitioners are entitled to the credits claimed.

For the reasons set forth above, the Department's Exception of No Right of Action is overruled, and the Petition for Refund and associated claims of Glenn H. Woods and Jimmie M. Woods are granted.

Baton Rouge, Louisiana, this 7 day of November, 2017.

**For the Board:**

**Hon. Francis J. "Jay" Lobrano Louisiana Board of Tax Appeals**

Judge Tony Graphia (Ret.)  
Chairman

Footnotes

- 1 The applicable version of AFTC is the one which existed when taxpayers purchased vehicles in question. *See Barfield v. Bolotte*, 2015-0847 (La. App. 1 Cir. 12/23/15), 185 So. 3d 781, 786, *reh'g denied* (Jan. 21, 2016), *writ denied*, 2016-0307 (La. 5/13/16), 191 So. 3d 1058.
- 2 The Board recognizes that Metro may be procedurally barred from litigating its own refund denial, but the tax laws of our State provide for the type of flow-through of credits utilized by these taxpayers, and there is no apparent procedural bar to this refund action.

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