

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**KAMRAN KHOUBEHI,
Petitioner,**

VERSUS

DOCKET NO. 11326A

**SECRETARY, DEPARTMENT OF REVENUE,
Respondent**

JUDGMENT

This case came before the Board for hearing on July 10, 2019 on the merits of the Petition of Kamran Khoobehi (“Taxpayer”) and on the *Peremptory Exception Raising the Objection of Peremption and Declinatory Exception Raising the Objection of Lack of Subject Matter Jurisdiction* (the “Exceptions”) filed by the Secretary, Department of Revenue (the “Secretary”) with Vice Chairman Cade R. Cole, presiding and Board Member Jay Lobrano present, Judge Tony Graphia (ret.), Chairman, was absent. Participating in the hearing were Allison Civello, CPA, for the Taxpayer and Aaron Long, attorney for the Secretary. After the hearing, the Board referred the exceptions to the merits and took the entire matter under advisement. A majority of the Board now renders Judgment in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Exception filed by the Secretary is GRANTED IN PART AND DENIED IN PART; the Exception is granted as to the Taxpayer’s claim for a refund, the Exceptions are denied as to the Taxpayer’s appeal for redetermination of an assessment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Taxpayer’s prayer for relief BE AND IS HEREBY DENIED and that Judgment be rendered in favor of the Secretary and against the Taxpayer, and

that the Petition of Kamran Khoobehi BE AND IS HEREBY DISMISSED, with prejudice.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 14 day of August, 2019.

For the Board:



**Vice-Chairman Cade R. Cole
Louisiana Board of Tax Appeals**

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WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on July 10, 2019 on the merits of the Petition of Kamran Khoobehi (“Taxpayer”) and on the *Peremptory Exception Raising the Objection of Peremption and Declinatory Exception Raising the Objection of Lack of Subject Matter Jurisdiction* (the “Exceptions”) filed by the Secretary, Department of Revenue (the “Secretary”) with Vice Chairman Cade R. Cole presiding, and Board Member Jay Lobrano present. Participating in the hearing were Allison Civello, CPA, for the Taxpayer and Aaron Long, attorney for the Secretary. After the hearing, the Board took the matter under advisement. A majority of the Board now renders Judgment in accordance with the following written reasons.

Background:

The Taxpayer owns and operates a plastic surgery business in Metairie, Louisiana. In 2016, the Taxpayer installed a row of Electric Vehicle (“EV”) charging stations in his parking lot for use by his customers. The EV charging stations incorporate and draw power from solar panels. The solar panels supply energy only to EV’s and do not supply energy to any residential building.

At the hearing, the Taxpayer introduced documentary evidence in the form of schematics, photographs and a contract for the construction of the charging stations.

The schematics depict the design and plans for the charging stations. The photographs show the charging stations after completion. The contract lists the costs and payment schedule for construction. Based solely on this evidence, the Board cannot reach any technical conclusions as to the inner workings of the charging stations. Nevertheless, the following facts appear undisputed: The solar panels attached to the charging stations gather energy from the environment. The charging stations or solar panels convert that energy into electricity. The charging stations store electricity until delivering it into the internal battery of an EV. The EV's store electricity in a battery until consuming it to power locomotion.

The Taxpayer claimed the Alternative Fuel Tax Credit ("AFTC") under La. R.S. 47:605(B)(2)(c) in the amount of \$14,508.00 for a portion of the charging station construction costs on his 2016 individual income tax return. Based on the contract introduced into evidence, the amount claimed would appear to be equal to 36% of the cost of constructing the charging stations. That amount includes the cost of installing the solar panels. However, it is unclear what the cost of constructing the charging stations would be if the solar panels were excluded.

The Secretary denied the Taxpayer's claim for the AFTC by Refund Denial notice dated February 12, 2018 (the "Refund Denial"). The effect of the Refund Denial was to leave the Taxpayer with a deficiency on his 2016 income tax return. Consequently, by Assessment dated April 19, 2018 (the "Assessment"), the Secretary assessed the Taxpayer with delinquent individual income tax, penalties and interest totaling \$6,200.37. On May 14, 2018, the Taxpayer filed the instant Petition as an appeal from the Assessment.

The Exceptions:

The Secretary raises exceptions of preemption and lack of subject matter jurisdiction. The gist of both exceptions is that the Taxpayer's right to petition the

Board expired sixty days after the issuance of the Refund Denial. Although the Taxpayer is ostensibly appealing from the Assessment, the Secretary's position is that the merits of his AFTC claim should have been litigated via the refund denial appeal procedure provided in La. R.S. 47:1625. The Taxpayer responds by asserting that the Refund Denial was not actually delivered, and that he has the right to challenge the Assessment even if he no longer has the right to challenge the Refund Denial.

The Board agrees with the Secretary that the Taxpayer's right to appeal from the Refund Denial is prescribed under La. R.S. 47:1625. At the hearing, the Taxpayer attempted to introduce a purported USPS tracking webpage printout to show that the Refund Denial was not actually delivered. However, counsel for the Secretary objected to the introduction of the printout as hearsay. The Board sustained that objection. Based on the evidence admitted into the record, the Board concludes that the Taxpayer's right to appeal from the Refund Denial is prescribed. Accordingly, the Board cannot order the refund prayed for in this case.

Nevertheless, the Board will deny the Exceptions as to the Taxpayer's appeal from the Assessment. Under La. R.S. 47:1407, the Board has the authority to rule on the correctness of all matters relating to assessments. As required under La. R.S. 47:1564, the Assessment states that the Taxpayer has the right to appeal to this Board. With respect to the Assessment, the Petition was timely. In accordance with the Secretary's Assessment and statutory law, the Exceptions will be overruled to the extent necessary to decide the correctness of the Assessment.

The Merits:

La. R.S. 47:6035(B)(2)(c), provides a credit for:

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 Secretary claims that since EV's run off batteries, they do not have fuel tanks. Therefore, according to the Secretary, property used to deliver electricity to an EV's battery cannot be "directly related to the delivery of an alternative fuel into the fuel tank" of a motor vehicle. The Taxpayer, however, argues that a battery is functionally the fuel tank of an EV.

To resolve the dispute, the Board must interpret the words "fuel tank" as used in the statute. The goal of statutory interpretation is to discern the intent of the legislature. *Metals USA Plates & Shapes Se., Inc. v. Dep't of Revenue*, 2017-699, p. 7 (La. App. 3 Cir. 3/21/18); 240 So.3d 1016, 1022, *writ denied*, 2018-0635 (La. 8/31/18); 251 So.3d 412. Generally, the interpretation of any statutory provision begins with the language of the statute itself. *Billeaudeau v. Opelousas Gen. Hosp. Auth.*, 2016-0846, p. 10 (La. 10/19/16); 218 So.3d 513, 520. The Board is obligated to interpret the non-technical language of a statute according its generally prevailing meaning. La. Civ. Code Art. 11. Unambiguous provisions are to be applied as written unless doing so would lead to absurd consequences and no further interpretation may be made in search of the intent of the legislature. La. Civ. Code Art. 9. Any legal ambiguity in tax credit statutes is strictly construed against the taxpayer and in favor of the Secretary. *Ethyl Corp. v. Collector of Revenue*, 351 So.2d 1290, 1293 (La. Ct. App. 1977), *writ denied*, 353 So.2d 1035 (La. 1978).

Dictionaries are a valuable resource for determining the generally prevailing usage of words. *Turner v. E. Baton Rouge Parish Sch. Bd.*, 2017-1769, p. 6 (La. App. 1 Cir. 6/4/18); 252 So.3d 990, 994, *writ denied*, 2018-1127 (La. 10/15/18); 253 So.3d 1299. The dictionary definitions of "tank" are "a usually large receptacle for holding, transporting, or storing liquids (such as water or fuel)," or "a container for

holding a liquid or gas.” Merriam-Webster Online Dictionary - Tank, Merriam-Webster.com. The evidence introduced by the Taxpayer in this case does not enable the Board to determine whether an EV’s battery stores liquids or gases. Consequently, the Taxpayer has not demonstrated that a battery is a “fuel tank” within the ordinary meaning of those words.

The Board is compelled to adhere to the well-established rule of strict construction applicable to tax credit statutes. *Ethyl*, 351 So.2d at 1294. The Board cannot accept the Taxpayer’s construction without contorting the meaning of the words employed beyond their prevailing usage. Further, La. R.S. 47:6035 specifically uses the term “fuel tank” in some instances and not in others. The following two definitions of the “cost of qualified clean-burning motor vehicle fuel property” illustrate the distinct language employed:

(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***

(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

In Subparagraph (b), the legislature described property “attributable to the storage of the alternative fuel.” That description could include a battery that stores alternative fuel in something other than a tank. However, in Subparagraph (c), the legislature specifically used the words “fuel tank.” The jurisprudence teaches that when the legislature employs different language in two subsections of the same statute, the legislative intent is to convey two different meanings. *See Mallard Bay Drilling, Inc. v. Kennedy*, 2004-1089, p. 22 (La. 6/29/05); 914 So.2d 533, 549.

In sum, the Taxpayer here has not proved that an electric battery is a “fuel tank” within the ordinary meaning of those terms. The taxpayer’s interpretation of

La. R.S. 47: 6035(c), a credit statute, would be contrary to settled principles of statutory construction. Accordingly, the Assessment must be upheld.

Baton Rouge, Louisiana this 14 day of August, 2019.

For the Board:



**Vice-Chairman Cade R. Cole
Louisiana Board of Tax Appeals**