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**IN THE  
INDIANA TAX COURT**

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AK STEEL CORPORATION, )

Petitioner, )

v. )

Cause No. 49T10-0403-TA-00013

INDIANA DEPARTMENT OF )  
STATE REVENUE, )

Respondent. )

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ON APPEAL FROM A FINAL DETERMINATION OF THE  
INDIANA DEPARTMENT OF STATE REVENUE

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**NOT FOR PUBLICATION**

October 18, 2005

FISHER, J.

AK Steel Corporation (AK Steel) appeals the final determination of the Indiana Department of State Revenue (Department) denying its claim for refund of additional Economic Development for a Growing Economy (EDGE) tax credit for the 1998 tax year (year at issue). The sole issue for the Court to decide is whether the Department had the authority to increase AK Steel's EDGE tax credit previously awarded and certified by

the EDGE Board.<sup>1</sup> For the following reasons, the Court AFFIRMS the Department's final determination.

### FACTS AND PROCEDURAL HISTORY

The parties have stipulated to the following facts. AK Steel is a Delaware corporation, with its principal place of business located in Ohio. Because it anticipated creating new jobs at its steel mill in Indiana, AK Steel sought an EDGE tax credit against its state tax liabilities, pursuant to Indiana Code § 6-3.1-13-11. See IND. CODE ANN. § 6-3.1-13-11 (West 1998); see also IND. CODE ANN. § 6-3.1-13-13 (West 1998) (amended 2002) (stating that EDGE tax credit may be awarded to foster job creation in Indiana). During the latter part of 2000, AK Steel entered into a Tax Credit Agreement (agreement) with the EDGE Board, the body established to award EDGE tax credits.<sup>2</sup> Under the agreement, AK Steel was allowed to claim an EDGE credit beginning with the 1998 tax year. The credit was conditioned, in part, upon AK Steel's creation of 233 new full-time jobs in Indiana.

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<sup>1</sup> AK Steel also initially sought the refund of supplemental net income taxes, which the Department previously determined AK Steel was entitled to receive. The parties have since resolved this claim; hence, the Court need not address this issue. (See Stip. Facts at 3, ¶ 6.)

<sup>2</sup> Indiana Code § 6-3.1-13-12, the statute that established the EDGE Board, was repealed, effective February 9, 2005. IND. CODE ANN. § 6-3.1-13-12 (West Supp. 2005-2006). Pursuant to Indiana Code § 6-3.1-13, the functions of the EDGE Board are now performed by the Indiana Economic Development Corporation (IEDC). See IND. CODE ANN. § 6-3.1-13-1.5 (West Supp. 2005-2006). See generally IND. CODE ANN. § 6-3.1-13 (West Supp. 2005-2006) (where several sections of the chapter were revised to incorporate the IEDC as the body charged with awarding/governing EDGE tax credits); see also IND. CODE ANN. § 5-28-3-1, -2 (West Supp. 2005-2006) (establishing the IEDC, which is to be "a body politic and corporate" that "exercise[s] essential public functions"). Nevertheless, during the year at issue, Indiana Code § 6-3.1-13-12 was still in effect; therefore, the Court will reference the EDGE Board throughout this opinion, unless otherwise appropriate.

AK Steel initially claimed an EDGE credit of \$290,000 on its 1998 tax return. On March 27, 2001, EDGE Board member and Executive Director of the Department of Commerce, Thomas McKenna, sent a letter to AK Steel certifying its entitlement to claim a credit in the amount of \$290,932.74 on its 1998 return.<sup>3</sup> On June 4, 2001, however, AK Steel filed an amended return for 1998 in which it claimed an EDGE credit in the amount of \$347,065.<sup>4</sup> AK Steel therefore requested a refund of \$57,065 of the additional credit. The Department has not paid the requested refund nor has it issued a final determination on the matter.<sup>5</sup>

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<sup>3</sup> Before its repeal, Indiana Code § 6-3.1-13-12 provided that either the Director or Executive Director of Commerce was a member of the EDGE Board; therefore, the Executive Director, in this case, is presumed to have been acting on its behalf. See IND. CODE ANN. § 6-3.1-13-12(a) (West 1998). In addition, the Department of Commerce assisted the EDGE Board in its duties under the EDGE credit statutory scheme. A.I.C § 6-3.1-13-12(c).

<sup>4</sup> This Court has previously held that a taxpayer's amended return requesting a refund with statements explaining the reason for and amount of the requested refund constitutes a claim for refund. See *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1298-99 (Ind. Tax Ct. 1994). Accordingly, AK Steel's amended return is treated as a claim for refund. (See Stip. Facts Ex. 3.)

AK Steel believes that its EDGE credit should have included an additional \$56,133 in county income tax withholdings from its employees, in addition to the state income tax withholdings accounted for in the amount certified by the EDGE Board via the Department of Commerce (Commerce). (See Stip. Facts at 3, ¶ 8.) The requested refund amount (\$57,065), therefore, reflects the alleged state and county income tax withholdings (\$347,065) less the credit claimed on AK Steel's original 1998 tax return (\$290,000).

<sup>5</sup> The Department never responded to AK Steel's claim for refund. Its failure to act on the claim for refund within 180 days of its filing constitutes a denial of the claim and is appealable to this Court. See *Ziegler v. Indiana Dep't of State Revenue*, 797 N.E.2d 881, 884 n.2 (Ind. Tax Ct. 2003).

On March 10, 2004, AK Steel initiated an original tax appeal. The parties filed stipulated facts on February 11, 2005, and the Court heard their oral arguments on August 4, 2005. Additional facts will be supplied as necessary.<sup>6</sup>

## **ANALYSIS AND OPINION**

### **Standard of Review**

This Court hears appeals from denials of claims for refunds by the Department *de novo*. IND. CODE ANN. § 6-8.1-9-1(d) (West Supp. 2005-2006). Therefore, the Court is not bound by the evidence or the issues presented at the administrative level. *Chrysler Fin. Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909, 911 (Ind. Tax Ct. 2002), *review denied*.

### **Discussion**

As an incentive to create new jobs in Indiana, the legislature has provided taxpayers who create such jobs a credit (EDGE credit) against any state tax liability imposed upon them after December 31, 1993.<sup>7</sup> See A.I.C. § 6-3.1-13-11 (footnote added). In connection with that credit, the legislature enacted a statutory scheme for the award of the credit. See IND. CODE ANN. § 6-3.1-13 (West 1998). Under that

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<sup>6</sup> The Court notes that, in its petition, AK Steel's version of the facts is somewhat different from the stipulated facts. Specifically, AK Steel reported that it filed an amended return for the 1998 tax year on March 12, 2001, in which it claimed a refund of additional EDGE credit. (See Pet. at ¶¶ 4, 6.) According to the petition, the Department then conducted an audit where it miscalculated the EDGE credit and denied AK Steel's request for additional credit. (See Pet. at ¶¶ 7, 17-18.) The petition does not mention the June 4, 2001 amended return. In turn, neither the audit nor the Department's calculation of the credit were mentioned (or provided) in any subsequent filings or at the oral argument. Therefore, the Court will base its decision only upon those facts contained within the parties' stipulation.

<sup>7</sup> Sections of Indiana Code § 6-3.1-13 have since been amended to foster job retention in Indiana as well as job creation. These amendments do not affect the Court's decision today.

scheme, a taxpayer was to submit an application to enter into an agreement with the then existing EDGE Board, which consisted of the director or executive director of the department of commerce, the director of the budget agency, the commissioner of the department of state revenue, and four members appointed by the Governor of Indiana. See IND. CODE ANN. § 6-3.1-13-12 (West 1998). See also *supra*, note 2; IND. CODE ANN. § 6-3.1-13-14 (West 1998) (amended 2002). In turn, the EDGE Board could enter into an agreement with the applicant if it determined that certain statutorily prescribed conditions were satisfied by the applicant's project.<sup>8</sup> See IND. CODE ANN. § 6-3.1-13-15 (West 1998) (amended 2002) (footnote added). An agreement between the EDGE Board and an applicant specified, among other things, the duration of the credit; the maximum credit amount available for each taxable year; that the applicant must annually report to the EDGE Board the number of new employees and the corresponding income tax withholdings; and a requirement that the Director of Commerce was authorized to verify the amounts reported by the applicant and issue a certificate stating that the amounts have been verified. IND. CODE ANN. § 6-3.1-13-19 (West 1998) (amended 2002). After receiving the certification letter from the Director of Commerce, the taxpayer was to submit the letter to the Department when claiming the credit. IND. CODE ANN. § 6-3.1-13-20 (West 1998) (amended 2005).

In the case at bar, the agreement between the EDGE Board and AK Steel set AK Steel's maximum credit available for the 1998 tax year at \$464,265. (See Stip. Facts,

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<sup>8</sup> For example, the EDGE Board could enter into an agreement with an applicant if it determined that the project was economically sound and would benefit the people of Indiana by increasing employment opportunities and strengthening the economy. See IND. CODE ANN. § 6-3.1-13-15 (West 1998) (amended 2002).

Ex. 1 at 14.) The Executive Director of Commerce, however, subsequently sent AK Steel a letter stating:

Under the terms of th[e] agreement, AK Steel is eligible to claim a tax credit in an amount not to exceed \$464,265 for the 1998 tax year[.] . . . AK Steel has partially met the terms and conditions of its EDGE agreement for 1998. Based upon the information that AK Steel submitted to the Indiana Department of Commerce on January 23, 2001, the individual income tax withholdings for its new net Indiana resident employees totaled \$291,604.34. [The] I[ndiana] D[e]partment O[f] C[ommerce] will certify \$290,932.74 of this total amount as EDGE tax credits. (Excluded from this amount is the state taxes withheld for employees earning less than \$14.98 per hour). This figure is less than the EDGE credits available under the EDGE agreement credit schedule[.] . . . AK Steel may therefore only claim \$290,932.74 in credits for the 1998 tax year.

(Stip. Facts, Ex. 2.)

AK Steel claims the credit amount certified by Commerce was incorrectly calculated because it did not include certain county income tax withholdings. (See Pet'r Br. at 11-13 (stating that county income tax withholdings are part of the calculation of incremental income tax withholdings according to the tax credit agreement and the statutes).) See *also* IND. CODE ANN. § 6-3.1-13-5 (West 1998); IND. CODE ANN. § 6-3-4-8 (West 1998) (amended 2002). Therefore, AK Steel argues that the Department should correct the miscalculation and grant it a refund of the additional credit. As support for its argument, AK Steel asserts that the agreement gives the Department explicit authority to alter the credit by stating that “[t]he actual amount of the credit allowable to the taxpayer is subject to the Indiana Department of Revenue’s final determination under I[ndiana] C[ode] 6-8.1-3-12 and I[ndiana] C[ode] 6-8.1-5.” (See Stip. Facts, Ex. 1 at 2, ¶ 6; Oral Argument Tr. at 12-13.) See *also* IND. CODE ANN. § 6-

8.1-3-12 (West 1998) (amended 2003) (outlining the Department's general audit and investigatory powers); IND. CODE ANN. § 6-8.1-5 (West 1998) (outlining the Department's power to assess unpaid taxes).

The Department argues that it does not have the authority to change the amount of credit Commerce certified for the year. (See Oral Argument Tr. at 19-29.) Rather, the Department claims that its role in the EDGE credit scheme is merely administrative, in that it only applies the certified amount. Furthermore, the Department claims that the provision in the agreement, on which AK Steel relies, refers to the Department's power to make an assessment against a taxpayer receiving credit who has not complied with an agreement or the statutes governing the credit, pursuant to Indiana Code § 6-3.1-13-22. (See Oral Argument Tr. at 23-25; Stip. Facts, Ex. 1 at 7, ¶ 9.) See *also* IND. CODE ANN. § 6-3.1-13-22 (West 1998) (amended 2005). According to the Department, the provision also allows the Department to refund any portion of the credit that exceeds the taxpayer's liability for the year. Lastly, the Department argues that the term "final determination" pertains to the Department's duty to process the returns and apply the credit, not make discretionary determinations as to the amount of the credit. (See Oral Argument Tr. at 25.)

Admittedly, the agreement does state that the actual amount of the credit is subject to the Department's final determination. But when read in the context of the entire document, the statement does not provide the Department with the authority to independently increase the amount of the credit, as AK Steel suggests. Indeed, the agreement states:

The Director of the Department of Commerce [] is hereby authorized to verify with the appropriate state agencies the

information reported by AK Steel under Paragraph 7C of this [a]greement. After such verification, the EDGE Board shall cause the Director to issue a certificate to AK Steel stating that the amounts have been verified.

[] Pursuant to I[ndiana] C[ode] 6-3.1-13-22, if the Director determines that AK Steel is not complying with the requirements of this [a]greement or of the provisions of I[ndiana] C[ode] 6-3.1-13, the Director shall, after giving AK Steel an opportunity to explain the noncompliance, notify the Indiana Department of Revenue of the noncompliance and request an assessment under I[ndiana] C[ode] 6-8.1-5. The Department of Revenue shall notify the taxpayer of the amount of the assessment, which may not exceed the sum of any previously allowed credits.

(Stip. Facts, Ex. 1 at 7, ¶ 9.) (See *a/so* Stip. Facts, Ex. 1 at 4-5, ¶ 7C (requiring the taxpayer to submit to the Department of Revenue and the EDGE Board information pertaining to income tax withholdings and the EDGE credit).)

Thus, according to the agreement, after submitting the required information to the EDGE Board and the Department, the *Director of Commerce* is to verify and certify the information so the Department can apply the amount of credit AK Steel is entitled to claim against its tax liabilities. If the Director finds that AK Steel failed to comply with the agreement, then he/she may request that the Department make an assessment. The Department does not take action concerning the credit without the certification or request of the EDGE Board. Since the agreement calls for the Director of Commerce to certify the information used to calculate the credit (even though the Department also received the information), it would be inconsistent to then allow the Department to change the specific amount certified without the approval or request of the EDGE Board.



By the same token, the EDGE credit statutes also required the Director of Commerce to annually issue a certification letter stating that it verified the number of new employees and income tax withholdings reported by AK Steel. See A.I.C. § 6-3.1-13-19(7). AK Steel was then required to submit that certification to the Department when it claimed its credit on its tax return. See A.I.C. § 6-3.1-13-20. If the Department could actually calculate the credit or could increase or decrease the credit as it saw fit, as AK Steel claims,<sup>9</sup> the Director's certification is meaningless – and certainly, presenting the certification to the Department would be meaningless.<sup>10</sup> This Court presumes that the Legislature does not intend to enact statutes that are meaningless or a nullity, and therefore, cannot adopt AK Steel's interpretation. See *Indiana Waste Sys. of Indiana, Inc. v. Indiana Dep't of State Revenue*, 633 N.E.2d 359, 366 (Ind. Tax Ct.1994).

The Executive Director of Commerce certified AK Steel's credit amount based on his verification of the information reported by AK Steel and his determination that AK

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<sup>9</sup> In its petition, AK Steel claimed that the Department conducted an audit and miscalculated its credit amount. As previously noted, however, AK Steel never subsequently mentioned or provided the Court with any evidence of the audit and alleged miscalculation. (See *supra*, note 6.)

<sup>10</sup> Prior to an amendment in 2005, Indiana Code § 6-3.1-13-20 also stated that the “failure to submit a copy of the [Director's certification letter] does not invalidate a claim for a credit.” IND. CODE ANN. § 6-3.1-13-20 (West 1998). The Court does not interpret this provision as suggesting that the certification is meaningless. On the contrary, the requirement of presenting the certification to the Department further emphasized the relationship between the EDGE Board and the Department by indicating the necessity of informing the Department of the Director's certification.

The legislature amended the statutory language in 2005 to require a taxpayer to submit to the Department all information necessary for the calculation of the credit and determination of whether the credit was properly claimed. See IND. CODE ANN. § 6-3.1-13-20 (West Supp. 2005-2006). Based on other amendments to this chapter (i.e., the replacement of the EDGE Board with the IEDC), however, the Court's decision and reading of the original statutory language remains unchanged.

Steel partially complied with the agreement. Therefore, the Executive Director stated that AK Steel could only claim a specific amount. The Court will not assume that the statement in the agreement that the actual amount of the credit was subject to the Department's final determination was intended to negate the rest of the document or the statutory scheme provided by the legislature. Accordingly, the Department properly denied the claim for refund.

### **CONCLUSION**

For the foregoing reasons, the Court AFFIRMS the Department's denial of AK Steel's claim for refund of additional EDGE credit. Nevertheless, the Court now grants AK Steel a thirty-day leave, within which it may request that the IEDC (as the EDGE Board's successor) increase its certified EDGE tax credit amount to account for the alleged miscalculation of the credit. If the request is granted and the IEDC changes the certification, the Department must then apply the change and refund the additional credit accordingly. If, however, the IEDC denies the request, and AK Steel believes the denial to be without basis or not according to law or the agreement, AK Steel will then be granted leave to join the IEDC as a party to this action.