

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	
AMANA SOCIETY SERVICE COMPANY 506 39 th Avenue Amana, IA 52203	DOCKET NO. 2019-240-2-0582 DOCKET NO. 2020-240-2-0266 DOCKET NO. 2021-240-2-0170
v.	DIA Docket Nos. 22IDRCIT0002, 22IDRCIT0005, 22IDRCIT0006
IOWA DEPARTMENT OF REVENUE	DIRECTOR'S FINAL ORDER ON REVIEW
RENEWABLE ENERGY TAX CREDITS	

PROCEDURAL SUMMARY

On March 23, 2022, an Administrative Law Judge ("ALJ") issued a proposed Amended Summary Judgment Order in the above-captioned matter. On April 8, 2022, the Iowa Department of Revenue ("Department") appealed the Proposed Decision to the Director of the Department ("Director"). On April 26, 2022, the Director granted the parties' request to present oral arguments and issued a Notice of Hearing and Briefing Schedule to the parties. The Department submitted an initial brief on May 31, 2022. Amana Society Service Company ("ASSC") submitted a response brief on June 24, 2022. The Department submitted a reply brief on July 15, 2022.

A hearing before the Director was held on July 19, 2022, at the Hoover State Office Building in Des Moines, Iowa. Assistant Attorney General Andrew N. Jensen appeared on behalf of the Department. Attorneys Cynthia Boyle Lande and Sean Moore appeared on behalf of ASSC. Also present for the hearing were Tiana Slaney and Amy Stohlmeyer, attorneys for the Director; and Hollie Welch, Executive Secretary to the Director. Other Department staff were also present to observe the proceedings.

In the proposed Amended Summary Judgment Order, the ALJ reversed the Department's denial of ASSC's renewable energy tax credit claims for tax years 2018 and 2019. The ALJ affirmed the Department's denial of ASSC's credit claim for tax year 2020. Having reviewed and examined the parties' written briefs, the record made before the ALJ, the ALJ's proposed Amended Summary Judgment Order, and hearing the parties' arguments, the Director issues this order.

FINDINGS OF FACT

The Director hereby adopts the findings of fact issued by the ALJ.

CONCLUSIONS OF LAW

The Director hereby adopts the conclusions of law issued by the ALJ, with the following addition.

"Adoption of administrative rules which are at variance with statutory provisions or which amend or nullify legislative intent exceed the department's authority."

Calcaterra v. Iowa Bd. of Med., 965 N.W.2d 899, 907 (Iowa 2021) (quoting *Wakonda Club v. Iowa State Bd. of Tax Rev.*, 444 N.W.2d 490, 491 (Iowa 1989)). "While . . . weight [is given] to an agency's construction of a statute, such construction may not make law nor change the legal meaning of a statute." *City of Fort Dodge v. Iowa Pub. Emp. Rels. Bd.*, 275 N.W.2d 393, 396 (Iowa 1979). Agency rules must be "reasonable and consistent with legislative enactments" to be given the force and effect of law. *Harlan Sprague Dawley, Inc. v. Iowa State Bd. of Tax Rev.*, 601 N.W.2d 66, 69 (Iowa 1999). "[A]gency applications, even of long standing, may not alter the meaning of a statute." *City of Fort Dodge*, 275 N.W.2d at 396; *see also Clarion Ready Mixed Concrete Co. v. Iowa State Tax Comm'n*, 107 N.W.2d 553, 558 (1961).

In the present matter, the Department claims there is ambiguity in the statute and has used this purported ambiguity to adopt a rule to narrowly interpret the ten-year limitation on the renewable energy tax credit on producers to the facility itself and the facility's initial producer or owner. However, the statute is clear in its language, and rather than interpreting, the rule instead alters the meaning of the statute.

Iowa Code section 476C.5 by its terms, places a limitation of the renewable energy tax credit on *producers*. In Iowa Code section 476C.1, the legislature has statutorily defined producer as the *owner* of a qualified facility, not the facility itself, therefore there is no need nor authority to interpret the word "producer." *The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 423–24 (Iowa 2010) ("[I]nsurmountable obstacle to finding the department has authority to interpret [a] word . . . in this context is the fact that this word has already been interpreted, i.e., explained, by the legislature through its enactment of a statutory definition."). While the Department claims ASSC's reading of the statute could result in more claimants being eligible for this tax credit beyond what the legislature intended, ASSC's reading of the statute is the only logical reading of the statute because the language is unambiguous. Thus, the Department has exceeded its authority.

Further, the legislature already expressly provides multiple limits on the tax credit within the statute, such as specifically delineating limitations on the tax credit amount, found in Iowa Code section 476C.2, in addition to what types of facilities can qualify as a "eligible renewable energy facility" as described in Iowa Code section 476C.1(6). Therefore, if the legislature wanted to make a distinction between the initial and subsequent owners/producers of a qualified facility and more narrowly limit the ten-year

period for the issuance of tax credit certificates by starting the ten-year clock with a facility's initial owner/producer, it knew how to add such limitations with express language. See *Shumate v. Drake Univ.*, 846 N.W.2d 503, 512 (Iowa 2014). Such narrow language is not currently present in the statute and the Department is not vested with the authority to fix what it perceives to be a mistake or oversight of the legislature through rule.


ORDER

IT IS THEREFORE ORDERED that the Administrative Law Judge's Proposed Decision on above-captioned matter is AFFIRMED.

Issued at Des Moines, Iowa this 26 day of August, 2022.

IOWA DEPARTMENT OF REVENUE

BY



Craig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 20th day of August 2022, I caused a true and correct copy of the Director's Final Order of Review to be delivered or forwarded by U.S.

Mail to the following person(s):

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L O C A L


Kelsie Royster
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Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

Amana Society Service Company)	
506 39 th Avenue)	
Amana, IA 52203,)	
)	Case Nos. 22IDRCIT0002, 5, 6
Appellant,)	
)	IDR Docket Nos. 2019-240-2-0582, 2020-
v.)	240-2-0266, 2021-240-2-0170
)	
Iowa Department of Revenue,)	
)	AMENDED SUMMARY JUDGMENT ORDER
Respondent.)	

STATEMENT OF THE CASE

The matter comes before the tribunal on competing motions for summary judgment. The tribunal is in receipt of the following documents: the parties' jointly filed statement of stipulated facts, the appellant's motion for summary judgment, a brief in support of the appellant's motion for summary judgment, the respondent's motion for summary judgment, the respondent's statement of undisputed material facts, the respondent's memorandum of authorities in support of its motion, an appendix (242 pages), the respondent's resistance to the appellant's motion for summary judgment, the appellant's resistance to respondent's motion for summary judgment, the appellant's brief in support of its resistance, and a second appendix (9 pages).

FINDINGS OF FACT

In 2007, Amana Farms, Inc., ("Amana Farms") commissioned an anaerobic digester facility ("the Facility") to be built in or near West Amana. (Stipulated facts). The Facility began operations in August 2008. (Stipulated facts). The Facility has a nameplate generating capacity of greater than 0.75 MW and has been in-service and operational since 2008. (Stipulated facts).

In December 2016, Amana Society Service Company ("ASSC") acquired the Facility. (Stipulated facts). Both Amana Farms and ASSC are owned by Amana Society, Inc. ("Amana Society"). (Stipulated facts). ASSC subsequently submitted the Facility for certification as an eligible renewable energy facility, which apparently had not been done prior. (Resp. Memorandum of Authorities in Support of MSJ, p. 9).

Since 2016, ASSC has sold electricity generated by the Facility. (Stipulated facts). In addition, approximately 3-5% of the total renewable energy production of the Facility is consumed on site to meet the station load of the Facility. (Stipulated facts).

On April 19, 2017, the Iowa Utilities Board issued an order granting the Facility eligibility as a renewable energy facility. (Stipulated facts).

ASSC subsequently requested renewable energy tax credits for calendar years 2018, 2019, and 2020. (Stipulated facts). The Iowa Department of Revenue ("IDR") granted the 2018 credit in part and denied it in part, denied the 2019 credit entirely, and denied the 2020 credit entirely. (Stipulated facts). IDR denied a portion of the 2018 credit and the 2019 credit because IDR asserts ASSC is no longer eligible for the renewable energy tax credit for the Facility. IDR denied the 2020 credit because IDR asserts ASSC is no longer eligible for the renewable energy tax credit and because ASSC filed its application for the 2020 credit on March 2, 2021, which IDR asserts is too late. (Stipulated facts). These consolidated appeals followed.

CONCLUSIONS OF LAW

Timeliness. The issue of the 2020 credit is easily decided. The relevant tax year ended December 31, 2020. The deadline to request the credit was 30 days subsequent (i.e., January 30, 2021). Iowa Admin. Code r. 701-52.27(2)(a). Appellant requested its 2020 credit on March 2, 2021. This is untimely and ASSC can point to no order, rule, law, or exception thereto granting it permission to file an untimely application. The 2020 credit is denied as untimely.

Credit eligibility. Iowa Code Chapter 476C establishes the renewable energy tax credit. Renewable energy facilities, to be eligible for the credit, must be located in Iowa; must have been placed into service on or after July 1, 2005, and before January 1, 2018 ("service dates"); must meet certain production requirements; and must be at least fifty-one percent owned by one of a select list of qualifying ownership arrangements. See Iowa Code § 476C.1(6).

Two categories of people may apply to the Iowa Utilities Board (IUB) for a written determination of whether a facility is eligible for the credit. See *id.* § 476C.3. Those categories are "producers" and "purchasers" of renewable energy. For purposes of Chapter 476C, a "producer of renewable energy" means a "person who owns an eligible renewable energy facility." *Id.* § 476C.1(11). A "purchaser of renewable energy" means "a person who buys electric energy, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for a commercial purpose from an eligible renewable energy facility." *Id.* § 476C.1(12). There is no dispute that ASSC is a producer of renewable energy or that the Facility is eligible for the credit.

A purchaser or producer may also apply to the IUB for a renewable energy tax credit. If that application is approved, the IUB issues a certificate. *Id.* § 476C.4.

Each tax credit certificate shall contain the person's name, address, and tax identification number, the amount of tax credits, the first taxable year the certificate may be used, the type of tax to which the tax credits shall be applied, and any other information required by the department. The tax credit certificate shall only list one type of tax to which the amount of the tax credit may be applied. Once issued by the department, the tax credit certificate shall not be terminated or rescinded.

Id. § 476C.4(3). The tax credit certificate may be transferred to any person, but only once. *Id.* § 476C.6.

At issue in this case is the Chapter's ten-year limitation on the credit. Iowa Code section 476C.5 provides:

A producer or purchaser of renewable energy shall receive renewable energy tax credit certificates for a ten-year period for each eligible renewable energy facility under this chapter. The ten-year period for issuance of the tax credit certificates begins with the date the purchaser of renewable energy first purchases electricity, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for commercial purposes from the eligible renewable energy facility for which a tax credit is issued under this chapter, or the date the producer of the renewable energy first uses the energy produced by the eligible renewable energy facility for on-site consumption. Renewable energy tax credit certificates shall not be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027 ["sunset date"].

Beyond the statutory framework, a regulatory scheme for the renewable energy tax credit exists. *See id.* § 476C.7 (authorizing rulemaking). One of the governing rules puts the ten-year limitation slightly differently from the language employed in the statute quoted above:

e. Ten-year award limitation. The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

Iowa Admin. Code r. 701-42.28(3)(e).

It is the view of the tribunal that differences in the statute and rule create ambiguity. The statute centers "the producer" (or the purchaser). The rule centers "the facility." Consider the following framings of the parties' arguments.

ASSC's argument tracks the statute. ASSC is a producer of renewable energy. It has been since 2016. ASSC, "the producer of the renewable energy," "first use[d] the energy produced by the eligible renewable energy facility" it owns "for on-site consumption" in 2016. *See* Iowa Code § 476C.5. Therefore, ASSC asserts, it should be eligible for the renewable energy tax credit for ten years beginning in 2016. *See id.*

IDR's argument tracks the rule. The "qualified facility" at issue here "first began producing renewable energy for on-site consumption" in 2008. *See* Iowa Admin. Code r. 701-42.28(3)(e). IDR argues the ten-year award period expired on October 1, 2018. IDR thus believes it was correct to award a portion

of the claimed 2018 credit and deny credits claimed in subsequent years as past the ten-year limitation.

Note, though, that the statute's language itself is not ambiguous. Where that is the case, the tribunal will not look past the plain meaning of the statute's words. *Babka v. Iowa Dep't of Inspections & Appeals*, 967 N.W.2d 344, 355 (Iowa Ct. App. 2021). Where a statute and a rule are in conflict, the statute controls. *Exceptional Persons, Inc. v. Iowa Dep't of Hum. Servs.*, 878 N.W.2d 247, 252 (Iowa 2016). Here there is a direct conflict between whether to start the clock with *the producer* or *the facility*. The statute must prevail in that conflict, which means ASSC must prevail on its claims for 2018 and 2019.

IDR attempts to bolster its argument with citations to legislative history and a fiscal note prepared by the Legislative Services Agency contemporaneously with the law's enactment. The legislative-history argument depends on establishing a tenuous link between the service dates and sunset date in Chapter 476C. The argument goes, each time the legislature has updated this Chapter, the legislature has changed the service dates and sunset date, and each time has kept the date of the latest service date approximately ten years earlier than the sunset date. The argument is not persuasive: there could be many reasons for doing so, and speculating that the ten-year gap between service dates and sunset date establishes a facility-centric approach is a bridge too far.

The fiscal-note argument is similarly unpersuasive. ASSC cites a case in which our supreme court wrote, "[W]e are usually unwilling to rely upon the interpretations of individual legislators for statutory meaning. This unwillingness exists even where, as here, the legislators who testify are knowledgeable and entitled to our respect." *Iowa State Ed. Ass'n-Iowa Higher Ed. Ass'n v. Public Emp't Relations Bd.*, 269 N.W.2d 446, 448 (Iowa 1978). If the Iowa Supreme Court is unwilling to credit individual legislators while attempting to determine legislative intent, one can reasonably infer a Legislative Services Agency employee's view on statutory interpretation is entitled to very little deference indeed.

IDR also draws strength from another regulation. The cited regulation states:

For renewable energy that is sold, either the owners of an eligible facility or a designated purchaser of renewable energy from the facility may apply for renewable energy tax credits for up to ten tax years following the date the facility is placed in service. For renewable energy used for on-site consumption, the owners of an eligible facility may apply for renewable energy tax credits for up to ten tax years following the date the facility is placed in service.

Iowa Admin. Code r. 199-15.21. This regulation, too, centers the facility. What these regulations establish, individually and together, is an administrative interpretation. But administrative interpretation must bow to clear statutory language. *Calcaterra v. Iowa Bd. of Medicine*, 965 N.W.2d 899, 907 (Iowa 2021). Here the clear statutory language supports ASSC's interpretation.

The parties' motions for summary judgment are each granted in part and denied in part. ASSC shall be allowed to claim its full renewable energy tax credit for calendar years 2018 and 2019. Its credit for 2020 is denied as untimely.

The hearing on this matter is canceled.

ORDER

IDR's decision as to the 2020 tax credit at issue is affirmed. Its decision on the 2018 credit is affirmed in part and reversed in part; appellant is entitled to its full renewable energy tax credit for 2018. IDR's decision denying the 2019 tax credit is reversed. The hearing on this matter is canceled. IDR shall take all necessary action to enforce this decision.

Dated this 23rd day of March, 2022.



Joseph D. Ferrentino
Administrative Law Judge

cc: Amana Society Service Company (by mail)

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Malia Kirkpatrick, IDR (by email)

Andrew Jensen, Assistant Attorney General (by email)

Connie Larson (by AEDMS)

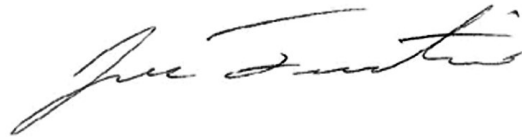
NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. Iowa Admin. Code r. 701-7.19(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

Case Title: AMANA SOCIETY SERVICE COMPANY V. IOWA
DEPARTMENT OF REVENUE
Case Number: 22IDRCIT0002
Type: Order - Summary Judgment

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

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of the claimed 2018 credit and deny credits claimed in subsequent years as past the ten-year limitation.

Note, though, that the statute's language itself is not ambiguous. Where that is the case, the tribunal will not look past the plain meaning of the statute's words. *Babka v. Iowa Dep't of Inspections & Appeals*, 967 N.W.2d 344, 355 (Iowa Ct. App. 2021). Where a statute and a rule are in conflict, the statute controls. *Exceptional Persons, Inc. v. Iowa Dep't of Hum. Servs.*, 878 N.W.2d 247, 252 (Iowa 2016). Here there is a direct conflict between whether to start the clock with *the producer* or *the facility*. The statute must prevail in that conflict, which means ASSC must prevail on its claims for 2018 and 2019.

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The parties' motions for summary judgment are each granted in part and denied in part. ASSC shall be allowed to claim its full renewable energy tax credit for calendar years 2018 and 2019. Its credit for 2020 is denied as untimely.

The hearing on this matter is canceled.

ORDER

IDR's decision as to the 2020 tax credit at issue is affirmed. Its decision on the 2018 credit is affirmed in part and reversed in part; appellant is entitled to its full renewable energy tax credit for 2018. IDR's decision denying the 2019 tax credit is reversed. The hearing on this matter is canceled. IDR shall take all necessary action to enforce this decision.

Dated this 17th day of March, 2022.



Joseph D. Ferrentino
Administrative Law Judge

cc: Amana Society Service Company (by mail)
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Malia Kirkpatrick, IDR (by AEDMS)
Andrew Jensen, Assistant Attorney General (by AEDMS)
Connie Larson (by AEDMS)

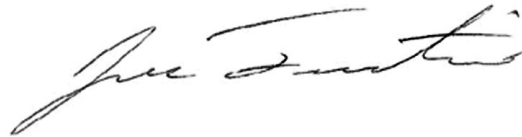
NOTICE

Any aggrieved party has 10 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. Iowa Admin. Code r. 701-7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

Case Title: AMANA SOCIETY SERVICE COMPANY V. IOWA
DEPARTMENT OF REVENUE
Case Number: 22IDRCIT0002
Type: Order - Summary Judgment

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge