

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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4 ROBERT E. and CAROLE L. LOWERY,)
5 Appellant,) Docket No. 1910-03-NEV
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW

10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 On December 16, 1999, Robert E. and Carole L. Lowery ("Appellants," with the singular referring
14 to Robert E. Lowery) paid in full for a neighborhood electric vehicle ("NEV"). Appellants titled and
15 registered the vehicle on December 31, 1999. They received physical possession of the NEV in 2000.

16 Appellants subsequently claimed a credit of \$8,889 for the purchase of the NEV on their 1999
17 Arizona income tax return. The Arizona Department of Revenue (the "Department") examined
18 Appellants' return and disallowed the credit for the 1999 tax year because Appellants did not take
19 possession of the NEV until tax year 2000. The disallowance resulted in an assessment of additional
20 income tax for 1999. Appellants unsuccessfully protested the disallowance to the Department and now
21 timely appeal to this Board.

22 DISCUSSION

23 The Department acknowledges that Appellants are entitled to a credit. The issue is whether they
24 are entitled to a credit for tax year 1999 or tax year 2000. During 1999, as part of an alternative fuel
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1 program intended to improve Arizona's air quality, A.R.S. § 43-1086 allowed an income tax credit for
2 purchases of one or more new original equipment manufactured alternative fuel vehicles for use in this
3 state. The statute allowed a credit in an amount equal to fifty per cent of the cost of the vehicle or ten
4 thousand dollars, whichever was more. The statute was subsequently amended for tax year 2000 to limit
5 the credit to no more than the amount that the taxpayer actually paid for the vehicle. Laws 2000, 7th S.S.,
6 Ch. 1, § 16.

7 The 1999 version of the statute did not define a "purchase" for purposes of receiving the credit.
8 However, the 2000 amended version specified that in order to qualify for the income tax credit, "the
9 vehicle shall be in the possession of the taxpayer before December 1, 2000 **or** the taxpayer shall have
10 paid in full for the vehicle before December 1, 2000." *Id* (emphasis added).

11 Because Appellants did not have physical possession of the NEV in 1999, the Department argues
12 that they are not entitled to the credit for that year. Appellants counter that a qualified purchase requires
13 physical possession ***or payment in full*** and, for support, point to the language of the statute in effect for
14 2000, as well as similar language in the Department's own rule, A.A.C. R15-2c-702.A.2. However, the
15 very language of the amended statute makes it clear that the amendment does not apply to the 1999 tax
16 year. Laws 2000, 7th S.S., Ch. 1, § 26. Further, the historical note to A.A.C. R15-2c-702 provides that it
17 was not effective before November 29, 2001.

18 In determining what the Arizona Legislature intended by the word "purchase" in the 1999 statute,
19 the cardinal principle of statutory construction is to follow the plain and ordinary meaning of a word.
20 *Dearing v. Arizona Dep't of Economic Security*, 121 Ariz. 203, 589 P.2d 446 (App. 1978); *State Tax*
21 *Comm'n v. Peck*, 106 Ariz. 394, 476 P.2d 849 (1970). *See also* A.R.S. § 1-213.

22 The parties focus on whether or not "purchase" requires physical possession under the 1999
23 statute, and they provide multiple, conflicting definitions to support their opposing positions. Clearly,
24 physical possession of the NEV on or before December 31, 1999 would entitle Appellants to a credit for
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1 year 1999. However, Appellants did not possess the NEV until 2000. Consequently, the issue before this
2 Board is whether Appellants' 1999 payment in full for the NEV entitles them to the credit in 1999.

3 The Board finds that a reasonable person would understand the plain and ordinary meaning of
4 the word "purchase" to include payment in full of an item. However, a reasonable person would also
5 understand that the payment must be for an existing item. Therefore, payment in full for an item that has
6 not yet been manufactured would not qualify as a purchase.

7 The Energy Office of the Arizona Department of Commerce published information on Alternative
8 Fuel Vehicle Incentives in July 1999. This information is not binding on the Department. There is, in fact,
9 no evidence that the Department approved or even reviewed the publication. Nonetheless, the
10 publication was distributed to assist taxpayers. It provides that taxpayers must have a vehicle factory
11 invoice. Such an invoice identifies an existing vehicle. This requirement supports the Board's reasonable
12 interpretation of "purchase" in this case.

13 At the hearing before the Board, Appellant provided a vehicle factory invoice identifying an NEV
14 existing at the time Appellants paid in full for it. Therefore, Appellants have satisfied the requirements of
15 the statute and are entitled to the credit for tax year 1999.

16 CONCLUSIONS OF LAW

17 Appellants are entitled to the credit for tax year 1999. See A.R.S. § 43-1086 (as it read in 1999).

18 ORDER

19 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted, and the final order of the
20 Department is vacated.

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