

BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
100 North 15<sup>th</sup> Avenue - Suite 140  
Phoenix, Arizona 85007  
602.364.1102

ROBERT DECKER AND ASSOCIATES, PC ) Docket No. 1878-02-AFTC  
Appellant, )  
vs. ) NOTICE OF DECISION:  
ARIZONA DEPARTMENT OF REVENUE, ) FINDINGS OF FACT AND  
Appellee. ) CONCLUSIONS OF LAW

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

FINDINGS OF FACT

Prior to June, 2002, Robert Decker and Associates, P.C. ("Appellant") filed a request for relief from the alternative fuel usage requirements with the Arizona Department of Revenue (the "Department"). The Department denied the request on the basis that the request was premature because the Department could not determine yearly compliance with the fuel usage requirements until the end of each vehicle year, which in this case was November, 2002.<sup>1</sup> Appellant timely protested the denial to the Department's hearing officer, who upheld the denial. Appellant now timely appeals to this Board.

<sup>1</sup> In his decision, the Department's hearing officer stated that the Department properly denied Appellant's request for relief. Because the Department had denied the request based on the fact that it was premature, the statement gave Appellant, as well as this Board, the impression that Appellant could not request relief from compliance prior to the end of the vehicle year. This impression was not assuaged at the hearing before the Board, even after the Board's hearing officer expressed concern that it appeared Appellant could not apply for relief from compliance until after he had complied or had risked losing his tax credits by not complying. However, Arizona General Tax Procedure GTP-01-2 (under subsection I, entitled "Application for Relief") clearly provides that "A taxpayer may request an advance determination of eligibility for relief by submitting [Form AFV-RR] to the Department . . . ." Therefore, the Department's initial denial of Appellant's request for relief from fuel usage compliance, on the basis that it was premature and not on the merits of the case, was improper. The Department's hearing officer, however, did address the merits of the case in his decision denying Appellant's protest.

DISCUSSION

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2 The issue before the Board is whether Appellant is entitled to relief from the alternative fuel usage  
3 requirements.

4 A.R.S. §§ 43-1086 and 43-1174 provide tax credits for individuals and corporations for the  
5 purchase, lease or conversion costs of alternative fuel vehicles. Both these statutes include requirements  
6 a taxpayer must meet in order to avoid having to recapture a previously granted credit. The pertinent  
7 portions of A.R.S. § 43-1174 follow:

8 E.4 If the vehicle is a bi-fuel vehicle that operates on liquefied petroleum gas,  
9 the taxpayer shall provide evidence satisfactory to the department that at least  
fifty per cent of the fuel the vehicle uses is alternative fuel for thirty-six months<sup>2</sup>  
from the date the vehicle is initially registered as an alternative fuel vehicle.

10  
11 F. If a vehicle fails to comply with subsection E . . . the department shall  
recapture the tax credit . . . or disallow the tax credit for a taxable year. The  
12 director may relieve a taxpayer of requirements prescribed . . . if both of the  
following apply:

- 13 1. The taxpayer is unable to meet the requirements due to circumstances  
that would make the requirement unfair or inequitable to the particular  
14 taxpayer.
- 15 2. The taxpayer acted in good faith and the taxpayer intended to primarily  
propel the vehicle with alternative fuel.

16 The Department has issued Arizona General Tax Procedure 01-2 ("GTP 01-2) detailing the  
17 procedure for requesting relief from certain registration, ownership and fuel usage requirements for  
18 alternative fuel vehicles:

19 In all cases a taxpayer will be required to declare under penalties of perjury that the  
20 taxpayer intended to primarily propel the vehicle with alternative fuel and acted in good  
faith in purchasing the vehicle. All facts asserted or declared by a taxpayer are subject to  
21 review and audit, and any determination that a taxpayer is entitled to relief may be  
revoked if the facts presented in the claim are not correct . . . .

22 Relief granted from the fuel usage requirement will generally apply only to a single tax  
year and relief for subsequent years will have to be applied for and justified.

23  
24 The taxpayer may qualify for relief from the fuel usage requirement if one of the  
following conditions is met:

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<sup>2</sup> Appellant is seeking relief from the second vehicle year.

- 1 • The taxpayer shows that the requirement cannot be met because records of fuel usage
- 2 were not kept prior to December 14, 2000, the effective date of Laws 2000, 7<sup>th</sup> S.S, ch.1.
- 3 • The taxpayer shows that the requirement cannot be met because of out-of-state travel.
- 4 • The taxpayer shows that refueling options are unavailable and the taxpayer was unaware
- 5 of this unavailability at the time the vehicle was purchased.
- 6 • A combination of the above conditions.
- 7 • Any other circumstances that would make the requirement unfair or inequitable to the
- 8 particular taxpayer.

9 Originally, the alternative fuel legislation included incentives for those establishing alternative fuel  
10 service stations and a prohibition against excessively charging for the fuel. These provisions were  
11 eventually eliminated.

12 Appellant testified in the hearing before this Board that there are only two service stations that sell  
13 propane within a reasonable proximity of Appellant's location in Tucson. Both are regular service  
14 stations. One station charges \$3.00 a gallon for the propane it typically provides for use in barbecue  
15 grills, camping equipment, etc., and the other refused to service Appellant's vehicles at all. Appellant  
16 must spend one hour traveling in order to obtain propane for a reasonable price (\$1.25 per gallon), and  
17 this service is only available Monday through Friday between the hours of 9 a.m. and 4 p.m. Therefore,  
18 Appellant must take time from his job to refuel its vehicles.

19 For the foregoing reasons, the Board finds that Appellant has met the requirements for relief from  
20 the fuel usage requirements under GTP 01-2.

21 CONCLUSIONS OF LAW

22 Appellant has met the requirements for relief from the fuel usage requirements under GTP 01-2.

23 ORDER

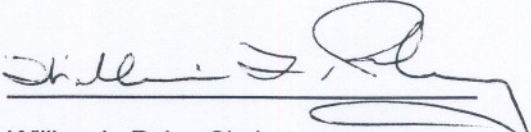
24 THEREFORE, IT IS HEREBY ORDERED that the appeal is granted, and the final order of the  
25 Department is vacated.

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...  
...

1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 3rd day of March , 2003.

4 STATE BOARD OF TAX APPEALS

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6   
7 William L. Raby, Chairperson

8 WLR:ALW

9 CERTIFIED

10 Copies of the foregoing  
11 Mailed or delivered to:

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