

1 BEFORE THE STATE BOARD OF TAX APPEALS
2 STATE OF ARIZONA
3 100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

4 DAVID C. and SANALEE DAVIS,)
5 Appellants,) Docket No. 1939-05-I
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
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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 31, 1999, David C. and Sanalee Davis ("Appellants") paid \$9,740 in full for a
14 neighborhood electric vehicle ("NEV"). The NEV was manufactured in February 2000, and Appellants
15 took physical possession of the NEV in April 2000.

16 Appellants subsequently claimed a credit of \$10,000 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. After unsuccessfully protesting the disallowance to the Department, Appellants
21 timely appealed to this Board. A hearing was held before the Board on January 18, 2005.

22 The issue before the Board was whether Appellants were entitled to a credit for tax year 1999 or
23 tax year 2000. During 1999, as part of an alternative fuel program intended to improve Arizona's air
24 quality, A.R.S. § 43-1086 allowed an income tax credit for purchases of one or more new original
25 equipment manufactured alternative fuel vehicles for use in this state. The statute allowed a credit in an
amount equal to fifty per cent of the cost of the vehicle or ten thousand dollars, whichever was more. The

1 statute was subsequently amended for tax year 2000 to limit the credit to no more than the amount that
2 the taxpayer actually paid for the vehicle. Laws 2000, 7th S.S., Ch. 1, § 16.

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

7 Because Appellants did not have physical possession of the NEV in 1999, the Department
8 argued that they were not entitled to the credit for that year. Appellants countered that a qualified
9 purchase requires physical possession *or payment in full*, not both.

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

14 The Board, applying principles of statutory construction in a case involving the same issue, had
15 previously determined that a reasonable person would understand the plain and ordinary meaning of the
16 word "purchase" to include payment in full of an *existing* item. *See, Guttilla v. Arizona Dep't of Rev.*,
17 1914-03-NEV (BOTA, Feb. 26, 2004). Appellants' NEV was not manufactured until April 2000.
18 Therefore, the Board denied Appellants appeal in a decision issued on March 22, 2005.

19 On the same day, the Department and Appellants filed a Stipulated Motion to Dismiss this
20 matter with the Board. On April 19, 2005, the Board revoked its decision in accordance with the motion.

21 Appellants subsequently filed a claim with the Department for reimbursement of the fees and
22 costs incurred in association with their original claim. In May 2005, the Department denied Appellants'
23 claim for reimbursement. Appellants now timely appeal to this Board.

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DISCUSSION

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2 The issue now before the Board is whether Appellants are entitled to the reimbursement of the
3 fees and costs claimed.

4 A.R.S. § 42-2064 provides the following:

5 A. A taxpayer who is a prevailing party may be reimbursed for reasonable fees
6 and other costs related to an administrative proceeding that is brought by or
7 against the department in connection with an assessment . . . or refund . . .
8 of any tax For purposes of this subsection, a taxpayer is considered to
9 be a prevailing party only if both of the following are true:

1. The department's position was not substantially justified.
2. The taxpayer prevails as to the most significant issue or set of
10 issues.

11 H. For purposes of this section:

1. "Administrative proceeding" means any review proceeding or appeal
12 pursuant to section 42-1251 that is conducted under the authority of
13 section 42-1003 and an appeal to the state board of tax appeals
2. "Reasonable fees and other costs" means fees and other costs that
14 are based on prevailing market rates for the kind and quality of the
15 furnished services . . .

16 Under this statute, Appellants bear the burden of proving that the Department's denial of their
17 original refund claim was not substantially justified. "Substantially justified" is not defined for purposes of
18 the statute above, but the U.S. Supreme Court has affirmed the Ninth Circuit's definition of substantially
19 justified as a position that "has a reasonable basis in law and fact." *Pierce v. Underwood*, 487 U.S. 552,
20 561, n.2. (1988).

21 Appellants argue that the Department's position was not substantially justified as evidenced by
22 superior court rulings in favor of similarly-situated taxpayers, followed by the Department's subsequent
23 agreement to dismiss Appellants' original appeal. However, Appellants must show that the Department's
24 position was not substantially justified at the time it denied their refund claim. A change in the
25 Department's position due to an intervening court case or legislative action that is dispositive does not
meet the criteria of the statute. Although it was subsequently revoked, the decision of the Board in favor
of the Department in this matter clearly indicates that the Department's position had a reasonable basis in
law and in fact at the time Appellants' refund claim was denied.

1 Even when the Department's position is not substantially justified, taxpayers are not entitled to
2 reimbursement for every conceivable indirect fee and cost. Taxpayers must itemize and sufficiently
3 document their fees and costs and demonstrate that they are reasonable. Further, A.R.S. § 42-2064
4 does not authorize the reimbursement of fees and costs related to the claim for reimbursement itself.
5 Finally, reimbursable costs must be directly related to the administrative proceedings in the original
6 appeal.¹

7 After reviewing this matter, the Board finds that Appellants have not met their burden of proving
8 that the Department's refund denial was not substantially justified; therefore, Appellants are not entitled to
9 reimbursement.

10 CONCLUSIONS OF LAW

11 Appellants are not entitled to reimbursement. See A.R.S. § 42-2064.

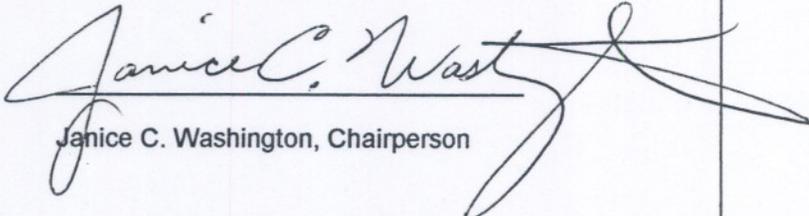
12 ORDER

13 THEREFORE, IT IS HEREBY ORDERED that Appellants' request for reimbursement of fees and
14 costs is denied.

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

17 DATED this 22nd day of November, 2005.

18 STATE BOARD OF TAX APPEALS

19 
20 Janice C. Washington, Chairperson

21 JCW:ALW

22 CERTIFIED

23 Copies of the foregoing
24 Mailed or delivered to:

25 ¹ Appellants seek reimbursement for costs associated with filing amended income tax returns during the appeals process to claim carry-forward credits available under the amended alternative fuel vehicles statute. Though the Board itself noted Appellants' need to file the returns during the original hearing before the Board, the decision to file was Appellants' and the costs associated with the filings were not directly related to Appellants' appeal.

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