

1 On December 4, 2000, the Legislature enacted SB 1004 (current version of A.R.S. § 43-1086) to
2 retroactively adjust and limit some of the benefits under SB 1504. For those who converted vehicles they
3 owned prior to the passage of SB 1504 in April 2000, SB 1004 eliminated tax credits based on a
4 percentage of a vehicle's purchase price. The governor signed the legislation into law on December 14,
5 2000.

6 Brice E. and Arlesa D. Hammond ("Appellants") purchased a Ford Expedition SUV in October
7 1999 and a GMC truck in February 2000. They contracted for the conversion of the vehicles in October
8 2000. The conversions were completed in November and December of 2000.

9 In order to be eligible for tax credits under either SB 1504 or SB 1004, a taxpayer had to submit a
10 grant application to the State. According to the State's records, Appellants submitted their applications
11 for the two vehicles at issue on December 12, 2000, after SB 1004 had been enacted. Thereafter,
12 Appellants claimed a refundable credit of \$13,000 on their 2000 Arizona income tax return for the cost of
13 converting the vehicles to AFVs.

14 The Arizona Department of Revenue (the "Department") granted this refund. Appellants
15 subsequently amended their 2000 Arizona income tax return to claim an additional credit of \$18,388. The
16 Department denied this credit. Appellants protested to the Department's hearing officer who denied the
17 protest. Appellants now timely appeal to this Board.

18 DISCUSSION

19 The issue before the Board is whether Appellants are entitled to the additional credit claimed on
20 their 2000 Arizona amended income tax return. Tax statutes are strictly construed against a party who
21 claims a credit. *Davis v. Arizona Dep't of Rev.*, 197 Ariz. 527, 4 P.3d 1070. (App. 2000).

22 A.R.S. § 43-1086 currently allows taxpayers an income tax credit, under certain enumerated
23 conditions, for AFVs for taxable years ending on or before December 31, 2001. For the conversion of a
24 *used* conventionally-fueled vehicle, a credit equal to the cost of conversion is available. A.R.S. § 43-
25 1086(B)(14). "Used," for the purposes of this statute, is defined to mean any vehicle other than a new

1 vehicle. A.R.S. § 43-1086(P)(10). A "new" vehicle is defined, in pertinent part, to include a vehicle that
2 was never titled and registered anywhere before its conversion or a vehicle that is converted after the
3 vehicle is titled and registered if, at the time the applicant contracted to purchase the vehicle, the
4 applicant ordered the conversion of the vehicle. A.R.S. § 43-1086(P)(9).

5 Appellants did not contract for the conversion of the vehicles at issue until October 2000.
6 Therefore, the vehicles are "used" under the statute and the amount of the credit is limited to the cost of
7 conversion.

8 Appellants argue that they contracted with the State for the tax credit at issue under SB 1504,
9 and the State is bound by the terms of that contract. Therefore, they are entitled to the additional refund.
10 The Board disagrees.

11 A right provided by statute can be removed by statute before the right has vested. *Aranda v.*
12 *Industrial Comm'n of Arizona*, 198 Ariz. 467 (2000). A right vests when all the events that must take
13 place to make the realization of the right certain have happened. *Aranda*, 198 Ariz. at 471. A right that is
14 vested is one that can be asserted as a legal cause of action or has been so substantially relied on that
15 retroactive removal of it would be "manifestly unjust." *Id.* at 471. A right is expectant when it depends
16 upon the sustained existence of the status quo until the occurrence of some future event. *Id.* at 471-472.

17 In this case, Appellants' right to the additional refund did not vest prior to the amendment. Not all
18 of the necessary events, including certification and the filing of an income tax return, had taken place
19 before the Legislature amended the statute. Appellants' applications were not certified until March 2001,
20 and Appellants' did not file their income tax returns until April 2001.

21 Appellants' right to the refund was expectant because it depended upon the continued existence
22 of A.R.S. § 43-1086, as it read under SB 1504, until their applications were certified and they filed their
23 tax returns. Appellants may have expected to receive the additional refund, but they did not rely on it to
24 their detriment. Appellants purchased the vehicles at issue before the enactment of SB 1504. Thus, they
25 purchased the vehicles with no intention of converting them to AFVs and with no expectation of receiving
any tax benefits. They already have been fully reimbursed for the cost of converting the vehicles, and

1 there is no evidence that the additional refund they seek was so substantially relied on by Appellants that
2 it would be manifestly unjust to deny its issuance. Accordingly, Appellants are not entitled to the
3 additional tax credit.

4 CONCLUSIONS OF LAW

5 Appellants are not entitled to the additional refund. See A.R.S. § 43-1086; *Aranda v. Industrial*
6 *Comm'n of Arizona*, 198 Ariz. 467 (2000).

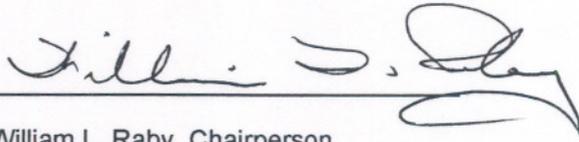
7 ORDER

8 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
9 Department is affirmed.

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

12 DATED this 1st day of April, 2003.

13 STATE BOARD OF TAX APPEALS

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15 _____

16 William L. Raby, Chairperson

17 WLR:ALW

18 CERTIFIED

19 Copies of the foregoing
20 Mailed or delivered to:

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