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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

4 FRANK A. and LINDA C. SMITH, )  
5 Appellants, ) Docket No. 1917-03-NEV  
6 vs. )  
7 ARIZONA DEPARTMENT OF REVENUE, ) NOTICE OF DECISION:  
8 Appellee. ) FINDINGS OF FACT AND  
9 ) CONCLUSIONS OF LAW

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

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FINDINGS OF FACT

13 On December 29, 1999, Frank A. and Linda C. Smith ("Appellants") ordered a neighborhood  
14 electric vehicle ("NEV") and paid in full for it on December 30, 1999. Appellants did not receive physical  
15 possession of the NEV until 2000.

16 Appellants subsequently claimed a credit of \$3,082 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.

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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, 7<sup>th</sup> 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. However, the very  
15 language of the amended statute makes it clear that the amendment does not apply to the 1999 tax year.  
16 Laws 2000, 7<sup>th</sup> S.S., Ch. 1, § 26. Further, the historical note to A.A.C. R15-2C-702 provides that it was  
17 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, Appellants provided a document entitled "INVOICE." However,  
14 a review of the document confirms that it amounts to a purchase order for an NEV. It is not a vehicle  
15 factory invoice identifying an NEV existing at the time they paid in full for it. Therefore, Appellants have  
16 not satisfied the requirements of the applicable statute and are not entitled to the credit for tax year 1999.

17 CONCLUSIONS OF LAW

18 Appellants are not entitled to the credit for tax year 1999. See A.R.S. § 43-1086 (as it read in  
19 1999).

20 ORDER

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

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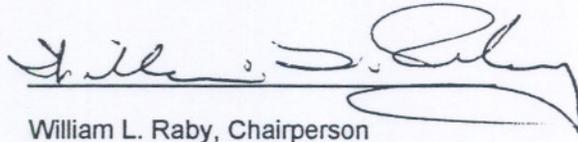
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer.  
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 26th day of February , 2004.

4 STATE BOARD OF TAX APPEALS

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William L. Raby, Chairperson

8 WLR:ALW

9 CERTIFIED

10 Copies of the foregoing  
Mailed or delivered to:

11 Frank A. and Linda C. Smith  
12 42525 North Back Creek Way  
Anthem, Arizona 85086

13 Elizabeth Hill  
14 Assistant Attorney General  
15 Civil Division, Tax Section  
1275 West Washington Street  
Phoenix, Arizona 85007