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

4 VARIAN ASSOCIATES, INC., AND AFFILIATED)
5 SUBSIDIARIES,)

6 Appellant,)

7 vs.)

8 ARIZONA DEPARTMENT OF REVENUE,)

9 Appellee.)

Docket No. 1887-02-I

NOTICE OF DECISION:
FINDINGS OF FACT AND
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 Varian Associates, Inc., and affiliated subsidiaries (collectively, "Appellant") is a manufacturer and
14 seller of various high technology instrumentation and equipment including ion implantation systems. In
15 Arizona, Appellant maintains a warehouse, sells semiconductor manufacturing equipment, manufactures
16 printed circuit boards, and engages in contract manufacture for high technology entities.

17 On June 16, 1994, Appellant started construction on an office and manufacturing facility located
18 in Tempe, Arizona. Construction of the facility was completed on November 17, 1994. On that same
19 day, the City of Tempe issued a certificate of occupancy for the facility. Based on A.R.S. § 43-1171,
20 Appellant claimed a construction materials credit in connection with the construction of the facility on its
21 Arizona corporate income tax return for the fiscal year ending September 30, 1995.

22 The Arizona Department of Revenue (the "Department") issued an assessment against Appellant
23 originally for the period October 1, 1994, through September 30, 1998. Among other adjustments, the
24 Department disallowed the credit claimed for construction materials, resulting in an additional tax liability
25

1 and interest. The Department subsequently modified the assessments, and the credit disallowance in
2 the fiscal year ending September 30, 1995 is the only issue remaining.

3 Appellant protested the disallowance to an administrative hearing officer who denied the protest.
4 Appellant now timely appeals to this Board.

5 DISCUSSION

6 The issue before the Board is whether Appellant is entitled to the credit claimed for construction
7 materials.

8 A.R.S. § 43-1171(A) provides that:

9 A credit is allowed against the tax imposed by this title for new construction materials
10 incorporated into a qualifying facility located entirely within this state, construction of
11 which is begun on or after January 1, 1994 and completed on or before December 31,
1999 This credit shall be claimed in the taxable year in which the qualified facility
receives a certificate of occupancy.

12 The session law enacting the statute above provides that "[t]his act is effective, and applies to taxable
13 years beginning, from and after December 31, 1994." Laws 1994, Ch. 117, § 7. Appellant began
14 construction on its facility in June of 1994 during the calendar years referred to in the statute but
15 completed it in November of 1994 before the first year for which the statute was effective as established
16 by the session law. Appellant contends that there is a conflict between A.R.S. § 43-1171(A) and the
17 session law and argues that the resulting ambiguity must be construed in favor of Appellant. *Estancia*
18 *Dev. Assocs., L.L.C. v. City of Scottsdale*, 196 Ariz. 87, 90, 993 P.2d 1051, 1054 (Ct. App. 1999).

19 According to Appellant, there is no reason for A.R.S. § 43-1171(A) and the session law to
20 encompass different dates, and the legislature could not have intended this inconsistency to exclude a
21 taxpayer such as Appellant from the benefit of the credit. In order "to avoid an absurd result that the
22 legislature could not in any event have intended," Appellant argues that one must look beyond the plain
23 meaning of the language in the statute. *Arizona Dep't of Rev. v. Gen. Motors Acceptance Corp.*, 188 Ariz.
24 441, 444, 937 P.2d 363, 366 (Ct. App. 1996). Thus, Appellant proposes that the specific and primary
25 language of A.R.S. § 43-1171(A) supersedes the general and secondary language of the session law.

1 See, e.g., *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994); *Estancia*, 196 Ariz. at
2 90, 993 P.2d at 1054; *Centric-Jones Co. v. Town of Marana*, 188 Ariz. 464, 469, 937 P.2d 654, 659 (Ct.
3 App. 1996). The Board disagrees.

4 There is no authority supporting Appellant's contention that the language of A.R.S. § 43-1171(A)
5 is primary to that of the session law. Further, the principle of statutory construction holding that the
6 specific governs over the general in the event of a conflict is pertinent when courts construe two different
7 statutes addressing the same subject. The rule does not apply to provisions within the same statute.

8 To interpret a statute, one must "look *first* at the words of the statute itself, *and if their meaning is*
9 *clear,*" one must "accord the statute that plain meaning." *Allstate Ins. Co. v. Universal Underwriters, Inc.*,
10 199 Ariz. 261, 265, 19 P.3d 106, 110 (Ct. App. 2000) (quotation omitted) (emphasis added). The
11 language of A.R.S. § 43-1171(A) and the language of the session law are equally important and equally
12 clear and specific. A.R.S. § 43-1171(A) establishes the calendar years in which qualifying construction
13 must occur, and the session law identifies the taxable years for which a taxpayer may claim the credit.
14 The legislative history confirms that the statute was reviewed prior to its enactment, and in reviewing the
15 statute, the Board cannot conclude that the provisions of the law do not fulfill legislative intent.

16 Contrary to Appellant's position, credits are a matter of legislative grace and not a matter of
17 taxpayer right. As such, credits must be strictly construed against the taxpayer and in favor of the taxing
18 authority. *Keyes v. Chambers*, 209 Or. 640, 307 P.2d 498 (1957); *Davis v. Arizona Dep't Rev.*, 197 Ariz.
19 527, 4 P.3d 1070 (App. 2000). For the foregoing reasons, the Board finds that Appellant is not entitled to
20 the credit under A.R.S. § 43-1171(A) and is liable for the tax assessed. Because the interest at issue is
21 made a part of the tax by statute and represents a reasonable interest rate on the tax due, it may not be
22 abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

23 CONCLUSIONS OF LAW

24 1. The Department properly denied the credit for construction materials, and Appellant is liable
25 for the tax assessed. A.R.S. § 43-1171(A); Laws 1994, Ch. 117, § 7; *Allstate Ins. Co. v. Universal*

1 *Underwriters, Inc.*, 199 Ariz. 261, 265, 19 P.3d 106, 110 (Ct. App. 2000); *Keyes v. Chambers*, 209 Or.
2 640, 307 P.2d 498 (1957); *Davis v. Arizona Dep't Rev.*, 197 Ariz. 527, 4 P.3d 1070 (App. 2000).

3 2. The interest at issue is made a part of the tax by statute and represents a reasonable interest
4 rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286,
5 30 P.2d 841 (1934).

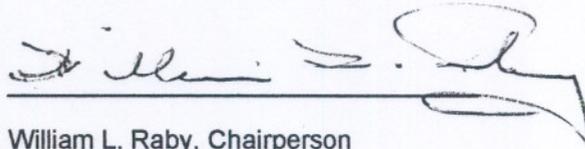
6 ORDER

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

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

11 DATED this 15th day of July, 2003.

12 STATE BOARD OF TAX APPEALS

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William L. Raby, Chairperson

WLR:ALW

CERTIFIED

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