

**REDACTED DECISION – DK# 14-251 AFTC**

**BY: CRYSTAL S. FLANIGAN, ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON JANUARY 16, 2018  
ISSUED ON JUNE 5, 2018**

**BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS**

**FINAL DECISION**

On July 28, 2014, the Taxpayer Services Division of the West Virginia Tax Department issued return change letters for tax years 2011, 2012, and 2013 to the Petitioner. These letters informed the Petitioner that the Alternative Fuel Tax Credit (hereinafter “AFTC”) that he had claimed for 2011 and 2012 had been denied.

On August 20, 2014, the Petitioner received a statement of account for tax in the amount of \$ \_\_\_\_\_, penalties and additions in the amount of \$ \_\_\_\_\_ and interest in the amount of \$ \_\_\_\_\_ for tax year 2011. The Statement of Account also included for tax year 2012, tax in the amount of \$ \_\_\_\_\_, penalties and additions in the amount of \$ \_\_\_\_\_, and interest in the amount of \$ \_\_\_\_\_. The Statement finally included tax for tax year 2013 in the amount of \$ \_\_\_\_\_, penalties and additions in the amount of \$ \_\_\_\_\_, and interest in the amount of \$ \_\_\_\_\_, for a total of \$ \_\_\_\_\_.

On August 14, 2014, the Petitioner timely filed with this Tribunal, a petition for reassessment. On September 3, 2014, the Petitioner paid the West Virginia State Tax Department \$ \_\_\_\_\_ under protest. An evidentiary hearing was held in this matter on January 26, 2017, and a supplemental hearing was held on September 27, 2017, at the conclusion of which, the parties filed legal briefs. The matter became ripe for a decision at the conclusion of the briefing schedule.

## FINDINGS OF FACT

1. The Petitioner is a Resident Individual, as that term is defined in West Virginia Code Section 11-21-7. As such, he pays West Virginia income taxes.

2. On December 31, 2010, the Petitioner purchased a new 2011 Chevrolet Silverado from a West Virginia Auto Dealer. *See* State's Exhibit 4, and Petitioner's Exhibit B, Motor Vehicle Purchase Agreement.

3. In the 2011, 2012 and 2013 West Virginia tax filings, the Petitioner applied for the AFTC. The Petitioner was granted the credit after his 2011 filing. Shortly after his 2013 filing he received a credit denial from the Tax Department denying the credits for the tax years at issue. *See* State's Exhibit 2.

4. On September 3, 2014, the Petitioner paid, under protest, \$ \_\_\_\_\_, to the West Virginia State Tax Department.

## DISCUSSION

The only issue in this matter is the date of purchase of the vehicle discussed above. In 1996 the Legislature passed Senate Bill 363, which created an alternative fuel motor vehicle tax credit. However, the Legislature clearly stated in Section 7 that the credit would only be available for ten years. "The tax credit provided in this article shall expire by operation of law ten years after the effective date of this article," TAXATION—ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT, 1996 West Virginia Laws Ch. 234 (S.B. 363).

In 2011 the West Virginia Legislature passed Senate Bill 465, titled the Marcellus Gas and Manufacturing Development Act. TAX CREDITS-NATURAL GAS-ALTERNATIVE FUELS, 2011 West Virginia Law Ch. 161 (S.B. 465). The legislation contained various provisions, including reenacting the alternative fuel motor vehicle tax credit which had expired in 2006.

The controlling provision for this matter is West Virginia Code Section 11-6D-3 which states:

The tax credits for the **purchase of alternative-fuel motor vehicles or conversion to alternative-fuel motor vehicles**, qualified alternative-fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one, article twenty-three or article twenty-four of this chapter, but in no case may more than one tax credit be granted under this article or any combination of articles set forth in this chapter for purchase of an alternative-fuel motor vehicle or for costs relating to conversion to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure as defined in this article. **This credit shall be available for those tax years beginning on or after January 1, 2011**, but shall not be available for, or with relation to, any purchase, expenditure, investment, installation, construction or conversion made in any tax year beginning after the termination dates specified in this article, as applicable to specified purchases, expenditures, investments, installations, construction or conversions.

W. Va. Code Ann. § 11-6D-3 (West)(Emphasis added.)

The Tax Commissioner argues that when the Petitioner purchased the 2011 Chevrolet Silverado, the credit was not in effect. The Petitioner is *pro se* and argues that he purchased the vehicle on January 3, 2011 and relies on a service invoice from a West Virginia Auto Dealer dated September 1, 2016, which refers to a delivery date of January 3, 2011. *See* Petitioner's Exhibit No. C. The vehicle purchase agreement shows that the Chevrolet Silverado was purchased from a West Virginia Auto Dealer., on December 31, 2010. The Petitioner claims that this date is incorrect because the car dealership backdated the purchase date so that sale would become part of 2010's sales tax year. The Petitioner did not bring a witness from the car dealership to testify to the date of the purchase. *See* Petitioner's Exhibit C. The date of purchase is on the purchase agreement as December 31, 2010, and it is the purchase agreement that is controlling.

Furthermore, the Petitioner put December 31, 2010, as the date of purchase on his West Virginia Schedule AFTC-1 credit worksheet that was attached to his amended 2011 West Virginia State Income Tax Return. *See* State's Ex. 4.

Neither party argues that this statute is ambiguous and its effective date of January 31, 2011 is quite clear. We find Petitioner's argument regarding the delivery date on the Auto Dealer Service invoice unpersuasive. Unfortunately for the Petitioner, the purchase was made on December 31, 2010, just one day prior to the effective date. However, this statutory requirement could not be clearer. Therefore, the Petitioner did not meet the statutory qualifications to receive the Alternative Fuel Tax Credit for the vehicle at issue.

### **CONCLUSIONS OF LAW**

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. § 11-1-2 (West 2010).

2. "The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable." W. Va. Code Ann. § 11-10-11(a) (West 2010).

3. Resident individual means an individual: (1) Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State W. Va. Code Ann. § 11-21-7 (West 2013).

4. The Petitioner is a resident individual, as that term is defined in West Virginia Code Section 11-21-7, and as such, pays West Virginia taxes.

5. Article 6D of Chapter 11 of the West Virginia Code provides various tax credits, including one for taxpayers who purchase “alternative-fuel motor vehicle or conversion to an alternative-fuel motor vehicle...on or before January 1, 2011.” W. Va. Code Ann. § 11-6D-3 (West 2011).

6. The Petitioner is ineligible for the tax credit provided to purchasers of alternative fuel motor vehicles because he purchased a vehicle prior to the statute’s effective date.

7. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax against it is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003).

8. The Petitioner in this matter has not carried his burden of proving that the assessment was erroneous, unlawful, void or otherwise invalid.

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the ATFC credit denial issued July 28, 2014, in the total amount of \$\_\_\_\_\_, is **AFFIRMED**.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

By: \_\_\_\_\_  
Crystal S. Flanigan  
Administrative Law Judge

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Date Entered