

**REDACTED DECISION – DK# 15-406 RAFTC**

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON MARCH 3, 2017  
ISSUED ON MAY 17, 2018**

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

**FINAL DECISION**

By a letter issued on November 24, 2015, the Tax Account Administration Division of the West Virginia Tax Department informed the Petitioners that the Alternative Fuel Tax Credit that they had claimed for tax years 2008 and 2013 had been denied.

Thereafter, on November 30, 2015, the Petitioners timely filed with this Tribunal, a petition for reassessment. An evidentiary hearing was held in this matter on October 7, 2016, at the conclusion of which, the parties filed legal briefs<sup>1</sup>. The matter became ripe for a decision at the conclusion of the briefing schedule.

**FINDINGS OF FACT**

1. The Petitioners are Resident Individuals, as that term is defined in West Virginia Code Section 11-21-7. As such, they pay West Virginia income taxes.

2. In December of 2008, the Petitioners bought a used 2007 Chevy Silverado truck, that may or may not have been a flex fuel vehicle. TR P 16-17 & State’s Ex. 2, P 3.

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<sup>1</sup> The evidentiary hearing in this matter was conducted by Chief Administrative Law Judge Heather Harlan. Since the date of the hearing, Judge Harlan has resigned her position, and this decision was written by Chief Administrative Law Judge A.M. “Fenway” Pollack.

3. In August of 2013, the Petitioners bought a new 2013 GMC Sierra truck, which also may or may not have been a flex fuel vehicle. TR P 19-20 & State's Ex. 2 P 12.

4. On November 16, 2015 the Petitioners filed two West Virginia Schedule AFTC-1, which are the forms the Tax Commissioner has created to obtain the alternative fuel tax credits (AFTC) that are the subject of this matter. State's Ex. 2 P 1-2 & 5-7. One of the schedules was for tax year 2008 and the other for tax year 2013, and both requested the AFTC, for the Chevy Silverado and the GMC Sierra, respectively.

5. It was these filings that led to the November 24, 2015, letter from the Tax Account Administration Division, denying the requested tax credits.

### **DISCUSSION**

At the outset it should be noted that at the hearing Petitioner testified that both vehicles were flex fuel vehicles, and as such were eligible for the AFTC. However, no independent documentary evidence was introduced to corroborate her testimony. Due to the fact that we are ruling against the Petitioners on other grounds, this potential question of fact is not determinative.

The only issue in this matter is the date of purchase of both vehicles discussed above. The Tax Commissioner argues that when the Petitioners purchased the used 2007 truck the credit they seek had expired. Regarding the 2013 truck, the Tax Commissioner argues that at the time of purchase, August of 2013, the definition of alternative fuel had changed to exclude the type of vehicle the Petitioners bought. The Petitioners are *pro se*. At the hearing, they explained that they did not understand why they were not entitled to the AFTC, when on two different occasions they purchased alternative fuel vehicles. In post hearing briefs they advanced two arguments, both regarding their August 2014 purchase of the GMC truck, (seemingly conceding any argument regarding their 2008 used truck purchase). First, the Petitioners argue that Title 110, Series 6D of

the West Virginia Code of State Rules gave them a deadline of November 8, 2013, to have purchased the 2013 truck. Alternatively, they argue that West Virginia’s fiscal year, July 1 to June 30 is somehow controlling in this matter. We will address the arguments of the parties in chronological order, taking the older truck purchase first.

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). Moreover, the credit only applied to new or converted vehicles.

A taxpayer is eligible to claim the credit against tax provided in this article if he or she:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate:

(1) Exclusively on an alternative fuel . . .

(b) Purchases from an original equipment manufacturer or an after-market conversion facility a new dedicated or dually fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration. . . .

Id. Therefore, the Petitioners purchase of the 2007 Silverado is ineligible on two fronts, there was no AFTC in existence when they bought the truck, and even if the credit had not expired, it did not apply to used vehicle purchases.

Turning now to the Petitioner’s purchase of the new Sierra truck in 2013, again, **at the time of the Petitioner’s purchase** West Virginia law did not provide for a tax credit. In 2011 the West Virginia Legislature passed Senate Bill 465, titled the Marcellus Gas and Manufacturing Development Act. The legislation contained various provisions, including reenacting the alternative fuel motor vehicle tax credit which had expired in 2006. Unfortunately for the

Petitioners, in 2013, just four months before they purchased the Sierra truck, the Legislature passed Senate Bill 185. One of the provisions of the Bill was to modify the availability of the credit, stating: “No person is eligible to receive a tax credit under this article for: . . . (5) Purchases of motor vehicles that operate on fuels other than compressed natural gas, liquefied natural gas or liquefied petroleum gas, occurring on or after April 15, 2013 . . . .” W. Va. Code Ann. § 11-6D-7 (West 2018). This statutory provision could not be clearer. When the Petitioners bought their Sierra truck in August of 2013, it was not eligible for a tax credit, because it did not operate on compressed natural gas, liquefied natural gas or liquefied petroleum gas.

The Petitioners vehemently argue two points, first that the State’s fiscal year should somehow control the April 15, 2013 date in Section 7. Moreover, they rely on an interpretive rule filed by the Tax Department with the Secretary of State’s office on November 8, 2013. They argue that this interpretive rule filing also controls the deadlines contained in Section 7. However, neither of these arguments are correct. The Legislature clearly spoke during its 2013 session and changed the Alternative Fuel Tax Credit to make it available only for natural gas vehicles, and clearly stated that the date of the change was April 15, 2013.

### **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 Petitioners are resident individuals, as that term is defined in West Virginia Code Section 11-21-7, and as such, pay West Virginia taxes.

5. The Alternative Fuel Motor Vehicle Tax Credit, created by the Legislature in 1996, by its own terms, expired in 2006. Moreover, the credit was only available to newly purchased or converted vehicles. *See* TAXATION—ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT, 1996 West Virginia Laws Ch. 234 (S.B. 363).

6. The Petitioners 2008 purchase of a flex fuel vehicle was not eligible for the alternative fuel credit because there was no credit available at the time of the purchase and because they purchased a used vehicle.

7. The Marcellus Gas and Manufacturing Development Act, which passed in 2011 reenacted the alternative fuel tax credits; however, in 2013 the Legislature amended the tax credit portion of the Act to modify which types of vehicles were eligible for the credit. The amendment mandated that after April 15, 2013, only vehicles that operated on compressed natural gas, liquefied natural gas or liquefied petroleum gas would be eligible for the credit. *See* W. Va. Code Ann. § 11-6D-7 (West 2018).

8. The Petitioners purchased their GMC Sierra truck in August of 2013, and that vehicle did not operate on compressed natural gas, liquefied natural gas or liquefied petroleum gas. As such, the Petitioners were not eligible to receive a tax credit for that vehicle purchase.

9. In a hearing before the West Virginia Office of Tax Appeals, the burden of proof is upon the Petitioner to show that any denial of a tax credit 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)

10. The Petitioners in this matter have not carried their burden of proving that the November 24, 2015 denial of their alternative fuel tax credit 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 November 24, 2015 denial of an Alternative Fuel Tax Credit to the Petitioners is hereby **AFFIRMED**.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

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A.M. "Fenway" Pollack  
Chief Administrative Law Judge

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Date Entered