

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
)	HEARING OFFICER
[REDACTED])	
)	Case No. 201000271-O
UTI # [REDACTED])	
_____)	

A hearing was held on January 18, 2011 in the matter of the protest of [REDACTED] (Taxpayers) to assessments of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax years 2004 and 2005. At the hearing it was agreed that the record in this matter remain open to allow Taxpayers time to provide additional documentation. Taxpayers and the Section submitted their respective opening and response memoranda. Taxpayers did not submit a reply memorandum.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayers timely filed their Arizona income tax return for tax years 2004 and 2005.
2. Taxpayers claimed an income tax credit pursuant to Arizona Revised Statutes (A.R.S.) § 43-1086 in the amount of \$9,596 for tax year 2004 and in the amount of \$61 for tax year 2005.
3. The credit was based on Taxpayers' purchase of a neighborhood electric vehicle (NEV).
4. Taxpayers ordered and paid for the NEV in tax year 1999.
5. The invoice for the NEV was dated December 23, 1999.
6. Taxpayers were not residents of Arizona during tax years 1999, 2000 and 2001.

7. The Department had no record of Taxpayers filing Arizona individual income tax returns for tax years 1999, 2000 or 2001.
8. Taxpayers have not submitted copies or other evidence of having filed individual income tax returns for tax years 1999, 2000 or 2001.
9. Taxpayers did not have Arizona source income in tax years 1999, 2000 or 2001.
10. Taxpayers did not file Arizona individual income tax returns for any of tax years 1999, 2000 or 2001.
11. Taxpayers filed a part-year resident individual income tax return for tax year 2002.
12. Taxpayers became Arizona residents in July of 2002.
13. Taxpayers registered and used the NEV in Arizona.
14. Taxpayers did not take a credit for the NEV in tax year 1999.
15. Taxpayers claimed a credit of \$10,000.00 for the NEV on their 2003 individual income tax return and used \$[REDACTED] of the credit to offset their tax year 2003 income tax liability.
16. The total amount of NEV credits claimed by Taxpayers for tax years 2003, 2004 and 2005 was \$10,061.
17. Taxpayers' Arizona individual income tax return for tax year 2003 was not audited by the Department.
18. The Section reviewed Taxpayers' 2004 income tax return and issued a proposed assessment dated March 25, 2009 disallowing Taxpayers' claimed credit of \$[REDACTED].
19. The Section reviewed Taxpayers' 2005 income tax return and issued a proposed assessment dated September 10, 2009 disallowing Taxpayers' claimed credit of \$[REDACTED].
20. The assessments included interest at the statutory rate but no penalties.

21. Taxpayers timely protested the assessments stating that they had attached all applicable documentation to support the allowance of the credit.

CONCLUSIONS OF LAW

1. Taxpayers purchased a NEV in Arizona in tax year 1999.
2. For tax year 1999, Arizona taxpayers could take a credit for the purchase of a NEV for use in Arizona. A.R.S. § 43-1086(A).¹
3. For a new NEV purchased in 1999 the allowable credit was fifty percent of the cost of the vehicle or \$10,000, whichever was more. A.R.S. § 43-1086(B)(5).
4. The deductions and credits provided for in title 43, A.R.S., are to be taken for the taxable year in which “paid or accrued” or “paid or incurred”, dependent upon the method of accounting upon the basis of which the taxable income is computed. A.R.S. § 43-905.
5. Taxpayers were not subject to Arizona income tax for tax year 1999.
6. Taxpayers did not file an Arizona income tax return for 1999.
7. The credit for the purchase of a NEV is established in the year the NEV is purchased by filing an income tax return for that year and claiming the credit.
8. If the allowable credit exceeds the taxes otherwise due on a return, the credit not used to offset Arizona income taxes may be carried forward to the next five consecutive taxable years as a credit against subsequent years' income tax liability. A.R.S. § 43-1086(D).
9. Taxpayers did not file an Arizona income tax return and did not establish their entitlement to a credit in 1999.²

¹ Statutory references are to A.R.S. § 43-1086 as in effect for tax year 1999.

² Because Taxpayers did not file an income tax return for tax year 1999 establishing the credit, we do not need to address the argument that Taxpayers were not “taxpayers” for tax year 1999 within the meaning of A.R.S. § 43-1086.

10. Taxpayers had no credit established in 1999 that was available to be carried over to subsequent years.
11. Taxpayers were not entitled to the NEV credits they claimed on their 2004 and 2005 income tax returns.³
12. The Section's disallowance of Taxpayers' credit for tax years 2004 and 2005 was proper.
13. The proposed assessments issued by the Section for tax years 2004 and 2005 are upheld.

DISCUSSION

Taxpayers moved to Arizona from [REDACTED] in July of 2002. Before they were Arizona residents, Taxpayers purchased a NEV in Arizona in tax year 1999. Taxpayers did not file an Arizona income tax return for tax year 1999 and did not claim the NEV credit in the year they purchased the NEV. Taxpayers did not file an Arizona income tax return until tax year 2002.

Taxpayers claimed NEV credits on their income tax returns filed for tax years 2003, 2004 and 2005. The Section disallowed the credits claimed for 2004 and 2005. Tax year 2003 was not audited and is not at issue here. The question presented here is whether Taxpayers can claim the credit for tax years 2004 and 2005 without having established their right to claim the credit in 1999, the year they purchased the NEV.

With respect to a NEV, A.R.S. § 43-1086 allows a credit against taxes imposed by Title 43 to each taxpayer who purchases or leases one or more new original equipment manufactured alternative fuel vehicles for use in Arizona. The Arizona income tax is based on a year period. Deductions and credits are to be taken in the year they were incurred. Available credits incurred during the taxable year are available

³ Taxpayers would not have been entitled to a credit for tax year 2005 in any event because tax year 2005 was past the five year carry-forward period and any credit for tax year 2005 would have exceeded the maximum allowable total credit of \$10,000.

for use when a taxpayer files his return. With respect to the NEV credit, if the credit is not fully used in the year it was established, the unused portion may be carried forward to the next five consecutive years.

The credit is a single credit established in the first year based on the purchase of the NEV. If the credit is not established in the year of the purchase, there is no credit available to be carried forward. That is the situation here. Taxpayers have not shown that a credit had been properly claimed during the 1999 tax year for there to be any available carryover to tax years 2004 or 2005.

Based on the foregoing, the Taxpayers' protests of the Section's assessments dated March 25, 2009 and September 10, 2009 are denied.

DATED this 5th day of May, 2011.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section