

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**WILLIAM AND AMY RELLY,
Petitioners,**

VERSUS

DOCKET NO. 7923

**TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE, STATE
OF LOUISIANA,
Respondent.**

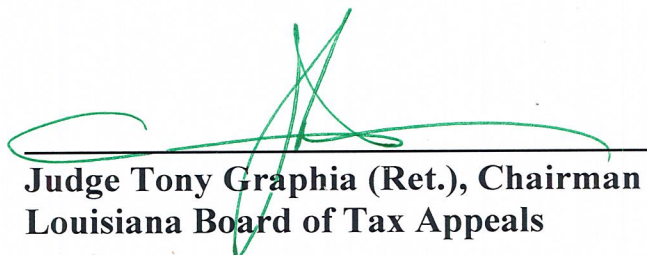
JUDGMENT

This case came before the Board for hearing on June 12, 2019 on the merits of the Petition of William and Amy Reilly (the "Taxpayers") with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were William Reilly, for the Taxpayers and Adrienne Quillen, attorney for Tim Barfield, Secretary, Department of Revenue, State of Louisiana (the "Secretary"). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayers' Petition BE AND IS HEREBY DISMISSED, and that Judgment be rendered in favor of the Secretary and against the Taxpayers.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 14 day of August, 2019.

For the Board:


**Judge Tony Graphia (Ret.), Chairman
Louisiana Board of Tax Appeals**

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WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on June 12, 2019 on the merits of the Petition of William and Amy Reilly (the “Taxpayers”) with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were William Reilly, for the Taxpayers and Adrienne Quillen, attorney for Tim Barfield, Secretary, Department of Revenue, State of Louisiana (the “Secretary”). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the following written reasons.

The Taxpayers filed their Petition as an appeal from a Refund Denial notice dated March 20, 2013. Initially, the Taxpayers appealed the denial of their claim for the Alternative Fuel Tax Credit (“AFTC”) under R.S. 47:6035(D) in the amount of \$3,000.00, as claimed on their 2011 individual income tax return. Taxpayers claimed this credit based on their purchase of a 2012 Chevrolet Tahoe (the “Vehicle”) on July 31, 2012. After the instant action commenced, counsel for the Secretary told the Taxpayers that, given that the Vehicle was purchased in 2012, any corresponding AFTC should have been claimed on a 2012 (and not 2011) return. Accordingly, the Taxpayers subsequently filed an amended 2012 return on which

they claimed the AFTC. The exact date when the Taxpayers filed their amended 2012 return is not clear, but Mr. Reilly testified that it was at some point in 2016.

Counsel for the Secretary orally stipulated at the hearing that the Taxpayers had provided adequate documentation in support of their AFTC claim. However, the Secretary nevertheless took the position that under Act 125 of the 2015 Regular Session (the “Act 125”), the amount of the AFTC allowable to the Taxpayers is limited to \$1,500.00. Act 125 reduced the maximum allowable credit for taxpayers under R.S. 47:6035(D) from \$3,000.00 to \$1,500.00 for a claim on a return filed on or after July 1, 2015. Counsel for the Secretary represented to the Board that the undisputed amount (\$1,500.00) has already been distributed to the Taxpayers. Thus, only the remaining \$1,500.00 is still in dispute.

The Secretary is correct in pointing out that Section 2 of Act 125 limited the maximum credit allowable under R.S. 47:6035(D) to \$1,500.00. The only real issue is whether that limitation actually applies to these Taxpayers. Section 7 of Act 125 states:

(A) Except as provided for in Subsection (B) of this Section, the provisions of Sections 1, 2, and 3 of this Act shall apply to a claim for a credit on any return filed on or after July 1, 2015, but before June 30, 2018, regardless of the taxable year to which the return relates.

(B) The provisions of Sections 1, 2, and 3 of this Act shall not apply to an amended return filed on or after July 1, 2015, but before June 30, 2018, relating to a credit properly claimed on an original return filed prior to July 1, 2015.

On its face, the law states that the limitation applies to “any return” filed after the effective date of July 1, 2015. And, since the Taxpayers did not claim the credit on their original 2012 return, the exception in Subsection (B) does not apply.¹

¹ There is another exception in Subsection (C) for a return which received an extension prior to the effective date. That exception is also inapplicable under the facts presented.

When the law is clear and unambiguous and its application does not lead to absurd consequences, the Board is obligated to apply the law as written by the legislature. La C.C. art. 9; La. R.S. 24:177. Act 125 states that the limitation on the AFTC applies to a claim for the credit on “any return” filed after July 1, 2015. The Taxpayers claimed the credit on a return filed in 2016. Therefore, the Taxpayers’ claim occurred after Act 125’s effective date. The limitation imposed by Act 125 applies to the Taxpayers’ claim.

The Board is mindful that R.S. 47:6035, and even Section 7 of Act 125 specifically,² have been amended since enactment. For this reason, the Board has undertaken its own review of the pertinent legislative history. After review, the Board can find no change in the law that would remove the limitation on the credit to the Taxpayers in this case. Considering the Secretary’s assurances that the Taxpayers have already received the \$1,500.00 credit to which they are entitled, the refund denial as to the remaining \$1,500.00 must be upheld. Accordingly, the Taxpayers’ prayer for relief must be denied.

Baton Rouge, Louisiana this 14 day of August, 2019.

For the Board:



**Judge Tony Graphia (Ret.), Chairman
Louisiana Board of Tax Appeals**

² Act 29 of the 2016 First Extraordinary Session amended Section 7 to provide:

(A) Except as provided for in Subsection (B) of this Section, the provisions of Sections 1, 2, and 3 of this Act shall apply to a claim for a credit on any return filed on or after July 1, 2015, through the termination date in the Act that originated as House Bill No. 62 of the 2016 First Extraordinary Session of the Legislature regardless of the taxable year to which the return relates.

(B) The provisions of Sections 1, 2, and 3 of this Act shall not apply to an amended return filed on or after July 1, 2015, through the termination date in the Act that originated as House Bill No. 62 of the 2016 First Extraordinary Session of the Legislature relating to a credit properly claimed on an original return filed prior to July 1, 2015.

The termination date provision referred to was ultimately cut from the final version of HB 62.