TX 2003-000551 03/23/2006
TX 2003-000552 (CONSOLIDATED)

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED:_____________________

ENTERPRISE LEASING COMPANY OF PHOENIX PATRICK DERDENGER
BENNETT EVAN COOPER

v.

ARIZONA DEPARTMENT OF REVENUE MIKE KEMPNER

UNDER ADVISEMENT RULING

This matter was taken under advisement after oral argument held January 30, 2006. The Court has considered the Plaintiffs' Motion for Partial Summary Judgment, Defendant's Cross-Motion for Summary Judgment and arguments of counsel.

I. THE ISSUE

The issue is whether the Arizona Department of Revenue ("the Department") properly denied Enterprise Leasing Company of Phoenix and Enterprise Leasing Company—West's (collectively "Enterprise's") claims for Arizona state income tax refunds for fiscal years 1996, 1997, and 1998 (the "Refund Period").

Enterprise filed refund claims for pollution control credits under A.R.S. § 43-1170(A) for "expenses that the taxpayer incurred during the taxable year to purchase real or personal property that is used in the taxpayer's trade or business in this state to control or prevent pollution." A.R.S. § 43-1170(A), *as amended by* 1995 Ariz. Legis. Serv. ch. 200, §§ 18, 21(L). Enterprise claims it satisfied the requirements of the pollution control equipment tax credit statute in effect during the Refund Period and when the claims were filed and that the Arizona legislature's later amendment of the tax credit statute in 2000 did not affect those already-pending claims. Enterprise only seeks from the court at this time a decision that it has legal entitlement to refunds, but it does not seek a decision at this time on the extent of the equipment installed on individual vehicles, the cost of such equipment, or the exact amounts of the refunds owed. Enterprise contends that those narrow, factual questions can be determined by stipulation, further motion, or trial once the threshold legal issues have been resolved.

In opposition, the Department contends that it properly denied Enterprise's refund claim because the pollution control equipment credit does not apply to personal property attached to a motor vehicle. Further in opposition to Enterprise's request of the court, the Department moves for judgment on the amount of the refund owed to Enterprise, if any.

II. FACTUAL BACKGROUND

Enterprise is a rental, leasing, and car sales company. Its rental business focuses on neighborhood markets in the State of Arizona, including the Phoenix and Tucson metropolitan areas. The company specializes in renting to customers who need either a replacement car as the result of an accident, mechanical repair, or theft, or a vehicle for a special occasion. Enterprise also operates rental car offices at or near airports in Phoenix, Tucson, Flagstaff, and other Arizona cities.

Through its consultants, Enterprise requested an informational ruling on September 14, 1999, regarding the applicability of the credit pertaining to automobiles. An employee of the Department's Tax Research & Analysis Section initially opined that automotive parts could qualify for the income tax credit in a letter dated October 18, 1999. The Department then rescinded the employee's October informational letter on February 16, 2000, stating that the October letter did not reflect "the Department's position."

Enterprise filed Arizona income tax returns for fiscal years ending July 1996, July 1997, and July 1998, without claiming pollution control credits. However, on March 14, 2000, Enterprise filed refund claims for pollution control credits under A.R.S. § 43-1170 requesting a credit for a portion of the motor vehicles' purchase price for personal property attached to the motor vehicles it purchased during the Refund Period. Enterprise had purchased a total of 24,615 motor vehicles for use in its Arizona business operations during this time. The Department calculates the total credit requested as $3,724,382.

Approximately one month after Enterprise filed its Refund Claim, and while the Refund Claim was pending, the Legislature amended to statute to clarify that the credit did not apply to the purchase of any personal property that is attached to a motor vehicle. *See* Ariz. Laws 2000, Ch. 405, SB 1504, 44th Leg., 2nd Reg. Sess., 2000. Thereafter, the Department denied Enterprise's refund claims.

III. ARGUMENTS OF THE PARTIES

- Enterprise Leasing Company of Phoenix's Arguments -

A. ENTERPRISE'S REFUND CLAIMS MET THE REQUIREMENTS FOR THE POLLUTION CONTROL EQUIPMENT CREDIT IN EFFECT WHEN THE REFUND CLAIMS WERE FILED.

Enterprise's refund claims satisfied all of the requirements established by statute for the pollution control equipment credit as of the date Enterprise filed its claims. The credit applied to "expenses that the taxpayer incurred during the taxable year to purchase real or personal property that is used in the taxpayer's trade or business in this state to control or prevent pollution." A.R.S. § 43-1170(A), *as amended by* 1995 Ariz. Legis. Serv. ch. 200, §§ 18, 21(L). Qualifying expenses included those related to "that portion of a...machine, equipment or device" or "any attachment or addition" that "is directly used" in Arizona to meet or exceed "rules or regulations adopted by the United States environmental protection agency" or "the department of environmental quality" to "prevent, monitor, control or reduce air...pollution." A.R.S. § 43-1170(B).

By claiming the portion of each vehicle's purchase price attributable to its emission control equipment, Enterprise satisfied the credit's requirements. First, these were "expenses that the taxpayer incurred during the taxable year to purchase… personal property." A.R.S. § 43-1170(A). Motor vehicles are personal property. *See Ryder Truck Rental, Inc. v. City of Phoenix*, 179 Ariz. 537, 544 (App. 1993) (gross income from truck rentals is taxable as "the business of renting personal property"). If the vehicles are personal property, the vehicle's emission control components are necessarily also personal property. Moreover, the emission control equipment accounted for a portion of the purchase price of each vehicle. *See, e.g.*, United States Dep't of Labor, Bureau of Labor Statistics, *Report on Quality Changes of 2001 Model Vehicles*, No. USDL 00-331 (Nov. 9, 2000) (reporting that a $67.65 price increase from model year 2000 alone was attributable to complying with 1990 amendments to the Clean Air Act).

Second, Enterprise "used [the emission control equipment] in the taxpayer's trade or business in this state to control or prevent pollution." A.R.S. § 43-1170(A). Enterprise used the vehicles in Arizona as the essential element of its business of renting and leasing such vehicles. These motor vehicles are Enterprise's business inventory. Enterprise registered the vehicles in Arizona and rented or leased them from its Arizona business locations. Indeed, without the pollution control equipment, Enterprise would not have purchased and could not have registered or leased or rented the vehicles for operation in the state. *See* A.R.S. § 28-955(D); A.R.S. § 49-542; A.R.S. § 49-447; A.A.C. R18-2-1029.

Third, Enterprise claimed refunds based solely on the portion of the vehicles' purchase price that represented emission control equipment.

B. THE 2000 AMENDMENT OF THE TAX CREDIT STATUTE DOES NOT AFFECT ENTERPRISE'S PRIOR-FILED REFUND CLAIMS.

In 2000, after Enterprise filed its claims, the Legislature amended A.R.S. § 43-1170(B) to add the following exclusion: "The credit allowed pursuant to this section does not apply to the purchase of any personal property that is attached to a motor vehicle." 2000 Ariz. Legis. Serv. ch. 405, § 30. The amendment became effective on April 28, 2000, when the bill was signed into law by the Governor. *Id.* § 47.

This substantive amendment was accompanied by two other provisions that sought to make the amendment effective as to prior claims. First, the 2000 legislation included a "legislative intent" provision which stated that the prior enactments, including section 43-1170, were "not intended to apply to personal property that is attached to a motor vehicle to control or prevent pollution," and that the amendments were "intended to be clarifying changes and are consistent with the legislature's intent when those sections were enacted." 2000 Ariz. Legis. Serv. ch. 405, § 41; *see* Arizona State Senate Final Revised Fact Sheet for S.B. 1504 at 10, 12, ¶ 21 (May 9, 2000) ("Senate Fact Sheet"). Second, the 2000 legislation included an express retroactivity provision providing that the amendment to the pollution control equipment tax credit would "apply retroactively to taxable years beginning from and after December 31, 1994." Ariz. Legis. Serv. ch. 405, § 40(A).

1. The Legislature's Attempted Expression of a Prior Legislature's Purported Intent Is Invalid.

The Legislature's retroactive amendment of the pollution control equipment tax credit cannot be saved by the "legislative intent" provision. As Arizona courts have recognized, "[t]he proposition that one legislature can declare what an earlier legislature intended is a doubtful one." *E.C. Garcia & Co. v. Ariz. Dep't of Revenue*, 178 Ariz. 510, 517 (App. 1993). This particular "legislative intent" provision cannot be reconciled with either the pre-amendment language of section 43-1170 or the statute's legislative history. As a result, judicial reliance on this expression of prior legislative intent would violate the separation of powers clause of the Arizona Constitution.

a. The 1994 Statute Was Not Ambiguous.

The 2000 amendment could not "clarify" the pollution control tax credit statute *ab initio* "because a legislative amendment may only 'clarify' an ambiguous statute." *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402, 409, ¶ 22 (App. 2001). "The court cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms." *Lawrence v. City of Concord*, 320 P.2d 215, 218 (Cal. App. 1958) (quotation omitted). There is nothing ambiguous about the 1994 statute, which applied broadly to expenses incurred "to purchase real or personal property that is used in the taxpayer's trade or business in this state to control or prevent pollution." A.R.S. § 43-1170(A). There is no qualification or other limiting language in the text that purports or could be construed to exclude pollution control equipment merely because it is attached to motor vehicles. The most powerful evidence of legislative intent is the language of the statute, with its words given "their ordinary meaning." *Ariz. Dep't of Revenue v. Raby*, 204 Ariz. 509, 511, ¶ 14 (App. 2003) (quotation omitted). When a statute's language is unambiguous, courts should look no farther. *In re Maricopa County Superior Court No. MH 2001-001139*, 203 Ariz. 351, 353, ¶ 12 (App. 2002).

The Department never suggested that the statute was in any way ambiguous at any time before it was amended in 2000. Indeed, in October 1999, the Department's Tax Research & Analysis Section advised Enterprise in writing that the credit was allowable "for the pro-rata portion of the motor vehicle cost" attributable to "pollution control devices installed in the vehicle."

b. The Legislative History of the 1994 Statute Indicates that No Exclusion of Pollution Control Equipment Attached to Motor Vehicles Was Intended.

The absence of any prior exclusion for equipment attached to motor vehicles is highlighted by the legislative history of the tax credit statute. When the statute was first enacted in 1994, neither the bill nor the final legislation reflected any exclusion of motor vehicle equipment. 1994 Ariz. Legis. Serv. ch. 117, § 6 (S.B. 1523). Nor did the committee records suggest any intention to exclude motor vehicle equipment. In fact, the Department admitted in its summary of the legislative record that when the House Ways and Means Committee considered Senate Bill 1523, which created the tax credit, "no discussion whatsoever regarding motor vehicles" or any other "specific limitation or restriction" on qualifying pollution control equipment took place. *See also S.B. 1523 – Tax Credit; Pollution Control; Construction*: *Before the S. Comm. on Fin.*, 41st Leg., 2d Reg. Sess. 24-26 (Feb. 21, 1994) (noting that the credit would be available to small businesses without specifying the qualifying equipment such taxpayers might use); *S.B. 1523 – Tax Credit; Pollution Control; Construction*: *Before the H. Ways & Means Comm.*, 41st Leg., 2d Reg. Sess. 10-11 (Mar. 22, 1994) (containing no reference to specific exclusions).

The Department's internal memoranda further confirm that this was not an oversight, and that the issue of motor-vehicle equipment had been flagged for the Legislature on several occasions. The Department's Tax Research & Analysis Section warned its Special Assistant for Legislative Services on February 15, 1994, that Senate Bill 1523 would enact a "very broad" credit that "would appear to include almost any property with pollution control equipment attached to it." The Department later admitted in a January 2000 memorandum that, in 1994, in "four separate analysis memos at various stages in the bill's progress through the legislature," it had raised the "problem" that "a personal automobile" would qualify for the credit. The Department concluded, "Apparently, it was not perceived as a problem by the legislature at that time." The Department did not suggest that there was any ambiguity in the statute, only a "problem" that the legislature did not consider problematic "at that time."

Nor did the legislature add any motor vehicle exclusion in 1995, when it amended the pollution control equipment credit statute in other respects. 1995 Ariz. Legis. Serv. ch. 200, § 18 (S.B. 1177) (restricting the credit to property used in Arizona in the taxpayer's trade or business). Indeed, the application of the tax credit to pollution control equipment attached to motor vehicles was not even raised in committee. *S.B. 1177 – Tax Correction Act: Before the H. Ways & Means Comm.*, 42d Leg., 1st Reg. Sess. 2-3 (Mar. 7, 1995).

c. The Legislature Cannot “Clarify” the Intent of a Prior Legislature as to a Six-Year Old Statute.

As the Arizona Supreme Court has recognized, the canon of construction that “a newly enacted statute may clarify ambiguities in an earlier version” applies only “[u]nder some circumstances” and “can assist with interpretation when both statutes were passed by the same legislature or perhaps within a few years of each other.” *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 209, ¶ 30 (1999). The Court cited two of its prior decisions in which the clarifying amendment was enacted one year after the original statute. *Id.* (citing *State v. Sweet*, 143 Ariz. 266, 271 (1985), and *City of Mesa v. Killingsworth*, 96 Ariz. 290, 297 (1964)). The Court admonished that suggesting that one legislature “knows and can clarify” what another intended over a longer period “carries us past the boundary of reality and into the world of speculation.” *Id.* at 209, ¶ 30. Instead, “‘[w]hen an amendment is enacted after a considerable length of time and constitutes a clear and distinct change of the operative language, it is an indication of an intent to change rather than clarify the previous statute.’” *Id.* at 210, ¶ 31 (quoting *O'Malley Lumber Co. v. Riley,* 126 Ariz. 167, 169 (App. 1980)).

The same year, the Arizona Supreme Court, citing *San Carlos Apache Tribe*, reiterated that “[s]ubsequent history cannot always be considered when construing legislation” because “the subsequent enacting body is often not the same as the one that enacted the original legislation.” *Calik v. Kongable*, 195 Ariz. 496, 501, ¶ 21 (1999). In contrast, where enactments occur within “a relatively short time frame” they can “pragmatically be considered as one overall or combined action.” *Id.*

This is not a case where the “same Legislature” or an immediate successor with most of the same legislators amended a recently passed statute as part of “one overall or combined action.” The broad pollution control equipment tax credit was enacted by the Forty-first Legislature; it was amended to exclude equipment attached to motor vehicles by the Forty-fourth Legislature six years later. Arizona precedent makes clear that such a six-year gap constitutes “a considerable length of time” under *San Carlos Apache Tribe*. In *O’Malley Lumber*, quoted by the Supreme Court, the Arizona Court of Appeals faced the same situation presented here: the amendment of a statute passed six years earlier. 126 Ariz. at 169. The court of appeals held that the amendment could not be used to “clarify” the pre-amendment statute. *Id.*

In this case, moreover, there was a considerable turnover of members in each legislative chamber over the intervening six years. Only fifteen of the sixty members of House of Representatives during the Forty-fourth Legislature in 2000 had been in that chamber in 1994, when the tax credit was passed. Only nineteen of the thirty Arizona Senators in 2000 had been in office six years earlier. Any attempt by one group of legislators to recreate a largely different group’s prior intent would be “doubtful” in the best of circumstances. *E.C. Garcia & Co.*, 178 Ariz. at 517. Such an attempt would be completely impossible here because the prior legislators left no record of any such intent, whether in the statute or legislative history.

In addition, any attempt to "clarify" the meaning of the 1994 tax credit six years later, was, in context, particularly dubious in light of the changed circumstances of public policy. The 2000 amendment was part of Senate Bill 1504, the 2000 Clear Air Act, a 91-page, broad-ranging bill that revamped Arizona's approach to air pollution control and included changes as to tax credits, alternative fuel vehicles, hydrogen projects, the Arizona Clean Air Fund, the phasing out of MTBE in fuels, the Voluntary Vehicle Repair and Retrofit program, and vehicle emissions inspection fees. Senate Fact Sheet at 1, 9.

Specifically, the 2000 Clean Air Act dramatically changed the approach to tax credits as a tool of pollution control, both eliminating the pollution control equipment tax credit for equipment attached to motor vehicles and also providing the enhanced "alt fuel" tax credits that later proved so controversial. As the Arizona Court of Appeals chronicled, "[b]eginning in the early 1990s, the Arizona Legislature authorized a variety of tax and grant incentives designed to encourage the purchase of or conversion to alternative fuel vehicles" as "part of a broad tax and regulatory program to improve Arizona's air quality." *Baker v. Ariz. Dep't of Revenue*, 209 Ariz. 561, 563, ¶ 2 (App. 2005). The Legislature then "continuously modified the program, with significant changes occurring in 1994, 1996, 1998, and 1999," and the following year the new Clean Air Act "enhanced tax credits and other benefits for persons who owned vehicles powered by alternative fuel," including "a new 100 percent tax credit for the cost of AFV conversions," "30 to 50 percent credits for the price of the vehicle," and "tax credits for 'bi-fuel' AFVs." *Id.* ¶¶ 2-3; *see* Senate Fact Sheet at 1. This reflected not a simple "clarification," but instead a redirection of pollution-control tax credits from conventional gasoline-powered vehicles to "alt fuel" vehicles. "Given the passage of time and the significant additions to and departures from prior law, [the amendment] is more akin to a change than a clarification." *San Carlos Apache Tribe*, 193 Ariz. at 210, ¶ 31.

d. The Legislature's Attempted "Clarification" Violates Constitutional Principles of Separation of Powers.

This Court may not effectuate the 2000 amendment's "legislative intent" clause because "the doctrine of separation of powers does not permit" Arizona courts "to accept legislative messages regarding the meaning of its past actions." *State v. Rodriguez*, 153 Ariz. 182, 187 (1987). The Arizona Constitution requires that Arizona's three branches of government "shall be separate and distinct" and that "no one of such departments shall exercise the powers properly belonging to either of the others." Ariz. Const. art. III. It is the province of the judiciary, not the Legislature, to construe existing laws. *State v. Fell*, 209 Ariz. 77, 82, ¶ 17 (App. 2004) ("It is for the legislative branch to enact the laws and for the judicial branch to interpret them.").

Rodriguez is fatal to the Legislature's attempt to clarify intent. In that case, the Legislature passed a sentencing statute for second-degree murder in 1984 that used the term "calendar years," and two years later added a definition of "calendar year" to the criminal code. "The legislature also made a statement about its previous intent," 153 Ariz. at 184, adding a provision that "our purpose in adding a definition for 'calendar years'…is not to make a change

in the law as it already exists, but merely to clarify what our intent always has been." S.B. 1232, 37th Leg., 2d Reg. Sess, *quoted in Rodgriuez*, 153 Ariz. at 184. The Arizona Supreme Court rejected that declaration of intent. 153 Ariz. at 184-85, 187. If that was true for an amendment two years after the original statute, it must be true for an amendment six years later.

2. The Six-Year Retroactivity Provision Violates Constitutional Due Process.

The retroactivity provision of the 2000 amendment violates Enterprise's due process rights under both the Arizona and United States Constitutions. Ariz. Const. art. II, § 4; U.S. Const. amend. XIV. The Arizona Court of Appeals recently stated the test for retroactive changes in tax laws: "a retroactive modification of a tax benefit is constitutionally permissible as long as its purpose is neither illegitimate nor arbitrary and the period of retroactivity is modest." *Baker*, 209 Ariz. at 569, ¶ 36. The *Baker* court followed *United States v. Carlton*, 512 U.S. 26 (1994), the United States Supreme Court's leading decision regarding the due process consequences of retroactive changes in deductions and other tax benefits. *Baker*, 209 Ariz. at 569, ¶ 36. Under the *Baker/Carlton* due process standard, the retroactive amendment must satisfy both prongs of the test as to purpose and temporal retroactivity. *See, e.g.*, *City of Modesto v. Nat'l Med, Inc.*, 27 Cal. Rptr. 3d 215, 222 (App. 2005).

a. The Retroactivity Period Was Arbitrary and Lacked a Legitimate Purpose.

The six-year retroactivity period in this case was arbitrary and lacked a legitimate purpose. In *Carlton*, the Supreme Court upheld a one-year retroactivity period because "[i]t seem[ed] clear that Congress did not contemplate such broad applicability of the deduction when it originally adopted" it, and "Congress acted to correct what it reasonably viewed as a mistake in the original 1986 provision that would have created a significant and unexpected revenue loss." 512 U.S. at 31-32. Similarly, in *Baker*, the Arizona Court of Appeals recognized that the eight-month retroactive amendment of the "alt fuel" credit "was enacted to stem an unexpected revenue loss and fill loopholes." 209 Ariz. at 1187, ¶ 31.

In this case, the Department warned the Legislature at least four times in 1994 that the credit might apply to such equipment, but, as the Department concluded, "it was not perceived as a problem by the legislature at that time." The legislature cannot legitimately wipe out a six-year-old tax credit retroactively simply because it changed its mind about the wisdom of the credit in a completely foreseen application. To the contrary, the six-year retroactivity provision lacked any rationale whatsoever and was entirely arbitrary. *See Carlton*, 512 U.S. at 38 (noting that "there is also an element of arbitrariness in retroactively changing…the availability of a deduction for engaging in [a] transaction") (O'Connor, J., concurring in the judgment).

b. The Amendment's Six-Year Retroactive Period Is Not Modest.

Under *Carlton*, "the legislative body must act promptly and establish only a modest period of retroactivity." *City of Modesto*, 27 Cal. Rptr. 3d at 222 (citing *Carlton*, 512 U.S. at 32). Thus, in *Carlton*, the "actual retroactive effect of the 1987 amendment extended for a period only slightly greater than one year," and "the amendment was proposed by the IRS…within a few months of [the statute's] original enactment." 512 U.S. at 33. As Justice O'Connor noted in her opinion concurring in the judgment, based on the Supreme Court's precedent, "[t]he governmental interest in revising the tax laws must at some point give way to the taxpayer's interest in finality and repose," and "[a] period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise…serious constitutional questions." 512 U.S. at 37-38. *See also Rivers v. State*, 490 S.E.2d 261, 264-65 (S.C. 1997); *City of Modesto*, 27 Cal. Rptr. at 222. Similarly, in *Baker*, the Arizona Court of Appeals noted that "the period of retroactivity here is modest. The December Law was passed within eight months of the April Law and within the same tax year." 209 Ariz. at 1187, ¶ 31.

Applying *Carlton*, courts have struck down retroactivity provisions for amendments to tax statutes where the retroactivity period was more than one year. For example, in *Rivers*, which the Arizona Court of Appeals quoted approvingly in *Baker*, the South Carolina Supreme Court held that retroactive application of an amendment of a tax statute would violate due process under both the federal and state constitutions because "the retroactivity period of [the amendment] far exceeds one year," and, depending on which prior statute was used in the calculations, "the period at issue is at least two years and possibly as long as three years." 490 S.E.2d at 265; *see Baker*, 209 Ariz. at 1187, ¶ 32. The court explained, "[a]t some point,…the government's interest in meeting its revenue requirements must yield to taxpayers' interest in finality regarding tax liabilities and credits. That point has been reached in this case; under the facts and circumstances here, the retroactivity period is simply excessive." *Rivers*, 490 S.E.2d at 265.

Similarly, in *City of Modesto*, the California Court of Appeal recently struck down an amendment of a business license tax ordinance solely on the ground that the city did not act promptly and the period of retroactivity was immodest. 27 Cal. Rptr. 3d at 222. The court noted that it took the city council two years to adopt applicable retroactive guidelines, and "the City cannot be found to have acted promptly." *Id.* Moreover, the amended guidelines adopted in 2004 "would be applied to the 1996 through 2000 tax years, up to eight years before those guidelines were adopted," which was not "modest." *Id.* As the court explained, in that state generally "courts have upheld the retroactive application of tax laws only where such retroactivity was limited to the current tax year." *Id.* (citation omitted). That is consistent with the Arizona Court of Appeals' ruling in *Baker*, which involved an amendment "within the same tax year." 209 Ariz. at 1187.

c. Any Determination of the Amount of Enterprise's Refund Should Be Deferred Until After the Legal Issues Are Resolved.

It makes no sense for Enterprise, the Department, or the Court to expend resources on the quantification of the purchase price until the retroactivity issues have been resolved. Enterprise has litigated this case with the understanding the Department's counsel, which has changed twice over time, shared that prudent view.

The Department now cross-moves for summary judgment, however, on the ground that Enterprise has not "identifie[d] the specific equipment it is claiming and the cost of such equipment." The Department does not suggest that there is no pollution control equipment attached to the motor vehicles; the legally mandated catalytic converter would by itself prove an entitlement to a credit in some amount. Moreover, Enterprise's statement of facts indicated, and the Department did not deny, that

> [e]ach of the Refund Period Vehicles included emission control equipment installed by the manufacturers to meet federal and state emissions requirements. This includes, but is not limited to, catalytic converters, exhaust gas conversion systems, exhaust gas recirculation systems, evaporative emission control systems, positive crankcase ventilation systems, early fuel evaporative systems, fuel metering systems, advanced ignition systems, and on-board diagnostic systems.

Nor does the Department deny that part of the purchase price of the motor vehicle must reflect the cost of the pollution control equipment. The precise quantification of the allocable portion of the purchase price likely will require expert testimony, the cost of which to either party should be deferred. In no sense is the issue of Enterprise's entitlement to *some* credit in dispute or "at the heart" of the present dispute. Nor does the Department explain why it believes that partial summary judgment on the legal issues is "impractical." The amount of the credit due does not impair resolution of the legal issues. This case exemplifies why Arizona Rule of Civil Procedure 56(a) expressly authorizes a party asserting a claim to bring a motion for "summary judgment in the party's favor upon all or any part thereof." Ariz. R. Civ. P. 56(a).

- Arizona Department of Revenue's Arguments -

A. THE TAX CREDIT FOR POLLUTION CONTROL EQUIPMENT DOES NOT APPLY TO PARTS ATTACHED TO A MOTOR VEHICLE.

The pollution control equipment tax credit applies to property that must be installed to meet federal or state laws to control or prevent pollution. *See* A.R.S. § 43-1160. The credit was never intended to apply to car parts sold as an inseparable part of the motor vehicle. The Arizona Legislature clarified the statute in 2000 to specifically provide that "[t]he credit allowed pursuant to this section does not apply to the purchase of any personal property that is attached to a motor vehicle." Laws 2000, Ch. 405, § 30.B, SB 1504, 44th Leg., 2nd Reg. Sess., 2000. Further, the Legislature specified that the clarification applied retroactively to taxable years beginning from and after December 31, 1994. Laws 2000, Ch. 405, § 40.A.

The items that Enterprise includes in its Refund Claim are, in fact, personal property

items that are "attached to a motor vehicle." Thus, according to the clear language of the statute, the items do not qualify for the pollution control equipment tax credit. Enterprise does not dispute that it does not qualify for the credit under the statute as written. It claims, however, that the Department cannot constitutionally apply the current statute to their refund claim.

There is a strong "presumption that all legislative enactments are constitutional, and the burden is on the challenger to establish otherwise." *Hall*, 149 Ariz. at 133, 717 P.2d at 437; *accord Baker v. Arizona Department of Revenue*, 209 Ariz. 561, 564, 105 P.3d 1180, 1183 (App. 2005). Enterprise fails to demonstrate that the Legislature's actions in 2000 were unconstitutional.

Additionally, the Supreme Court of Illinois rejected an argument very similar to Enterprise's assertions in this case. *See Heller v. Fergus Ford, Inc.*, 322 N.E.2d 441 (Ill. 1975). Similar to the Arizona statute, the Illinois statute required the taxpayer to purchase pollution control equipment in order to qualify for the exemption. Denying the taxpayer's exemption request, the Illinois Supreme Court stated the following:

> The pollution-control equipment built into recent-model automobiles by manufacturers cannot be considered pollution-control [equipment]…The purchaser of an automobile is given no option to purchase or not to purchase the pollution-control equipment. . .The purchases concerned here were of automobiles; they were not purchases of personal property as pollution-control equipment.

Id. at 443.

The Court of Appeals in that same case had stated that:

> [T]he affidavits submitted by the automobile manufacturers establish that the emission control devices are fully integrated into the operational functions of the engines. The act states the exemption extends only to property purchased as pollution control facilities, and we do not believe it was the intention of the legislature that integrated systems can be characterized as such. The plaintiff did not purchase an automobile and a pollution control facility; he purchased only an automobile…A product with a primary purpose other than the implementation of environmental quality may not be broken down into its component parts to determine whether any of them separately or in combination may have some benefit to the environment.

Heller v. Fergus Ford, Inc., 305 N.E.2d 352, 355 (Ill. App. 1973), *aff'd* 322 N.E.2d 441 (Ill. 1975).

That same reasoning applies here. Enterprise was not given an option to choose whether or not they wanted a car with or without emissions control equipment. It came as a standard

integrated part of the operating system of every vehicle. Enterprise did not purchase property to reduce or control the emission of pollution into the environment. Rather, it simply purchased automobiles. The Legislature certainly could not have intended for the credit to apply here.

1. Whether or not the 2000 Amendment "clarifies" the original intent of the Legislature is irrelevant to the validity of the 2000 Amendment.

Enterprise argues extensively that the 2000 Amendment cannot clarify the original intent of the Legislature. However, the 2000 Amendment specifically declared that the exclusion of property attached to motor vehicles was to apply retroactively to taxable years beginning from and after December 31, 1994. *See* Laws 2000, Ch. 405, § 40.A. Whether or not the language added by the 2000 Amendment was a valid clarification of the original statute has no relevance on whether the amended statute can have retroactive application. *See Baker,* 209 Ariz. 561, 568-69, 105 P.3d 1180, 1187-88.

Enterprise's argument that the Legislature's clarification "violates constitutional principles of separation of powers" is without merit. The case Enterprise relies upon merely provides that the separation of powers doctrine is violated when the Legislature attempts to use a "clarification" to "retroactively overrule a decision by the courts." *State v. Fell*, 209 Ariz. 77, 82 ¶17, 97 P.3d 902, 907 (App. 2004). In this case, the courts have never ruled that pollution control equipment attached to motor vehicles qualifies for a tax credit under A.R.S. § 43-1170. Thus, the clarification made by the 2000 Amendment did not "overrule a decision by the courts" and does not violate principles of separation of powers.

2. Applying the Amendment Retroactively Does Not Violate Enterprise's Due Process Rights.

Enterprise alleges that "the retroactivity provision of the 2000 Amendment violates Enterprise's due process rights." The Arizona Court of Appeals has recently addressed this issue. *See Baker,* 209 Ariz. 561, 105 P.3d 1180. In rejecting the plaintiff's due process argument, the *Baker* court specifically pointed out that the "Supreme Court has never sustained a due process challenge to the retroactive application of an income tax." *Id.* at 567, 105 P.3d at 1186; *see also U.S. v. Carlton*, 512 U.S. 26, 30 (1995) (stating that "[t]his Court repeatedly has upheld retroactive tax legislation against a due process challenge").

a. Enterprise's Due Process Rights Were Not Violated Because Enterprise Had No Vested Claim.

The Court in *Baker* declared that "to sustain a due process claim, a plaintiff must demonstrate a protected liberty or property interest . . . [which] includes 'any vested right of any value.'" *Id.* at 567, 105 P.3d at 1186 (citations omitted). The *Baker* Court held that because tax provisions do not "create vested rights, no due process violation could occur." *Id.*; *see also id.* at 568, 105 P.3d at 1187 (noting its agreement with the Supreme Court in *Carlton*, 512 U.S. 26, 33,

that "[t]ax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code").

Further, the Arizona Court of Appeals held that where a right to refund is contingent upon acceptance or verification of the claim by the Department of Revenue, it has not vested. *See S & R Properties v. Maricopa County*, 178 Ariz. 491, 499, 875 P.2d 150, 158 (App. 1993). The Department did not accept nor grant the refund request from Enterprise prior to the 2000 Amendment. Enterprise claims that because it filed its claim one month prior to the 2000 Amendment, that its rights to a refund became vested. However, the rule is that a taxpayer's right does not vest by merely filing its claim. *See S & R Properties,* 178 Ariz. at 498, 875 P.2d at 157. Therefore, as was the case in *Baker*, because Enterprise had no vested rights in the tax credit, it is impossible for Enterprise to suffer a violation of its due process rights.

b. Retroactive Changes in Tax Laws are Consistent with Due Process as Long as They are Rationally Related to a Legitimate Legislative Purpose.

Enterprise correctly points out that the Arizona Court of Appeals has adopted the analysis of the United States Supreme Court's ruling in *Carlton*. However, Enterprise's analysis is not completely accurate in its identification of the applicable rule. Enterprise alleges that in order to be constitutional, *Baker* and *Carlton* require that a "retroactive amendment must satisfy *both* prongs" of a two prong test involving a legitimate purpose and a modest time period. This, however, is not the standard set forth in *Carlton*. Rather, the Supreme Court's opinion in *Carlton*, adopted by *Baker*, clearly stated the applicable due process standard for retroactive tax statutes when it declared, "[t]he due process standard to be applied to tax statutes with retroactive effect, therefore, is the same as that generally applicable to retroactive economic legislation:

> 'Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remains within the exclusive province of the legislative and executive branches . . .'"

Carlton, 512 U.S. at 30-31 (quoting *Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717, 729-30 (1984). This standard was again clearly reiterated in *Carlton's* holding, which stated as follows:

> Because we conclude that retroactive application of the 1987 amendment to § 2057 is rationally related to a legitimate legislative purpose, we conclude that the amendment as applied to Carlton's 1986 transactions is consistent with the Due Process Clause.

Carlton, 512 U.S. at 35. Thus the test stated in *Carlton*, and adopted by *Baker* is that retroactive changes in tax laws are consistent with the Due Process Clause as long as they are "rationally related to a legitimate legislative purpose." *Id.*; *accord Montana Rail Link, Inc. v. United States*,

76 F.3d 991, 994 (9th Cir. 1996).

(1) The Retroactive Application of the 2000 Amendment Was Rationally Related to a Legitimate Legislative Purpose.

The *Carlton* Court found a legitimate legislative purpose where Congress enacted a retroactive statute that attempted "to correct what it reasonably viewed as a mistake in the original . . . provision that would have created a significant and unanticipated revenue loss." *Id*. at 32. Noting that after enacting the original statute, "it became evident" to Congress "that the expected revenue loss" under the original statute could be much higher than anticipated, Congress added language which retroactively limited the qualification requirements for the deduction. *Id*. The Court sanctioned the retroactive application concluding that Congress' actions were "neither illegitimate nor arbitrary." *Id*.

Similarly, the *Baker* Court found a legitimate purpose while upholding a retroactive statute that was enacted to "fill loopholes" in the prior statute. *Baker*, 209 Ariz. at 568, 105 P.3d at 1187. The *Baker* Court also relied on language in *Montana Rail Link,* which held that "preventing a loss of government revenue is a legitimate legislative purpose." *Id.* at 568, 105 P.3d at 1187. The concurring opinions in *Carlton* agree with this broad standard. Justice O'Connor's opinion unequivocally states that the "[r]etroactive application of revenue measures is rationally related to the legitimate governmental purpose of raising revenue." *Carlton*, 512 U.S. at 37. Justice Scalia, with whom Justice Thomas joined, flatly concluded that "[r]evenue raising is certainly a legitimate legislative purpose, and any law that retroactively adds a tax, removes a deduction, or increases a rate rationally furthers that goal." *Id*. at 40 (Scalia, J., concurring) (citation omitted).

In this case, the Legislature declared that the intent of the retroactive amendments to the pollution control equipment credit were "intended to be clarifying changes" that were "consistent with the legislature's intent when those sections were enacted." Laws 2000, Ch. 405, § 41, S.B. 1504, 44th Leg., 2nd Reg. Sess., 2000. Regardless of whether or not a subsequent Legislature is allowed to "clarify" the intent of a former Legislature, the clear statement by the Forty-Fourth Legislature that the amendment was "intended to be clarifying" in nature certainly demonstrates a legitimate purpose. Indeed, the Forty-Fourth Legislature's purpose of "clarifying" and "correcting" is the same as the legitimate legislative purpose found in *Carlton*, which was to correct, or clarify a mistake in the original statute. *See Carlton*, 512 U.S. at 32.

Likewise, the loss of revenue issues that led to a legitimate retroactive amendment in *Carlton* were also present in the 2000 Amendment at issue here. An Arizona Joint Legislative Budget Committee ("JLBC") Staff Memorandum, dated March 29, 2000, points out that the original legislation regarding Pollution Control Devices was estimated to cost the State of Arizona approximately $2.5 million annually. The memo continues as follows:

DOR has recently indicated that some companies are arguing that a vehicle's

> catalytic converter is a pollution control device. DOR currently has unpaid multiple-year claims for $15.0 million in these "catalytic converter" credits. Based on DOR's estimates, the state's total exposure for prior years could be as much as $60.0 million if the use of the existing credit for catalytic converters is upheld.
>
> The bill would clarify that the pollution control device credit does not include catalytic converters. . . . We have estimated the potential cost avoidance of this provision at $15 million annually . . . ."

Id. Thus, like the amended statute in *Carlton* that was legitimately corrected, the 2000 Amendment clarified a provision in the original statute in order to prevent "a significant and unanticipated revenue loss." *See Carlton*, 512 U.S. at 32.

The circumstances here are also similar to the legitimate purposes found in *Baker* of "fill[ing] loopholes." *See Baker,* 209 Ariz. at 568, 105 P.3d at 1187. In a Government Reform Committee meeting, the House Speaker of the Forty-Fourth Legislature also stated that the one of the purposes of the 2000 Amendment was to "close[] loopholes." *See* Committee on Government Reform Minutes for March 10, 2000 regarding S.B. 1504 (statement of House Speaker Jeff Groscost).

Based on the above, it is evident that the retroactive application of the 2000 Amendment is rationally related to the legitimate purposes of: (1) raising revenue; (2) filling loopholes in the original statute; and (3) clarifying provisions in the original statute to prevent a significant and unanticipated revenue loss. Consequently, the retroactive application of the 2000 Amendment does not violate Enterprise's due process rights.

(2) The Period of Retroactivity Is Not a Material Issue in this Case.

Enterprise argues that because the retroactive period of the 2000 Amendment was more than a year, it is unconstitutional, claiming that *Carlton* requires the Legislature to "act promptly and establish only a modest period of retroactivity." However, as shown above, the holding by the majority did not place any time limits on the period of retroactivity. The majority's opinion only notes that the modest retroactive period in that case was a factor because it seemed to "soften the impact of the amendment." *See Carlton*, 512 U.S. at 40 (Scalia, J. concurring). Enterprise's argument regarding the importance of the period of retroactivity, as well as the out-of-state decisions it cites, are based on Justice O'Connor's concurring opinion in *Carlton*, not the majority's holding. While Justice O'Connor noted that periods of retroactivity longer than a year may raise constitutional questions, she did not say that such a period would be *per se* unconstitutional. *See Carlton*, 512 U.S. at 38. Further, in *Carlton's* other concurring opinion, two Justices plainly stated that the time period involved is not an issue in many cases, such as the one at issue here. In welcoming the recognition by the majority that "the Due process Clause does not prevent retroactive taxes," Justice Scalia, with whom Justice Thomas joined, stated the

following:

> "The court . . . attempts to soften the impact of the amendment by noting that it involved only 'a modest period of retroactivity.' But in the case of a tax-incentive provision, as opposed to a tax on a continuous activity (like the earning of income), the critical event is the taxpayer's reliance on the incentive, and the key timing issue is whether the change occurs after the reliance; that it occurs immediately after rather than long after renders it no less harsh."

Carlton, 512 U.S. at 40 (Scalia, J. concurring). Certainly this logical opinion of two Justices, that the length of the period of retroactivity is not always an issue, carries as much weight as the concurring opinion of one. Indeed, even Justice O'Connor's rationale for placing importance on the time period is that "[t]he governmental interest in revising the tax laws must at some point give way to the taxpayer's interest in finality and repose." *Carlton*, 512 U.S. at 37-38 (O'Connor, J. concurring).

In the California case cited by Enterprise, the length of the retroactive period was a significant issue because the amended city ordinance required the taxpayer to prove and produce documents "from up to nine years ago that it was otherwise never required to maintain." *City of Modesto v. Nat'l Med, Inc*., 27 Cal Rptr. 3d 215, 223 (App. 2005). In the South Carolina case cited by Enterprise, the taxpayer had a fixed and determined expectation of a capital gains tax refund, and the retroactive statute "retroactively [deprived] Taxpayers of their expectation of a full capital gains tax refund." *Rivers v. State*, 490 S.E.2d 261 fn. 3 (S.C. 1997). In such cases, where a fixed, continuous tax is concerned, a taxpayer may have more of an "interest in finality and repose" and a retroactive application of a statute may be somewhat harsh. However, the case at bar involves a tax-incentive provision where there was neither a fixed right nor any detrimental reliance by Enterprise. Thus, the period of retroactivity is not a material issue.

The South Carolina case even made clear that it did "not suggest that every retroactivity period is *per se* unreasonable. In some instances, a lengthy period of retroactivity may be necessary to accomplish certain legitimate legislative ends." *Id*. at 265 fn. 4. *Rivers* also cites to various decisions relying on *Carlton* that upheld a retroactive application of tax provisions that were well in excess of a year. *See id*. at 264; *e.g. Tate & Lyle v. Comm'r of Internal Revenue*, 87 F.3d 99 (3d Cir. 1996) (holding that a six-year period of retroactivity for a tax regulation did not violate due process rights); *Montana Rail Link, Inc. v. United States*, 76 F. 3d 991 (9th Cir. 1996) (upholding the retroactive application of a tax statute with a four-year period of retroactivity, and noting that Carlton only requires that the "period of retroactivity bears a rational relation to its underlying legislative purpose").

In this case, Enterprise had no fixed right or expectation in receiving the pollution control equipment credit. When it filed its original returns for fiscal years 1996, 1997, and 1998, it did not make a claim for the credit. Further, while Enterprise argues that a Department employee sent it a letter in October 1999 stating his initial impression that the credit would be allowed for

the actual cost of the pollution control equipment attached to an automobile, it does not mention the February 16, 2000, letter from the same employee revoking his prior letter and stating that it did not reflect "the Department's position" on the matter. The February letter, sent to Enterprise a month prior Enterprise's filing for the refund claim, put Enterprise on notice that it is "likely that the Department will not find such purchases qualify." *Id*. Indeed, the Department did deny Enterprise's credit claim. Thus, Enterprise could not have had a fixed or expected right in receiving the credit, nor did it detrimentally rely on a determination by the Department, and therefore "the taxpayer's interest in finality and repose" was minimal or non-existent.

Even if the period of retroactivity was an issue in this case, it was modest under the circumstances as applied to Enterprise. The amendment in *Carlton* was introduced shortly after it became evident to Congress that the original statute may cause an expected revenue loss of "over 20 times greater than anticipated." *See Carlton*, 512 U.S. at 32-33 (stating that the amendment was proposed by the IRS in January 1987, shortly after it recognized the problem, but not enacted until December of 1987). In the case at bar, the Department had not received any claims for a pollution control credit for equipment attached to motor vehicles until December of 1999. The 2000 Amendment clarifying that the pollution control credit does not apply to equipment attached to motor vehicles was signed into law by the Governor on April 28, 2000, only one month after Enterprise filed its Refund Claim, and only four months after the Legislature became aware that the language of the original statute may lead to a misapplication of the credit and cause an unexpected revenue loss. While the retroactive period of the statute here is over a year, in no cases did it apply to refund claims filed more that 4-5 months prior to the amendment. This certainly demonstrates that the Legislature "act[ed] promptly and establishe[d] only a modest period of retroactivity." *See City of Modesto*, 27 Cal. Rptr. 3d at 222.

3. Enterprise Does Not Meet the Requirements For the Credit Under the Pre-Amendment Statute

Even if the 2000 Amendment violated Enterprise's Due Process rights, Enterprise does not meet the requirements for the pollution control credits under the statute as originally enacted. It is well settled that credits, rebates, exemptions, and remissions are a matter of legislative grace and not a matter of taxpayer right. As such, they are strictly construed against the taxpayer and in favor of the taxing authority. *Davis v. Department of Revenue*, 197 Ariz. 527, 4 P.3d 1070 (2000). Enterprise fails to meet its burden because (1) the pollution control credits were intended for things such as scrubbers, etc., not catalytic converters, and (2) Enterprise fails to establish the price it paid or any costs it incurred to purchase the equipment.

The pollution control credits were not intended to apply to pollution control equipment attached to motor vehicles. The Forty-Fourth Arizona Legislature, of whom 34 of the 90 legislators were among those that passed the original statute, plainly declared that the language stating that the credit was not intended to apply to equipment attached to motor vehicles were "clarifying changes and are consistent with the legislature's intent when those sections were enacted." Laws 2000, Ch. 405 §41, SB 1504, 44th Leg., 2nd Reg. Sess., 2000.

This declaration by the Forty-Fourth Legislature is supported by the discussions in the 1994 Committee Minutes regarding the pollution control credits. The minutes specifically point out that the credit was aimed at equipment involved in the creation, renovation, and expansion of "facilities," while as admitted by Enterprise, the applicability to "equipment attached to motor vehicles was not even raised in committee." The fact that motor vehicles were not discussed only further establishes that the Legislature did not intend for the credit to apply to equipment attached to motor vehicles. Enterprise's contention that Departmental employees "raised the 'problem' that a 'personal automobile' would qualify for the credit" is somewhat misleading. These *internal* memos were made by one Department employee to another, and have no relevance to legislative intent, as there is no evidence that these concerns were even discussed with members of the Legislature. Rather, the concerns raised only suggest that there were, in fact, ambiguities in the original statutory language.

B. ENTERPRISE'S INABILITY TO DETERMINE THE PURCHASE PRICE PROVIDES FURTHER EVIDENCE THAT IT DOES NOT QUALIFY FOR THE CREDIT.

Enterprise argues that the issue of purchase price is best deferred to after the legal issues are resolved. Counsel for Enterprise also alludes to an alleged "gentleman's agreement" with "Department's prior counsel." This inadmissible hearsay is completely unsubstantiated by any objective evidence, and the Department is unaware of any such agreement with this approach. The issue of purchase price is not "an intensively factual issue best deferred to after the predicate legal issues are resolved," but rather it is one of the elements necessary for the taxpayer to prove in order to establish a claim for a refund or credit. *See* A.R.S. § 42-1118(E).

Further, Enterprise's inability to determine the purchase price provides additional evidence that it does not qualify for the credit. The statute states that the credit is only for "expenses that the taxpayer incurred" during the year "to purchase" pollution control equipment. A.R.S. § 43-1170(a)(1995). It also states that the "amount of the credit is equal to ten percent of the purchase price" of the specific equipment. *Id*. Despite the fact that Enterprise filed its refund request over five and one-half years ago it has still not met the burden of establishing a purchase price for the equipment for which it alleges a credit. Enterprise admits that the numbers it used in its claim are estimates based on incremental cost increases of vehicles from year to year for all models of vehicles rather than the actual expenses or the actual purchase prices for the specific items it claims. It is unreasonable for Enterprise to claim entitlement to a credit for the purchase price of equipment when it neither identifies the specific equipment on each of its vehicles nor the purchase price of such equipment. Now, Enterprise seeks another four to six months, in addition to the five and one-half years it has already had, in order to engage an expert to try and calculate the cost of the operationally integrated engine parts. This seems futile because the statute refers to the purchase price of the equipment, not the "cost" of the equipment.

Enterprise also claims that the existence of a "catalytic converter would by itself prove an

entitlement to a credit in some amount" and that "there is no controversy" that part of the automobiles' purchase price was for emissions control equipment. The Department disagrees with both allegations. First, as shown above, the pollution control credit does not apply at all to property that is attached to motor vehicles. Thus, the mere existence of a catalytic converter does not in any way "prove an entitlement to a credit in some amount." Next, there is no proof that such equipment was added to the purchase price of the automobiles purchased by Enterprise. Enterprise has shown no actual expenses. In fact, the only objective evidence relating to the purchase price of such equipment is found in the invoices provided by Enterprise which clearly show that the purchase "price" for the emissions control equipment on those vehicles is zero.

IV. THE COURT'S FINDINGS AND CONCLUSIONS

The Court agrees with ADOR that regardless of the 2000 Amendment, Enterprise does not meet the requirements for the pollution control credits under the statute as originally enacted in 1994. The pollution control credits were aimed at expenses "to control or prevent pollution." They were not intended to apply to pollution control equipment attached to motor vehicles. Enterprise cannot even identify the purchase price of the subject equipment, which was a standard, integral part of the cars it purchased for its business. *See Heller v. Fergus Ford, Inc.*, 305 N.E.2d 352, 355 (Ill. App. 1973), *aff'd* 322 N.E.2d 441 (Ill. 1975), where the Court stated:

> The plaintiff did not purchase an automobile and a pollution control facility; he purchased only an automobile. . . . A product with a primary purpose other than the implementation of environmental quality may not be broken down into its component parts to determine whether any of them separately or in combination may have some benefit to the environment.

Additionally, the Court finds that the 2000 Amendment itself requires denial of Enterprise's claim. However, the validity of its retroactivity provision does not rest on the clarification argument of ADOR. Rather, it was constitutionally permissible for the Legislature to declare the exclusion of property attached to motor vehicles retroactively to taxable years beginning from and after December 31, 1994. As the Supreme Court stated in *Carlton* regarding retroactive tax statutes, as long as "the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means" it satisfies the Due Process Clause. *Carlton*, 512 U.S. at 30-31 (quoting *Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717, 729-30 (1984). And, as argued by ADOR, "preventing a loss of government revenue is a legitimate legislative purpose." Citing *Baker*, 209 Ariz. at 568, 105 P.3d at 1187.

The Court also disagrees with Enterprise's argument that *Carlton* necessarily requires the Legislature to "act promptly and establish only a modest period of retroactivity." Instead, the Court concurs with ADOR that the holding by the majority did not place any particular time limit on the period of retroactivity. And, even if the modesty requirement applied, the period in this case was modest under the circumstances as applied to Enterprise. The 2000 Amendment declaring that the pollution control credit does not apply to equipment attached to motor vehicles

was signed into law by the Governor on April 28, 2000, only one month after Enterprise filed its Refund Claim. Enterprise has failed to overcome the presumption that the 2000 Amendment is constitutional.

IT IS THEREFORE ORDERED granting ADOR's Cross-Motion for Summary Judgment.

IT IS FURTHER ORDERED denying Enterprise's Motion for Partial Summary Judgment