STATE OF ARKANSAS
Department of Finance and Administration

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August 23, 2016

[redacted]

RE: In the Matter of [redacted]
Motor Vehicle Sales Tax Refund Claim Denial
Revision Request: Docket Nos.:
16-317 [redacted]
16-318 [redacted]
16-319 [redacted]

[redacted]:

This letter is prepared in response to your request for a revision of the Administrative Decision entered in the above-referenced matter on May 31, 2016. Your letter dated June 20, 2016 is considered a timely filed request for revision and this letter will constitute the final decision of the Arkansas Department of Finance and Administration ("DFA") under the provisions of Ark. Code Ann. § 26-18-405. Your letter states the following four arguments in support of revision of the administrative decision:

1. *The administrative law judge improperly premised the Decision on a clearly wrong interpretation of Ark. Code Ann. § 26-52- 510 and improper use of Arkansas Gross Receipts Tax Rule GR-12.1(B)(3).*

2. *Arkansas Statutes Prevail Over Administrative Regulations; Thus, DFA's Interpretation of Ark. Code Ann. § 26-52-510 and Ark. Code Ann. § 26-52-103 and Reliance on Ark. Gross Receipts Tax Rule GR-12.1(B)(3) Is Clearly Wrong.*

3. *The Law Does Not Place Form Over Substance by Requiring a Futile, Useless or Vain Act.*

4. *Examples of Sales Tax Credit Transactions Routinely Permitted by DFA but Prohibited By the Holding in the Decision.*

Your request for revision provides no new evidence concerning the transactions in question. Therefore, the following findings of the hearing officer are adopted for purposes of responding to your request for revision:

1. On November 22, 2013, Taxpayer purchased a 2014 BMW X5 ([redacted]) from [redacted] in [redacted], [redacted] for $57,074. The Taxpayer paid to the State of Arkansas $3,772.31 in sales taxes at registration. On January 3, 2014, Taxpayer requested a refund of $3,772.31 based on its sale of a 2014 BMW X5 ([redacted]) to [redacted] (the LLC) on December 16, 2013 for $66,403.75;

2. On December 16, 2013, Taxpayer purchased a 2014 Mercedes GL ([redacted]) from [redacted] for $73,679.50. Taxpayer paid to the State of Arkansas $4,851.67 in sales taxes at registration. On January 3, 2014, Taxpayer requested a refund of $4,016.45 based on its sale of a 2014 BMW X5 ([redacted]) to the LLC on November 24, 2013 for $61,791.56;

3. On December 30, 2013, Taxpayer purchased a 2014 Range Rover ([redacted]) from [redacted] in [redacted]s, [redacted] for $96,169. Taxpayer paid to the State of Arkansas $6,313.48 in sales taxes at registration. On April 23, 2014, Taxpayer requested a refund of $5,163.16 based on its sale of a 2014 Mercedes GL ([redacted]) to the LLC on December 31, 2013 for $79,433.29;

4. Testimony provided at the hearing indicates that the taxpayer did not receive cash or the equivalent of cash in return for transferring these vehicles to the LLC. Instead, it received forgiveness of debt on loans from the LLC to the taxpayer; and

5. Testimony provided at the hearing indicates that loans between the LLC and the taxpayer are evidenced only by copies of checks and a verbal agreement between the LLC and the taxpayer.

Applying the above facts to Ark. Code Ann. § 26-52-510 and Arkansas Gross Receipts Tax Rule GR-12.1, the hearing officer determined that: (1) the Taxpayer had not proven entitlement to a refund by a preponderance of the evidence because the Taxpayer did not receive cash or a cash equivalent in return for transferring the vehicles to the LLC; (2) the Taxpayer failed to prove that the definition of "sale" in Rule GR-12.1 contradicts the statute; and (3) the Taxpayer failed to prove that the Department's interpretation of the statute was clearly wrong.

Based upon these findings, I address each of the arguments you have presented in turn below.

1. The administrative law judge improperly premised the Decision on a clearly wrong interpretation of Ark. Code Ann. § 26-52- 510 and improper use of Arkansas Gross Receipts Tax Rule GR-12.1(B)(3).

In your first basis for revision, you state:

> The Decision correctly states the burden of proof is 'preponderance of the evidence' and upon whom the burden rests; however, the Decision thereafter clearly misinterprets Ark. Code Ann. § 26-52-510 and improperly assumes applicability of Rule GR-12.1(B)(3).

Arkansas Code Annotated § 26-52-510 provides a sales tax credit for the sale of a used motor vehicle in lieu of a trade-in. Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. *See Cook, Commissioner of Revenue v. Walters Dry Goods Co.*, 212 Ark. 485, 206 S.W.2d 742 (1947); and *Kansas City Southern Ry. Co. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990). A taxpayer claiming a deduction or credit bears the burden of proving that it is entitled to the deduction or credit by bringing itself clearly within the terms and conditions imposed by the statute that contains the deduction or credit. *See Weiss v. American Honda Finance Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004). Arkansas Code Annotated § 26-18-313(b) (Supp. 2015) further states that statutes providing a tax exemption, deduction, or credit shall be strictly construed in limitation of the exemption, deduction, or credit. The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state, in controversies regarding the application of a state tax law shall be by preponderance of the evidence. *See* Ark. Code Ann. § 26-18-313(c) (Supp. 2015).

As a legislative enactment, the Arkansas General Assembly established the parameters of the sales tax credit in Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014). The Arkansas General Assembly granted the credit only as to the "amount received from the sale of the used vehicle […] sold in lieu of a trade-in". *Id*. This statute has been interpreted by the Department in GR-12.1 to mean that a "sale" for purposes of the credit "means the transfer of title to a used vehicle by a consumer (the seller) to another individual or business enterprise (the buyer) in exchange for *cash or the equivalent of cash, such as a check or money order*." *See* GR-12.1(B)(3) (emphasis added).

In this case, the Taxpayer assigned the title to three vehicles to the LLC: (1) a 2014 BMW; a 2014 Mercedes; and (3) a 2014 Range Rover. For each assignment of title, the Taxpayer provided a Bill of Sale to the Department in support of his claim for refund indicating that the "Full Sales Price of the Vehicle" was $66,403.75, $61,791.56, and $79,433.29, respectively. At the hearing, the Taxpayer testified that he did not actually receive these amounts in cash from the LLC. Instead, the Taxpayer testified that these amounts represented the balances due on loans between the Taxpayer and the LLC. The Taxpayer testified that there were no written loan agreements between the Taxpayer and the LLC. On behalf of the LLC, its owner, [redacted], testified that no liens or promissory notes are used to provide loans to persons to

purchase vehicles "because it is too time consuming" and "causes title delays". [redacted] also testified that the LLC does not perform credit or background checks of lenders and instead relies upon "word of mouth" to establish the creditworthiness of borrowers.

The Taxpayer's testimony establishes that in consideration for the assignment of the three vehicles the Taxpayer did not receive from the LLC "cash or the equivalent of cash, such as a check or money order" as required to establish a "sale" under GR-12.1. Accordingly, I agree with the hearing officer's findings that the Taxpayer failed to prove entitlement to a refund of sales tax pursuant to the credit permitted under Ark. Code Ann. § 26-52-510 and GR-12.1 by a preponderance of the evidence.

2. Arkansas Statutes Prevail Over Administrative Regulations; Thus, DFA's Interpretation of Ark. Code Ann. § 26-52-510 and Ark. Code Ann. § 26-52-103 and Reliance on Ark. Gross Receipts Tax Rule GR-12.1(B)(3) Is Clearly Wrong.

The Taxpayer takes issue with the hearing officer's reliance on the Arkansas Gross Receipts Tax Rules instead of applying the Arkansas Code exclusively to determine whether the Taxpayer was entitled to a refund of sales tax. The Taxpayer asserts that the provisions of Ark. Code Ann. § 26-52-510 are unambiguous and the Department lacks the legal authority to "change the unambiguous language of legislatively enacted statutes." It is the Taxpayer's position that Ark. Code Ann. § 26-52-510(b)(1)(C) should be interpreted to mean that the tax credit provided in this section should be calculated using the net difference in the "total consideration" paid for a vehicle and the "total consideration" received for the sale of a vehicle in lieu of trade in.

Pursuant to the authority granted by Ark. Code Ann. §§ 26-18-301 and 26-52-105, the Director of the Arkansas Department of Finance and Administration promulgated the Arkansas Gross Receipts Tax Rules for the purpose of facilitating compliance with the Arkansas Gross Receipts Act of 1941, as amended, and to facilitate the administration, enforcement, and collection of the tax. The Arkansas Gross Receipts Tax Rules were promulgated to implement and clarify Title 26, Chapter 52 of the Arkansas Code. *See* GR-2.

The interpretation of statutes by an administrative agency, while not conclusive, is highly persuasive. *Aluminum Co. of America v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997). An administrative agency's interpretation of a statute or its own rules will not be overruled unless it is clearly wrong. *Arkansas Dep't. of Human Servs. v. Hillsboro Manor Nursing*, 304 Ark. 476, 803 S.W.2d 891 (1991). The Arkansas Supreme Court has recognized that administrative agencies are often required to interpret statutes and rules. In *Walnut Grove School Distr. No. 6 of Boone County v. County Board of Education*, 204 Ark. 354, 162 S.W.2d 64 (1942), the Court's opinion stated, in part:

> The administrative construction generally should be clearly wrong before it is overturned. Such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight. It is highly persuasive.

Id. at 359, 162 S.W.2d at 66.

As noted above, the hearing officer relied upon the requirements of Ark. Code Ann. § 26-52-510 and GR-12.1 to determine that the Taxpayer failed to prove his entitlement to a refund. The taxpayer has not provided any evidence that the Department's interpretation of Ark. Code Ann. § 26-52-510 in GR-12.1 is clearly wrong. Therefore, the decision of the hearing officer must be sustained.

3. The Law Does Not Place Form Over Substance by Requiring a Futile, Useless or Vain Act.

The Taxpayer argues that the "law does not require absurd or nonsensical formalities, where doing so yields no material or financial difference in a transaction" and there "is no rational, material or financial net difference" between the LLC forgiving a debt owed by the Taxpayer in return for a transfer of title to a vehicle as opposed to paying cash or a cash equivalent in return for transfer of title to a vehicle.

As noted above, the Taxpayer and [redacted] testified that no cash or cash equivalent, such as a check or money order, was exchanged between the parties in exchange for the assignment of the titles to the LLC. A "sale" means the transfer of title to a used vehicle by a consumer (the seller) to another individual or business enterprise (the buyer) in exchange for *cash or the equivalent of cash, such as a check or money order*. *See* GR-12.1(B)(3) (emphasis added). The Taxpayer's testimony establishes that no "sale" occurred pursuant to the requirements of GR-12.1. The Department's promulgation of GR-12.1 to establish the requirements of a "sale" was not clearly wrong.

Applying the law to the facts of this case, the Taxpayer did not bring himself clearly within the terms and conditions imposed by the statute and providing the credit because he did not receive cash or a cash equivalent in return for transferring the vehicles to the LLC. Interpreting the statute in limitation of the credit, the Taxpayer's claim for refund must be denied.

4. Examples of Sales Tax Credit Transactions Routinely Permitted by DFA but Prohibited By the Holding in the Decision.

The Taxpayer argues that "Buy Here, Pay Here" dealerships use debt forgiveness to qualify taxpayers for a sales tax credit at trade in. Your request for revision explains your argument as follows:

> So called, "Buy Here, Pay Here" dealerships use debt forgiveness to qualify taxpayers for the sales tax credit when they trade-in a vehicle they have currently financed for another vehicle for which they are providing financing. While DFA considers manufacturer or dealer rebates part of the "sales" price or gross proceeds or gross receipts under Arkansas Gross Receipts Tax Rule 18(H), DFA cannot dispute such rebates are rarely, if ever, paid in "cash." Instead, the buyer routinely assigns the rebate to the dealership, which in turn receives an equal amount of "debt forgiveness" or "credit" from the manufacturer with such "debt forgiveness" or "credit" applied to the balance owed to the manufacturer by the dealership for existing or incoming inventory.

The Taxpayer did not present at the hearing any evidence or testimony from a representative of a manufacturer or dealership to testify that a rebate or incentive constitutes "debt forgiveness" between a manufacturer and a dealership. Vehicle manufacturer or dealer rebates are part of the consideration received for a motor vehicle and are considered part of the gross proceeds or gross receipts. *See* GR-18(I). When a taxpayer purchases and registers a vehicle in Arkansas, the manufacturer rebate is included in the gross receipts and subject to tax. I am unable to determine that the sales tax treatment of a manufacturer rebate is applicable to the facts and circumstances of the Taxpayer's case.

CONCLUSION

For the reasons set forth herein, the Taxpayer has not established that the Department's interpretation of Ark. Code Ann. § 26-52-510(b)(1)(C) in Rule GR-12.1 is clearly wrong nor that the Taxpayer is entitled to a refund in this matter. The administrative decision is sustained. This concludes your administrative remedies under the Arkansas Tax Procedure Act. Relief from this decision may be sought according to the procedure set forth in Ark. Code Ann. § 26-18-406.

Sincerely,

Tim Leathers
Deputy Director and
Commissioner of Revenue