STATE OF ARKANSAS
Department of Finance and Administration

OFFICE OF THE DIRECTOR
1509 West Seventh Street, Suite 401
Post Office Box 3278
Little Rock, Arkansas 72203-3278
Phone: (501) 682-2242
Fax: (501) 682-1029
http://www.dfa.arkansas.gov

April 25, 2019

[redacted]

RE: In the Matter of [redacted]
Motor Vehicle Sales Tax Refund Claim Denial
Revision Request; Docket Nos.:
17-437 ([redacted])
17-438 ([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 October 20, 2017. Your letter dated November 9, 2017, 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 (Supp. 2017). Your letter states the following arguments in support of revision of the administrative decision:

1. *The Decision Ignores Taxpayer's Receipt of Funds from Buyer Via Bank Deposit.*

2. *The Interpretation of Ark. Code Ann. § 26-52-510 and Reliance on Ark. Gross Receipts Tax Rule GR-12.1 (B)(3) is Clearly Wrong.*

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

1. On August 21, 2013, Taxpayer purchased a [redacted] ([redacted])[1]. The purchase price of this vehicle was [redacted].

2. On September 24, 2013, Taxpayer purchased a [redacted] ([redacted]) from [redacted] in [redacted] for [redacted]. At the time of registration, the Taxpayer claimed a private sale credit

[1] For purposes of this Response, only the last four numbers of each vehicle's identification number are being used to identify each vehicle.

of [redacted] for an August 26, 2013 sale of the [redacted] ([redacted]) to [redacted] (the "[redacted]").

3. On November 1, 2013, Taxpayer purchased a [redacted] ([redacted]) from [redacted] in [redacted], for [redacted]. At the time of registration, the Taxpayer claimed a private sale tax credit of [redacted] for the October 17, 2013 sale of the [redacted] ([redacted]) to the [redacted].

4. Prior to the date of purchase of each [redacted], the [redacted], or a subsidiary of the [redacted], deposited funds into the taxpayer's checking account, and the taxpayer then purchased each vehicle.

5. The evidence submitted indicates that there was no contemporaneous exchange of cash or a cash equivalent when the Taxpayer transferred title to each [redacted] to the [redacted].

Applying the factual findings to Ark. Code Ann. § 26-52-510 (Repl. 2014) and Arkansas Gross Receipts Tax Rule GR-12.1, the administrative law judge determined that the Taxpayer failed to prove entitlement to the claimed sales tax credits. Based upon these findings, I address each of the arguments you have presented in turn.

1. The decision ignores taxpayer's receipt of funds from buyer via bank deposit.

In your first argument for revision, you state:

> [T]he Decision(s) completely ignores the undisputed and established fact Taxpayer did actually receive the amount of valuable consideration stated in the Bill of Sale used to substantiate the sale of the used vehicle via a deposit from the Buyer, [redacted], into Taxpayer's bank account. It has not been and cannot be reasonably argued that Taxpayer's bank accepts deposits of anything other than "cash or cash equivalent."

When a used motor vehicle is sold by a consumer and the consumer subsequently purchases a new or used vehicle of greater value within forty-five (45) days of the sale, gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle purchased subsequently and the amount received from the sale of the used vehicle sold. Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014).

Applying the law to the facts of this case, the administrative law judge found that since there was not a contemporaneous exchange of cash or a cash equivalent when the Taxpayer transferred title to the motor vehicle to the [redacted], there was no "amount received from the sale." Instead, the

evidence presented more strongly suggests that the taxpayer's receipt of funds from the [redacted] via bank deposit served the purpose of funding the taxpayer's vehicle *purchases*. Accordingly, I agree with the finding of the administrative law judge that there was no "amount received from the sale," and thus no "sale" under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014).

2. The interpretation of Ark. Code Ann. § 26-52-510 (Repl. 2014) and reliance on Ark. Gross Receipts Tax Rule GR-12.1(B)(3) is clearly wrong.

In your second argument for revision, you state:

> The Decision is premised on a clearly wrong interpretation of Ark. Code Ann. § 26-52-510 and improper use of Rule GR-12.1(B)(3) ("Rule GR-12.1(B)(3)"). Nowhere in Ark. Code Ann. § 26-52-510 (b)(1)(C) does it appear the Taxpayer's sales tax credit is limited to only the "contemporaneous exchange" of "cash or equivalent of cash" for the sale of the vehicle or that the definition of "sale" when used in this specific section is specifically intended to be different than the "sale" provided by Ark. Code Ann. § 26-52-103 (19).

Arkansas Code Annotated § 26-52-510 (Repl. 2014) 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. 2017) 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. 2017).

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*. In other words, the amount received by the taxpayer must be for the sale of the used vehicle and not for some other purpose. In this case, the fact that receipt of the deposit in the taxpayer's account was not contemporaneous with the assignment of title from the taxpayer to the [redacted] more strongly suggests that the taxpayer's receipt of funds from the [redacted] via bank deposit served the purpose of funding the taxpayer's vehicle *purchases*. Therefore, it was proper for the administrative law judge to consider that there was no

contemporaneous exchange of cash or equivalent of cash in relation to the transactions at issue in this matter.

Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) has been interpreted by the Department in Rule 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* Rule GR-12.1(B)(3) (emphasis added).

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 (Repl. 2014) 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)(Repl. 2014) 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 (Repl. 2012) and 26-52-105 (Repl. 2014), the Director of the Arkansas Department of Finance and Administration promulgated the Arkansas Gross Receipts Tax Rules to facilitate 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* Rule 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 (Repl. 2014) and Rule GR-12.1 to determine that the Taxpayer failed to prove entitlement to the credit for the private sale of a vehicle in lieu of a trade-in. The taxpayer has not provided any evidence that the Department's interpretation of Ark. Code Ann. § 26-52-510 (Repl. 2014) in Rule GR-12.1 is clearly wrong. Therefore, the reliance of the administrative law judge on Rule GR-12.1 and the assessment of sales tax and interest must be sustained.

CONCLUSION

The administrative decision is sustained. This concludes your administrative remedies under the Tax Procedure Act. Relief from this decision may be sought according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Repl. 2014 & Supp. 2017).

Sincerely,

Walter Anger
Deputy Director and
Commissioner of Revenue