



STATE OF ARKANSAS  
**Department of Finance  
and Administration**

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March 11, 2019

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: In the Matter of [REDACTED]  
Revision Request Docket No. 19-124

[REDACTED]:

This letter is prepared in response to your request for revision of the Administrative Decision entered in the above-referenced matter on January 3, 2019. Your request for revision, dated January 8, 2019, is considered timely. This letter will constitute the final decision of the Arkansas Department of Finance and Administration (the "Department") under the provisions of Ark. Code Ann. § 26-18-405 (Repl. 2012 and Supp. 2017).

**FACTS**

Your January 2019 request for revision does not provide additional documentary evidence. Therefore, the facts set forth in this response are based upon my review of the administrative record.

On October 19, 2016, you (along with [REDACTED]) entered into a Motor Vehicle Lease Agreement through [REDACTED], with [REDACTED], as Lessor, for the lease of a new [REDACTED] with a vehicle identification number ("VIN" hereafter) of [REDACTED] (" [REDACTED]" hereafter). A Bill of Sale between [REDACTED] as Seller and [REDACTED] (" [REDACTED]" hereafter) as Buyer was executed. The Bill of Sale recites that the vehicle was "sold" to [REDACTED]. [REDACTED] as Owners registered and titled the [REDACTED] in Arkansas. The Application for Title evidences [REDACTED] as lienholder.

On April 3, 2018, you purchased a [REDACTED] (" [REDACTED]" hereafter) (VIN [REDACTED]) for \$32,199.00. On May 1, 2018, you registered the [REDACTED], applied for title and paid a total of \$2,274.09 in taxes and fees. No trade-in credit was claimed at the time of registration.

In May 2018, you submitted a Claim for Sales or Use Tax Refund to the Office of Tax Credits/Special Refunds ("the Office" hereafter). Your refund request was based on the sale of the [REDACTED] for the sum of \$23,500.00. Upon receipt of your refund claim, the Office researched whether you qualified for the trade-in credit and discovered that the [REDACTED]

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was titled and registered in the name of [REDACTED]. Accordingly, on June 11, 2018, the Office sent you a letter advising that additional information was needed to process your claim for refund. This inquiry letter requested proof of payment for the vehicle sold and documentation reflecting that you were the owner of the vehicle sold.

Department records reflect that you called the Office in response to its inquiry letter. Department records further reflect the following information was exchanged between yourself and the Office during that conversation: (1) you advised the Office representative that you sold the [REDACTED] to your son in California and that you and your son had an agreement or an arrangement about payments; (2) you advised the Office representative that your son decided he did not want the [REDACTED] and later sold it to his sister for \$8,000; (3) you advised the Office representative that no money has changed hands for the [REDACTED]; (4) the Office representative advised you that the Office would need to see a copy of any promissory note related to payments for the [REDACTED]; and (5) you advised the Office representative that you would “generate” a promissory note in relation to the sale of the [REDACTED].

In June 2018, the Office received the following documents to support your sale of the [REDACTED] to your son: (1) a Motor Vehicle Bill of Sale reflecting that [REDACTED] purchased a [REDACTED] with VIN [REDACTED] and an odometer reading of 18,500 miles on May 18, 2018 for \$23,500; (2) a copy of the back of a title reflecting: (a) transfer of ownership of an unidentified vehicle with an odometer reading of 17,300 miles from [REDACTED] to you and [REDACTED] for \$17,496.94 and (b) a dealer assignment of the unidentified vehicle, executed by you and [REDACTED], to [REDACTED] in return for a sales prices of \$0; (3) an Odometer Disclosure Statement for an unidentified vehicle reflecting mileage of 18,500 at the time of sale; and (4) a Promissory Note reflecting the sale of a [REDACTED] with VIN [REDACTED], executed by yourself and [REDACTED], reflecting that the [REDACTED] was being sold to [REDACTED] in return for his transfer to you of a [REDACTED] and his promise to pay you \$15,500. It is important to note certain discrepancies in the documents provided by you in June. First, the Motor Vehicle Bill of Sale and the Promissory note conflict as the Bill of Sale does not reflect the transfer of a [REDACTED] in return for the sale of the [REDACTED]. Second, the VIN reflected on both the Motor Vehicle Bill of Sale and the Promissory Note reflect the VIN for the [REDACTED] that you purchased in April 2018 rather than the VIN of the [REDACTED]. Third, the copy of the back of the title conflicts with both the Motor Vehicle Bill of Sale and the Promissory Note as it reflects a transfer of ownership of an unidentified vehicle for \$0. Lastly, the Promissory Note identifies only [REDACTED] as seller of the [REDACTED] rather than [REDACTED] and [REDACTED].

On July 10, 2018, you were notified that your claim for refund was denied on the basis that Department records reflected the [REDACTED] was not owned by you but was instead owned by [REDACTED]. You timely protested the denial of refund. In your protest, you stated in pertinent part as follows: (1) in March 2018 you began negotiations to buy out the lease of the [REDACTED] and that you subsequently did buy out that lease with the final payment including all sales taxes due

as well as total sales taxes paid over the life of the lease<sup>1</sup>; (2) in May 2018 you sold the [REDACTED] to your son [REDACTED]; (3) a Bill of Sale and Odometer Mileage Disclosure were completed in relation to the sale of the [REDACTED]; (4) you provided your son with the original title to the [REDACTED] and statement of satisfied payments you received from [REDACTED]; and (5) you have fully paid both sales and property taxes on both vehicles at issue in this matter.

After the date of your protest, you provided the Department with a copy of the front side of the title for the [REDACTED] which reflects a release of security interest in the [REDACTED]. There is no record of you having registered the [REDACTED] and the Department has never been provided with a copy of any documents reflecting your purchase of the [REDACTED]. In addition, you provided the Department with a copy of the Bill of Sale and Retail Purchase Order related to your purchase of the [REDACTED], proof of your assessment of the [REDACTED], printouts of account pages from the [REDACTED] website reflecting valuation and payments made towards the [REDACTED]<sup>2</sup>, an Odometer/Mileage Disclosure Statement, and a [REDACTED] receipt confirming a payment of \$340.02 by you to [REDACTED] on April 23, 2018. The “My Account” website page reflects you as a customer of [REDACTED] and [REDACTED] as a co-Lessee of the [REDACTED] with no payment due but with instructions to check pending payments. The “Payments” website page, which was current as of May 29, 2018, reflects a payment of \$17,496.94 received by you on April 9, 2018, which appears to have been reversed, with a payment of \$340.02 received by you on April 23, 2018. The Odometer/Mileage Disclosure Statement was not completed by [REDACTED]<sup>3</sup>. This statement reflects a mileage of 17,300 for the [REDACTED] and a hand-written statement by you stating: “check mailed off and payoff completed on 4/9/2018.”

A hearing on your protest took place on December 13, 2018. At the conclusion of the hearing, the hearing officer determined that you sufficiently proved ownership of the [REDACTED] by providing separate copies of the front of that vehicle’s title and the back of a title for an unidentified vehicle, despite questions raised at the hearing as to whether it could be sufficiently determined that the copy of the back of the title was indeed that of the [REDACTED].<sup>4</sup> To arrive at this decision, the hearing office relied upon the bill of sale, odometer disclosure statement, promissory note, testimony, and other documents that made up the record.<sup>5</sup> However, the hearing officer ultimately sustained disallowance of the refund by finding that a sale did not occur because the transfer of title to the [REDACTED] was not in exchange for cash or a cash equivalent.

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<sup>1</sup> The record is devoid of evidence of the claimed buyout and payment of taxes.

<sup>2</sup> The “My Account” page reflects you as a customer of [REDACTED], [REDACTED] as a co-Lessee of the [REDACTED], and no payment due.

<sup>3</sup> The Odometer/Mileage Disclosure Statement appears to be a [REDACTED] form which contains two parts, the top part was completed by you. The bottom part, which has not been completed, must be completed by the lessor.

<sup>4</sup> See Administrative Decision, Page 7-8.

<sup>5</sup> See Administrative Decision, Footnote 12.

## ISSUE

The issue to be decided is whether you met the statutory criteria to qualify for the sales tax credit for sale of a used vehicle. Your request for revision alleges that your ownership of the [REDACTED] [REDACTED] was proven at the hearing, it asserts that a note for payment constitutes the equivalent of cash, and it asserts that all taxes have been properly paid.

## ANALYSIS

Taxpayers bear the burden of proving entitlement to a refund of tax. Ark. Code Ann. § 26-18-507 (Repl. 2012). The Department bears the burden of proving that the tax law applies to an item or service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2017). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. Ark. Code Ann. § 26-18-313(a), (b), and (e) (Supp. 2017). If a well-founded doubt exists with respect to the meaning of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Supp. 2017).

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. A preponderance of the evidence means the greater weight of the evidence. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, at 12-13, 432 S.W.3d 25, 33, the Arkansas Supreme Court explained:

Preponderance of the evidence means evidence of greater convincing force and implies an overbalancing in weight. *Titan Oil & Gas, Inc. v. Shipley*, 257 Ark. 278, 298, 517 S.W.2d 210, 222–23 (1974) (citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)). A preponderance of the evidence is “not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” Black’s Law Dictionary 1301 (9th ed.2009).

Arkansas gross receipts (sales) tax is levied upon sales of tangible personal property. Ark. Code Ann. § 26-52-301 (Supp. 2017). Tangible personal property is defined as “personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.” Ark. Code Ann. § 26-52-103(30)(A) (Supp. 2017). Motor vehicles meet the definition of tangible personal property. Sales tax is a transactional tax rather than a property tax. *Pledger v. Brunner and Lay, Inc.*, 308 Ark. 512, 521, 825 S.W.2d 599, 604 (1992). Thus, to the extent

that a taxpayer purchases a vehicle for an amount totaling \$4,001 or more<sup>6</sup>, the tax is going to be due regardless of how many times the vehicle has been sold. The lease of tangible personal property is considered a sale for application of sales tax. Ark. Code Ann. § 26-52-103(26)(B)(i) (Supp. 2017). Arkansas Code Annotated § 26-52-103(26)(D)(ii)(b) (Supp. 2017) requires that sales tax be collected on the lease or rental payments for motor vehicles leased for a term of more than 30 days. The record reflects that you leased the [REDACTED] for a period of longer than 30 days and that taxes were collected on the lease stream. Any subsequent buyout of the lease of the [REDACTED] would be a separate transaction from the lease transaction and would also be subject to sales tax.

Arkansas Code Annotated § 26-52-510(b)(1)(C)(i) (Repl. 2014) authorizes a sales tax credit for the private sale of a used motor vehicle that occurs within 45 days of the purchase of a new or used motor vehicle. If a consumer who purchases a new or used motor vehicle sells a used motor vehicle within 45 days before or after the consumer has already registered the new or used vehicle and paid taxes due upon the purchase of the new or used vehicle, then the consumer may file a claim for refund to take advantage of the credit authorized in Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014). Arkansas Gross Receipts Tax Rule GR-12.1(D)(1)(b). However, the evidence contained within the record does not support a finding that you are entitled to a credit for the sale of the [REDACTED].

First, in reviewing the documents that have been filed in relation to this matter, I find that the hearing officer erred when he determined that you proved ownership of the [REDACTED] by a preponderance of the evidence. This is because you failed to provide the original title to the [REDACTED], a certified copy of the title to the [REDACTED], a contract for purchase of the [REDACTED], or any other official documentation that would verify your purchase of the [REDACTED]. At best, by providing separate copies of the front of the title to the [REDACTED] and the back of the title to an unidentified vehicle, you have demonstrated that the security interest in the [REDACTED] was released and that [REDACTED] transferred ownership of a vehicle to [REDACTED] and [REDACTED]. The only other documents that have been provided to prove your purchase of the [REDACTED] (the Odometer/Mileage Disclosure Statement and the account website pages are either incomplete or merely reflect that you are a lessee making payments to [REDACTED]).

Second, even if a preponderance of the evidence had demonstrated your ownership of the [REDACTED], I concur with the decision of the hearing officer that the evidence does not demonstrate that a sale of the [REDACTED] occurred for purposes of the credit authorized in Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014). This is because there are many discrepancies contained within the documents and statements you have provided to or made to the Department. For instance, the record reflects that you informed a representative of the Office that no money changed hands in relation to the alleged sale of the [REDACTED] to your son. Similarly, the record is devoid of proof of your receipt of any money in relation to the alleged sale of the [REDACTED] to your son. Additionally, the record reflects that you generated a Promissory Note for

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<sup>6</sup> Arkansas Code Annotated § 26-52-510(b)(1)(B) (Repl. 2014) sets forth the minimum sale price subject to the sales tax.

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the alleged sale of the [REDACTED] after you submitted your claim for refund. The record also reflects that the Promissory Note does not identify the correct VIN for the [REDACTED] and does not identify [REDACTED] as co-owner of the [REDACTED] and a necessary party to the sale of the [REDACTED]. The Promissory Note reflects a promise to pay \$15,500 in monthly installments of \$250 per month as well as the transfer of a [REDACTED], which conflicts with the Motor Vehicle Bill of Sale (which does not identify the transfer of a vehicle as part of the sale price for the [REDACTED]). Similarly, the record is devoid of proof of a transfer of a [REDACTED] to you and, as stated in the hearing decision, the transfer of a vehicle does not constitute a cash equivalent for purposes of demonstrating that a sale, as defined by Rule GR-12.1, occurred. Additionally, the Promissory Note conflicts with the back of the title presented by you to prove your ownership of the [REDACTED] (which reflects that you sold the [REDACTED] to your son for \$0). Lastly, the Motor Vehicle Bill of Sale provided to support the alleged sale of the [REDACTED] to your son does not list the correct VIN for the [REDACTED], and conflicts with the back of the title that you provided to support your ownership of the [REDACTED] (as the back of the title reflects that you sold the [REDACTED] to your son for \$0).

Third, even if a preponderance of the evidence demonstrated that you owned the [REDACTED], and that you subsequently sold it to your son, it would still be improper to authorize the credit and issue a refund to you because the record does *not* reflect that you have paid all required taxes due in relation to your purchase of the [REDACTED]. As explained above, Arkansas sales tax is a transactional tax and would have been due on your buyout of the lease of the [REDACTED]. The tax was required to have been paid by you directly to this agency. Ark. Code Ann. § 26-52-510(a)(1)(4)(B) (Repl. 2014). Assuming for arguments sake that the back of the title you provided to prove ownership of the [REDACTED] does reflect a transfer of ownership of that vehicle to you, it also reflects a sale price of \$17,496.94. The total tax due on that sales price is \$1,212.30, excluding interest and penalties that would be due for late payment of the tax, and the record is devoid of proof of payment of taxes, title, and license fees due in relation to the alleged buyout of the lease.

### CONCLUSION

For the reasons set forth herein, the administrative decision is sustained. This concludes your administrative remedies under the Tax Procedure Act. Judicial relief from this decision may be sought using the procedure set forth in Ark. Code Ann. § 26-18-406 (Repl. 2012 and Supp. 2017).

Sincerely,

Walter Anger  
Deputy Director and  
Commissioner of Revenue