



STATE OF ARKANSAS
Department of Finance
and Administration

OFFICE OF THE DIRECTOR

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May 21, 2019

[REDACTED]
[REDACTED]
[REDACTED]

RE: In the Matter of [REDACTED]
Request for Revision
Docket No: 19-149

[REDACTED]:

This letter is prepared in response to your request for a revision of the Administrative Decision entered in the above-referenced matter on December 17, 2018. Your e-mail, dated December 31, 2018, is considered a timely filed request for revision and this letter will constitute the final decision of the Arkansas Department of Finance and Administration (“Department”) under the provisions of Ark. Code Ann. § 26-18-405 (Supp. 2017).

FACTS

On or about August 2, 2017, you purchased a 2009 Honda (“Vehicle A”) for \$6,000.00. Vehicle A was registered with the Department on August 18, 2017. At the time of registration of Vehicle A, you claimed a private sale tax credit of \$6,000.00 which resulted in no Arkansas sales tax being paid on your purchase of Vehicle A. Your claim for the private sale credit was supported by a Bill of Sale indicating that you sold a 2004 Pontiac (“Vehicle B”) to [REDACTED] on July 22, 2017. At the time of the purported sale of Vehicle B, Department records indicated that Vehicle B was registered with the Department in your name.

Records available to the Department revealed that you sold Vehicle B several months prior to the purported July 22, 2017 sale to [REDACTED]. These records indicated that [REDACTED], of [REDACTED] Oklahoma, purchased Vehicle B and a lien was filed with the Oklahoma Tax Commission in favor of [REDACTED] Bank on December 15, 2016. Correspondence from the Oklahoma Tax Commission revealed that an Oklahoma Motor Vehicle Title was never issued to [REDACTED] for the vehicle. Additionally, the Department ran Vehicle B through the National Motor Vehicle Title Information System (“NMVTIS”) to identify all motor vehicle titles issued for the vehicle. The last title reflected for this vehicle is the Arkansas title issued to you. No title was shown to have been issued to either [REDACTED] or to [REDACTED].

Based on the information available, the Department disallowed the tax credit you claimed for the private sale of Vehicle B. A Notice of Proposed Assessment was issued on August 22, 2018,

assessing additional tax against you based on the disallowance of the private sale tax credit. The Notice of Proposed Assessment assessed tax in the amount of \$553.75 and interest in the amount of \$56.13 for a total assessment of \$609.88. You timely protested that assessment and requested an administrative hearing on written documents.

The attorney for the Department filed an opening brief with the Administrative Law Judge in support of the tax assessment. A brief was not filed on your behalf in opposition to that assessment. Accordingly, the Administrative Law Judge issued a decision on December 17, 2018, based on the record presented. That decision sustained the tax assessment against you in full. You then requested that the decision of the Administrative Law Judge be revised by the Commissioner of Revenue. To support your request for revision, you provided additional documentation for consideration by the Department. That documentation had not previously been provided to the Department for consideration during either the tax assessment process or the administrative hearing.

The additional documentation you provided reveals that you sold Vehicle B to [REDACTED] in December 2016. A lien was filed with the Oklahoma Tax Commission against Vehicle B in favor of [REDACTED] Bank on December 15, 2016. In July 2017, [REDACTED] began negotiating with you to purchase a Cadillac you owned. You agreed to sell the Cadillac to [REDACTED] and received cash plus Vehicle B in payment for the Cadillac. You then re-sold Vehicle B to [REDACTED] on July 22, 2017. You provided information explaining that neither [REDACTED] or [REDACTED] registered Vehicle B because the vehicle was being used for drag racing and neither gentleman intended to operate the vehicle on the highways.

ANALYSIS

Arkansas sales tax generally applies to all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Repl. 2014). 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 as follows:

When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

See also Arkansas Gross Receipts Tax Rule GR-12.1.

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The additional information provided with your request for revision of the administrative decision demonstrates that you sold Vehicle B to [REDACTED] on July 22, 2017. The sale to [REDACTED] occurred within 45 days of the purchase date of Vehicle A. Based upon these facts, you have shown by a preponderance of the evidence that you were entitled to claim the private sale credit for your July 22, 2017 sale of Vehicle B under Ark. Code Ann. § 26-52-510(b)(1)(C).

CONCLUSION

For the reasons set forth above, the decision of the hearing officer is reversed and the assessment of tax and interest against you is withdrawn. This concludes your administrative remedies under the Arkansas Tax Procedure Act.

Sincerely,

Walter Anger
Deputy Director and
Commissioner of Revenue