



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

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May 13, 2019

Ms. Amanda Land
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203

RE: In the Matter of [REDACTED]
Request for Revision
Docket No: 19-238

Ms. Land:

This letter is prepared in response to your request for a revision of the administrative decision entered in the above-referenced matter on January 9, 2019. Your request for revision, dated January 29, 2019, is considered timely. This letter will constitute the final decision of the Arkansas Department of Finance and Administration ("Department") under Ark. Code Ann. § 26-18-405 (Repl. 2012 and Supp. 2017) regarding the above-referenced matter.

FACTS

The administrative hearing dealt with the issue of whether [REDACTED] ("Taxpayer") was entitled to the GR-12.1 private sale tax credit he claimed on the purchase of a [REDACTED]. The hearing officer held that Taxpayer complied with the requirements of GR-12.1(D)(1)(a) at the time of his registration of a motor vehicle and had proven entitlement to the credit by a preponderance of the evidence. Consequently, the hearing officer held the assessment of tax on the purchase should be overturned. The following facts are noted for purposes of this response:

- On March 6, 2017, Taxpayer purchased a [REDACTED] (the "Vehicle A") from [REDACTED] for \$ [REDACTED].
- On March 1, 2017, Taxpayer allegedly sold a [REDACTED] homemade trailer (the "Vehicle B") for \$ [REDACTED].¹
- Taxpayer registered Vehicle A on May 2, 2017. At the time of registration, Taxpayer claimed the GR-12.1 private sale credit for the alleged sale of Vehicle B and paid sales tax on only \$ [REDACTED] of the purchase price of Vehicle A.

¹ This allegation was in dispute at the administrative hearing. It is noted solely for purposes of the analysis and is not adopted as true in this Decision.

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- On May 3, 2017, the Department determined that Taxpayer was still a registered owner of Vehicle B. The Department notified Taxpayer that its records reflected he was still the owner of Vehicle B, and that no credit for Vehicle B would be allowed toward Taxpayer's purchase of Vehicle A. The Department issued a Notice of Proposed Assessment to Taxpayer in the amount of \$[REDACTED]. The assessment consisted of tax in the amount of \$[REDACTED], with a credit toward a previous payment of \$[REDACTED], and interest in the amount of \$[REDACTED]. The assessment was based on the purchase price of \$[REDACTED].

The hearing officer overturned the assessment of tax for the following reasons:

- The Taxpayer presented a bill of sale that satisfied the certification requirements of GR-12.1(D)(1)(a);
- There was no evidence introduced to establish that the bill of sale was fraudulent or invalid;
- There was no evidence introduced to establish that the purchaser disputed purchasing Vehicle A; and
- The Department did not cite any legal authority to support a finding that the failure of the purported purchaser to register the vehicle operates to void the Taxpayer's compliance with the certification requirements of GR-12.1(D)(1)(a).

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). Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) authorizes a sales tax credit for the private sale of a used motor vehicle.

When a taxpayer claims to be entitled to a tax exemption, deduction, or credit under the terms of a state tax law, then the statute providing the tax exemption, deduction, or credit shall be strictly construed in limitation of the exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(b) (Supp. 2015). 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. Ark. Code Ann. § 26-18-313(c) (Supp. 2015). If a well-founded doubt exists with respect to the application 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. 2015).

The Office of Motor Vehicle must examine all applications for registrations of a vehicle and determine the genuineness, regularity and legality of those applications. Ark. Code Ann. § 27-

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14-409(a) (Repl. 2014). It may make any investigation it deems necessary for the examination of an application. Ark. Code Ann. § 27-14-409(b) (Repl. 2014). If the Office is not satisfied with the genuineness, regularity, or legality of an application, the Office must reject the application. Ark. Code Ann. § 27-14-409(b) (Repl. 2014).

The Office of Hearings and Appeals incorrectly placed the burden on the Department to disprove the Taxpayer's entitlement to the credit. The Department was not required to establish that the bill of sale was fraudulent or invalid, nor was the Department required to introduce evidence that the purchaser disputed purchasing Vehicle A.² Taxpayer failed to show the genuineness, regularity, and legality of his application for registration due to Vehicle B remaining registered in his name. A taxpayer does not automatically qualify for a sales tax credit on the purchase of a motor vehicle by submitting a bill of sale. Rather, upon the request by the Department, Taxpayer was required to present additional documentation to establish he was legally entitled to the credit. Taxpayer failed to do so. Taxpayer did not submit any bank deposit information, testimony from the alleged purchaser, or other documentation to verify the credit claimed at the time of his application for registration.

CONCLUSION

For the reasons set forth above, the decision of the hearing officer is reversed and the assessment will be upheld. This concludes the Taxpayer's administrative remedies under the Tax Procedure Act. The Taxpayer may seek relief from this decision according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Repl. 2014 and Supp. 2017).

Sincerely,

Walter Anger
Deputy Director and
Commissioner of Revenue

² It is noted that the Department submitted information that Taxpayer and the alleged purchaser may be related, notwithstanding Taxpayer's claim that he did not know the purchaser.