

**STATE OF ARKANSAS
DEPARTMENT OF FINANCE & ADMINISTRATION
OFFICE OF HEARINGS & APPEALS**

ADMINISTRATIVE DECISION

IN THE MATTER OF
[REDACTED]
(ACCT. NO.: [REDACTED])

**GROSS RECEIPTS
TAX ASSESSMENT**

DOCKET NO.: 19-351

**LETTER ID: [REDACTED]
(\$ [REDACTED])¹**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on May 2, 2018, and signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment of Gross Receipts Tax (“sales tax”) issued by the Department of Finance and Administration (“Department”).

A telephone hearing was held in Little Rock, Arkansas, on March 22, 2019, at 10:00 a.m. The Department was represented by Leslie Fryxell, Attorney at Law, Office of Revenue Legal Counsel. Barbara Montgomery (“Tax Credits Supervisor”) appeared for the Department. The Taxpayer appeared at the hearing, via telephone, and represented herself.

ISSUE

Whether the tax assessment issued against the Taxpayer on the purchase of a motor vehicle, resulting from the denial of a claimed sales tax credit, should be sustained? Yes.

¹ The reflected amount includes tax (\$ [REDACTED]), and interest (\$ [REDACTED]), with credit for payments totaling \$ [REDACTED].

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department disallowed a sales tax credit claimed by the Taxpayer for the private sale of a motor vehicle in lieu of a trade-in and issued an assessment against the Taxpayer in the amount of \$ [REDACTED] on April 25, 2018. The Department's Answers to Information Request addressed the disallowance of the sales tax credit claimed by the Taxpayer and stated, in part:

On or about December 16, 2016, . . . Taxpayer purchased a 2013 . . . ("Vehicle 1") from [REDACTED] in [REDACTED]. The Cash Retail Buyers Order reflects that the sales price of Vehicle 1 was \$ [REDACTED] (including a charge of \$ [REDACTED] and a vehicle inventory tax of \$ [REDACTED]) and that the Taxpayer financed \$ [REDACTED] of the purchase price through [REDACTED]. See the Cash Retail Buyers Order attached as **Exhibit 1** and the Note, Disclosure and Security Agreement attached as **Exhibit 2**. The Application for Title reflects a Trade In Credit of \$ [REDACTED]. A copy of the Application for Title for Vehicle 1 dated January 9, 2017 is attached as **Exhibit 3**. The Bill of Sale dated November 26, 2016, for a 2012 . . . ("Vehicle 2") previously sold by the Taxpayer was provided by the Taxpayer at the time of registration and is attached as **Exhibit 4**. The Certificate of Title for Vehicle 1 dated January 30, 2017 is attached as **Exhibit 5**.

The Tax Credits Section reviewed the registration documents and discovered two (2) discrepancies. Specifically, according to records provided by the Taxpayer at registration, Vehicle 2 was sold on November 26, 2016. See **Exhibit 4**. *However, Department records reflected that the Taxpayer was not a registered owner of Vehicle 2.* Therefore, because she was not the consumer who sold the vehicle within forty-five (45) days, the deduction was disallowed. In addition, the Tax Credits Section noted that the buyer of Vehicle 2 indicated that Vehicle 2 was purchased on August 10, 2016, which is more than forty-five (45) days from the purchase date of Vehicle 1. In order to qualify for the motor vehicle sales tax credit for a private sale, the vehicle purchased must be purchased within forty-five (45) days of the sale of the used vehicle. Therefore, because more than forty-five (45) days had passed, the deduction was disallowed. The Taxpayer was advised of these findings by letters sent on October 11, 2017. See Deduction from New Purchase Letter and Difference In Purchase Date Letter collectively attached as **Exhibit 6**. The letters stated that failure to timely respond and provide additional information and

documentation would result in a proposed assessment. Subsequently, on April 25, 2018, the Taxpayer was issued an Explanation of Tax Adjustment Letter and a Notice or Proposed Assessment Letter which are collectively attached as **Exhibit 7**. The Taxpayer was assessed an additional \$ [REDACTED].

On May 2, 2018, the Taxpayer timely filed a Protest of Assessment with documents attached as **Exhibit 8**. In her Protest, the Taxpayer asserts her disagreement with the assessment because 'she has proof' that Vehicle 2 was still 'in her name' on September 27, 2016. The Department notes the conflicting dates on the documents and asserts that the most reliable documents appear to support the August 10, 2016 date as the date on which Vehicle 2 was sold. [Emphasis added].

The Tax Credits Supervisor presented testimony consistent with the contentions in the Department's Answers to Information Request and also testified that: (1) Hearing Exhibit A is an Application for Title dated September 2, 2016, for Vehicle 2, reflecting that the name of "Owners" as the same individual whose name is reflected as the "Buyer(s)" on the back of the title for Vehicle 2 with the "Date of Sale" of August 10, 2016;² and (2) Page 1 of Hearing Exhibit B is a copy of the front of the title for Vehicle 2 reflecting the a lien was released on August 23, 2016.

The Taxpayer testified that: (1) the buyer of Vehicle 2 and his wife are her friends; (2) she knew that the buyer of Vehicle 2 and his wife wanted to buy Vehicle 2 but not on August 10, 2016; (3) the wife of the buyer of Vehicle 2 prepared the paperwork without her knowledge; (4) she did not sign the Bill of Sale on the back of the title of Vehicle 2 on August 10, 2016; and (5) she sold Vehicle 2 on the day she gave the keys and Vehicle 2 to the buyer.³

² See Hearing Exhibit B – P. 2.

³ See Department Exhibit 4. A Bill of Sale for Vehicle 2 signed by the Taxpayer and the same buyer as indicated on Hearing Exhibits A and B – P. 2.

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2017) provides, in pertinent part, as follows:

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:

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.

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 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. 2017).

Sales Tax Assessment

As a general rule, all sales of tangible personal property in the State of Arkansas are taxable unless a specific statutory exemption is applicable. See Ark. Code Ann. § 26-52-101 et seq. (Repl. 2014, Supp. 2017). Ark. Code Ann. § 26-52-103(30)(A) (Supp. 2017) defines “tangible personal property” as “personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses[.]” A motor vehicle is tangible personal property. The liability for sales tax on sales of tangible personal property is upon the seller in most circumstances. See Ark. Code Ann. § 26-52-517 (Supp. 2017). However, the liability for sales tax on sales of motor vehicles required to be licensed is upon the purchaser pursuant to Ark. Code Ann. § 26-52-510 (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 and states, 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.

Gross Receipts Tax Rule GR-12.1 (“GR-12.1”) was promulgated to implement and clarify the allowance of a sales tax credit for the private sale of a used vehicle and provides, in part:

A. PURPOSE. This rule is promulgated to implement and clarify the allowance of a sales tax credit for the sale of a used vehicle when the proceeds from such a sale are applied toward the purchase price of another vehicle.

B. DEFINITIONS.

1. "Consumer" means any private individual, business, organization or association.

2. "Vehicle" means an automobile, truck, motorcycle (registered for highway use), trailer and semitrailer.

3. **"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.** A sale does not occur, and therefore no credit will be allowed, when the title to a damaged vehicle is transferred by a consumer to an insurance company in exchange for a cash settlement paid by the insurance company.

C. GENERAL INFORMATION.

1. If a consumer **purchases a vehicle** and **within forty-five (45) days** of the **date of purchase**, either prior to or after such purchase, **sells a different vehicle** in lieu of a trade-in, the consumer will be entitled to a credit against the sales or use tax due on his or her newly purchased vehicle. [Emphasis added].

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. See Cook, Commissioner of Revenue v. Walters Dry Good Company, 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 himself or herself 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).

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) and the Arkansas General Assembly granted the credit only when the purchase and sale transactions were within forty-five (45) days of each other. Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) utilizes mandatory language, leaving no discretion to apply a different time period even if a taxpayer establishes that unusual or exigent circumstances prevented compliance with the time period. In the absence of any legislative intent or a duly promulgated rule to the contrary, compliance with the forty-five (45) day time period is an absolute requirement for entitlement to the credit.

The case file contains conflicting evidence regarding the date of sale of Vehicle 2. The resolution of the dispute regarding the sales tax assessment turns on the applicable burden of proof. The Taxpayer bore the burden of proving entitlement to the sales tax credit related to the private sale of Vehicle 2. The documentary evidence in the case file weighs against the Taxpayer's entitlement to the sales tax credit. Since there were one hundred twenty-eight (128) days between December 16, 2016 (the date the Taxpayer purchased Vehicle 1) and August 10, 2016 (the date of the assignment of title for Vehicle 2 to the buyer who registered Vehicle 2 on September 2, 2016),⁴ the Taxpayer failed to satisfy the forty-five (45) day time limit set forth in GR-12.1(C)(1). The Taxpayer failed to prove entitlement to the sales tax credit provided by Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014). Consequently, the Department correctly assessed sales tax against the Taxpayer.

⁴ As reflected on Hearing Exhibit A, the Taxpayer could not transfer title to Vehicle 2 (See GR-12.1(B)(3)) on November 26, 2016. See Department Exhibit 4.

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017), interest was properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2012). No penalty was assessed against the Taxpayer.

DECISION AND ORDER

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017), the proposed assessment is sustained. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law.


Pursuant to Ark. Code Ann. § 26-18-405 (Supp. 2017), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this Administrative Decision shall be effective and become the action of the agency.

The revision request may be mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501) 683-1161 or emailed to revision@dfa.arkansas.gov. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision.

Ark. Code Ann. § 26-18-406 (Supp. 2017) provides for the judicial appeal of a final decision of an Administrative Law Judge or the Commissioner of

Revenues on a final assessment or refund claim denial; however, the constitutionality of that code section is uncertain.⁵

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 26, 2019

⁵ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.