

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

██████████
OR ██████████

DOCKET NO.: 19-361

**REFUND CLAIM
DISALLOWANCE
(ACCT. NO.: ██████████)**

**LETTER ID: ██████████
(\$ ██████████)**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

This case is before the Office of Hearings and Appeals upon a written protest dated January 27, 2019, signed by ██████████, on behalf of himself and ██████████, the Taxpayers. The Taxpayers protested the denial of a refund claim by the Department of Finance and Administration (“Department”).

At the request of the Taxpayers, the matter was taken under consideration of written documents to be submitted by the parties. A briefing schedule was mailed to the parties on February 15, 2019. The Department was originally represented by Gina Gatzke, Attorney at Law, Office of Revenue Legal Counsel.¹ The Taxpayers represented themselves. The Department’s Opening Brief was filed on March 11, 2019. The Taxpayers did not file a Response Brief.² This case was submitted for decision on May 7, 2019.

ISSUE

Whether the denial of the sales tax credit claimed by the Taxpayer should be sustained? Yes.

¹ The Department is currently represented by Nina Carter, Attorney at Law, Office of Revenue Legal Counsel.

² The Taxpayers’ Protest Form was received into evidence.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department's Opening Brief set forth a summary of the facts and issues involved in this case and stated, in part:

On or about November 8, 2018, [REDACTED] ("Taxpayers") purchased a [REDACTED] . . . [hereinafter "MV1"] from [REDACTED]. The Bill of Sale reflects that the sales price of MV1 was \$ [REDACTED]. See the Vehicle Invoice, attached as **Exhibit 1**. On December 27, 2018, Taxpayer, [REDACTED], sold a [REDACTED] . . . [hereinafter "MV2"] for \$ [REDACTED]. See Bill of Sale, attached as **Exhibit 2**.

Taxpayer registered the [REDACTED] on December 3, 2018, and paid sales tax on the \$ [REDACTED] purchase price. See Application for Title, attached as **Exhibit 3**. Taxpayer, [REDACTED], then filed a Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle, dated December 28, 2018 See Claim Form, attached as **Exhibit 4**. The Claim Form states that the form is to be used by persons qualifying under Act 1232 of 1997 as explained on the reverse side of the form. Between the date of the Taxpayers' purchase of MV1 and (November 8, 2018) and the date MV2 was sold (December 27, 2018), forty-nine (49) days elapsed.

In a letter dated January 18, 2019, Lisa Watts, a DFA Service Representative, advised Taxpayers that their claim for refund of the motor vehicle sales tax had been denied. The reason for the denial of the claim provided was that MV2 was not sold within forty-five (45) days of purchasing MV1. See Notice of Claim Disallowance letter, attached as **Exhibit 5**. [P. 1].

The Taxpayers' Protest Form stated that, "I was not aware of this provision until I assessed my new vehicle with [REDACTED] Assessors Office I would have sent the request earlier had I known. [P. 1]."

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).

A taxpayer bears the burden of proving by a preponderance of the evidence that the claimed refund was erroneously paid and in excess of the taxes lawfully due under Ark. Code Ann. § 26-18-507 (Repl. 2012).

Refund Claim Denial

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:

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.

Applying the law to the facts of this case, since the time period between the date the Taxpayers' purchased MV1 (November 8, 2018) and the date the Taxpayers sold MV2 (December 27, 2018) was forty-nine (49) days,³ the Taxpayers were not entitled to the claimed sales tax credit for the private sale of a used motor vehicle. The Department correctly denied the Taxpayers' refund claim.

DECISION AND ORDER

The refund claim denial 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 Taxpayers request in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the

³ See Department Exhibit 4.

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 Taxpayers have 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.⁴

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 8, 2019

⁴ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.