

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

DOCKET NO.: 19-433

**REFUND CLAIM
DISALLOWANCE**

**DATE OF CLAIM: 10/08/18
(\$ [REDACTED])¹**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated December 20, 2018, signed by [REDACTED] [REDACTED] (“Taxpayer’s Representative”), on behalf of [REDACTED], the Taxpayer.² The Taxpayer protested the denial of a refund claim by the Department of Finance and Administration (“Department”). The Audit ID Number is [REDACTED].

A telephone hearing was held in Little Rock, Arkansas, on May 16, 2019, at 10:00 a.m. The Department was represented by Brad Young, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department, via telephone, were Anna Springer – Tax Auditor and Vanessa

¹ The total amount of the refund requested was \$ [REDACTED] but the Department only denied the portion reflected above. However, the Taxpayer subsequently conceded part of the portion reflected above and the total agreed upon amount in dispute is \$ [REDACTED].

² The Taxpayer obtained an assignment from a vendor.

Smith – Audit Supervisor. Taxpayer’s Representative appeared at the hearing, via telephone, and represented the Taxpayer.

ISSUE

Whether the Department’s denial of the Taxpayer’s refund claim should be sustained? Yes.³

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Taxpayer operates a manufacturing facility in [REDACTED], Arkansas. During the audit period, the Taxpayer purchased packaging cartons for manufactured articles and paid sales or use taxes on the purchases. The Department’s Answers to Information Request summarized the facts and issues involved in this matter and stated, in pertinent part, as follows:

On or about June 7, 2017, the Taxpayer discovered that [the vendor] was charging sales tax on the purchase of the cartons. The cartons should have been exempt as sales for resale. The Taxpayer requested a refund from [the vendor] directly, but on or about October 4, 2018, [the vendor] informed the Taxpayer that it would not issue the refund and that the Taxpayer could seek a refund from the Department. See Taxpayer’s Refund Request with email from [REDACTED] dated October 4, 2018, attached as **Exhibit 2**. The Taxpayer submitted a request to the Department dated October 8, 2018 for a refund in the amount of \$[REDACTED]. The Department received the request on or about November 1, 2018. See Refund Request (**Ex. 2**).

On or about December 5, 2018, DFA Auditor Anna Springer informed the Taxpayer that it would need to obtain an assignment from [the vendor] so that the Taxpayer could request the refund from the Department. See Email from Anna Springer dated December 5, 2018, attached as **Exhibit 3**. The Taxpayer obtained an assignment from [the vendor] dated December 11, 2018, attached as **Exhibit 4**.

The auditor prepared schedules, attached as **Exhibit 5**, of the Allowed Refund and Adjustments to Refund. On or about

³ See Footnote 1.

December 17, 2018, the Department sent the Taxpayer a Summary of Findings, attached as **Exhibit 6**, and a Notice of Claim Denial, attached as **Exhibit 7**. The Department approved a portion of the refund in the amount of \$ [REDACTED] plus interest and denied a portion of the refund in the amount of \$ [REDACTED]. The portion of the refund request that the Department denied consisted of \$ [REDACTED] for Invoice No. [REDACTED], which the Taxpayer has conceded [See Email from [REDACTED] (**Ex. 1**), *supra*], and \$ [REDACTED] because it was outside of the statute of limitations. [P. 2-3].

The Tax Auditor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and also testified that: (1) the only refund amount denied was for items purchased (exempt packaging materials) outside the statute of limitations; (2) the Taxpayer did not submit a vendor assignment with the original refund request received by the Department on November 1, 2018 (the date the refund request was signed was October 8, 2018); (3) the critical date for the statute of limitations is the date the Department receives the refund claim; and (4) even if the Department received the refund request and vendor assignment on October 8, 2018, the refund claim was properly denied for the four [4] invoices on page 2 of Department Exhibit 2 dated 3/3/15, 6/26/15, 7/16/15, and 8/7/15.

The Taxpayer's Representative contended that: (1) Taxpayer Exhibit 2 is a copy of an email dated October 4, 2018, indicating that the Taxpayer had previously provided the vendor with notification of the refund request; (2) all of the invoices were from the same vendor and the Taxpayer requested a refund from the vendor before November 1, 2018; (3) the Taxpayer was not in control of the vendor and could not directly contact the Department until it received the vendor assignment; (4) the vendor was a agent of the State of Arkansas and failed to refund the taxes after notification; (5) the vendor even incorrectly collected a

city tax; (6) the Taxpayer made a mistake by paying sales taxes to the vendor; and (7) the situation is unfair for the Taxpayer and the Taxpayer should receive back the taxes incorrectly paid without interest.

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

Ark. Code Ann. § 26-18-306(i) (Supp. 2017) provides that claims for refunds shall be filed within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever expires later. Under the facts of the case, the latest possible date to timely request a refund for the overpayment of tax was September 20, 2018 (which was three [3] years from the final due date for filing of the return encompassing the invoice dated 8/7/15). The case file does not contain any evidence to support a finding that a claim for refund, as defined by Arkansas Gross Receipts Tax Rule GR-81.1(B)(1), was timely filed with respect to the disputed invoices dated 3/3/15, 6/26/15, 7/16/15, and 8/7/15. The statute of limitations for filing refund claims (Ark. Code Ann. § 26-18-306(i) (Supp. 2017)) is controlling statutory authority enacted by the Arkansas General Assembly as a matter of policy. The Arkansas Supreme Court has explained that the Arkansas General Assembly is the sole arbiter of policy decisions within Arkansas and it would be inappropriate for an administrative agency or court to refuse to enforce a state law as it reads based on a policy

disagreement. See Snowden v. JRE Investments, Inc., 2010 Ark. 276, 370 S.W.3d 215.

The Taxpayer's Representative requested equitable relief based upon fairness. The Office of Hearings and Appeals has no equitable power to grant the Taxpayer equitable relief based upon fairness. An administrative tribunal can only operate within the powers granted to it by the legislature. There is considerable doubt whether the Arkansas General Assembly may even constitutionally grant equitable powers to an administrative agency, since the granting of equity is purely a judicial power. Provenzano v. Long, 64 Nev. 412, 183 P.2d 639 (1947); Mich. Mut. Liability Co. v. Baker, 295 Mich. 237, 294 N.W. 168 (1940), Ford v. Barcus, 261 Iowa 616, 155 N.W.2d 507 (1968) (citing Doyle v. Dugan, 229 Iowa 724, 295 N.W. 128 (1940)). Ark. Code Ann. § 26-18-405 (Supp. 2017) clearly indicates the decision of a hearing officer is limited to the application of the law to a proposed assessment or refund denial and does not grant authority for decisions based in equity, even assuming that such a power could be constitutionally granted and exercised by this tribunal. Consequently, the Department correctly denied the portion of the Taxpayer's refund claim relating to the invoices dated 3/3/15, 6/26/15, 7/16/15, and 8/7/15.

DECISION AND ORDER

The refund claim denial is sustained.⁴ 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

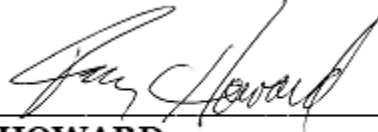
⁴ See Footnote 1.

(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: June 18, 2019

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