

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]

**GROSS RECEIPTS (SALES)
REFUND CLAIM DENIAL
LETTER ID:** [REDACTED]

DOCKET NO.: 19-441

AMOUNT DENIED: [REDACTED]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated April 15, 2019, signed by [REDACTED] on behalf of herself and [REDACTED], the Taxpayers. The Taxpayers protested a refund claim denial issued by the Department of Finance and Administration (“Department”). The Department was represented by Michael Wehrle, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayers, this matter was considered based on written documents. A briefing schedule was established for the parties by letter dated May 8, 2019. The Department filed its Opening Brief on May 8, 2019. The Taxpayers did not file a response; however, their protest was entered into the record. The record was closed and this matter was submitted for a decision on July 26, 2019.

ISSUE

Whether the Taxpayers demonstrated that they qualified for the motor vehicle tax credit¹ by a preponderance of the evidence. Yes.

PRESENTED FACTS AND ARGUMENTS

Prehearing Filings

Within his Opening Brief, the Department's Representative provided his rendition of the facts and his analysis in this matter, stating as follows in pertinent part²:

██████████ purchased a new ██████████ ["Vehicle A"] pickup on 2-12-19 for the sum of ██████████. Exhibit A.³ On 3-13-19, the taxpayer registered the ██████████ ["Vehicle B"] and paid sales tax on the full purchase price of the vehicle. Exhibit B.⁴ On 3-13-19, the taxpayer conveyed a used ██████████ to ██████████ ["Buyer"] for what may be ██████████. Exhibit C.⁵ However, the ██████████ was registered on 3-13-19 with a purchase price of zero (0) dollars. Exhibit D.⁶ A Claim for Sales Tax Refund for Sale of a

¹ The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) shall be referred to as the "motor vehicle tax credit" in this decision.

² All exhibits support the statements for which they are cited.

³ This cumulative exhibit includes copies of the original documents associated with the purchase of Vehicle A, including a copy of the original title, an Odometer Disclosure Statement, the seller's invoice, and the Dealer's Reassignment of Title to a Motor Vehicle issued to the Taxpayers. All documents support a finding that the Taxpayers purchased Vehicle A on February 12, 2019, from ██████████ of ██████████, Arkansas for a selling price of ██████████.

⁴ This document is a copy of Vehicle A's Application for Title and indicates that the Taxpayers registered Vehicle A at the ██████████ Office on March 13, 2019. An employee of the Department (utilizing a username of ██████████) entered that application into the Department's motor vehicle system. The Taxpayers claimed no deduction or credit against the full sales price of Vehicle A and paid state and county sales taxes in the amount of ██████████.

⁵ This cumulative exhibit includes a copy of the front of the original title to Vehicle B and a copy of the Bill of Sale from the back of that title. The Bill of Sale indicates the Buyer purchased Vehicle B from the Taxpayers on March 13, 2019 for a total price of ██████████. It appears that the first 9 within the purchase price was written over a different number that is no longer legible. This document includes that Buyer's mailing address but not the sellers' mailing address. The document is signed by the Buyer and ██████████.

⁶ This document is a copy of the Vehicle B's Application for Title and indicates that the Buyer registered Vehicle B at the ██████████ Revenue Office on March 13, 2019. An employee of the

Used Vehicle dated 3-13-19 was filed by the taxpayer. Exhibit E.⁷ The refund claim was reviewed and denied by the Department. Exhibit F.⁸ The Protest filed by the taxpayer is attached and marked as Exhibit G.⁹

Several documents refer to the selling price of the [REDACTED] as [REDACTED]. However, the Application for Title (signed by the "Applicant" at the time of registration) indicates a purchase price of zero (0) dollars for the [REDACTED]. Exhibit D. This is a significant discrepancy that calls into question whether or not the refund should be issued.

Within the Notice of Claim Disallowance, the Tax Credits division provided its reason for the denial of the Taxpayers' refund claim, stating as follows, in relevant part:

-GR-12.1 defines "Sale" as 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 check or money order. Our records show that a sale did not occur because [REDACTED] is list as the seller(s) (name(s) on title), and as buyer(s) (name(s) on the bill on sale) for the [REDACTED].¹⁰

Within their protest, the Taxpayers provide the following objection to the refund claim denial:

[REDACTED] paid [REDACTED] in cash to [REDACTED]. Buyer and Seller have same mailing address but different physical addresses. Bill of Sale

Department (utilizing a username of [REDACTED]) entered that application into the Department's motor vehicle system. The Application for Title listed a purchase price for Vehicle B in the amount of zero dollars (\$0) and no sales tax was remitted. It should be noted that, because the sales price listed in the sale documents is less than \$4,000, no sales tax would have been due even if the Application for Title had included the sales price provided by the Taxpayers. See Ark. Code Ann. § 26-52-510(b)(1)(B) (Repl. 2014).

⁷ This exhibit is a copy of the Taxpayers' Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle dated March 13, 2018, and received on March 19, 2019. Also included with the Taxpayer's Refund Claim was a copy of the completed State of Arkansas Vehicle Bill of Sale/Odometer Disclosure Statement listing a sale date for Vehicle B of March 13, 2019 and providing a sales price of [REDACTED]. That document includes the names of the buyer and sellers, their mailing addresses, the VIN and a description of Vehicle B, and is signed by the Buyer and [REDACTED].

⁸ This Exhibit is the Department's Notice of Claim Disallowance dated March 28, 2019.

⁹ This Exhibit is a copy of the Taxpayer's protest and the associated email dated April 15, 2019.

¹⁰ See Department's Exhibit F.

was included. There was an error on my part in completing back of title correctly. I have included a receipt of sale.¹¹

The email associated with the filing of the protest is from [REDACTED] and states the following:

Attached please find the Notice of Claim Disallowance Form as well as a receipt for the purchase of the [REDACTED]. As stated on the form, I incorrectly filled out the back of the title. The buyer and seller has the same mailing address, but different physical addresses. The physical address of the buyer is [REDACTED], AR [REDACTED] and the seller resides at [REDACTED], AR [REDACTED].

After a general discussion of the burdens of proof in tax proceedings, a legal analysis shall follow.

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:

¹¹ This document is a handwritten invoice dated March 13, 2019. That document states that the Buyer purchased Vehicle B for [REDACTED]. It includes the Buyer's mailing and physical addresses and is signed by [REDACTED].

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). Ark. Code Ann. § 26-18-507 (Repl. 2012) provides for a refund of any state tax erroneously paid in excess of the taxes lawfully due. The 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.

Legal Analysis

Arkansas sales tax generally applies to the entire gross receipts of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2017). Motor vehicles, such as Vehicle A, qualify as tangible personal property and, thus, are generally

taxable. For purchases of motor vehicles, the consumer is required to directly pay the accompanying sales tax liability to the Department. Ark. Code Ann. § 26-52-510(a)(1) (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:

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.

While Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) grants the motor vehicle tax credit, the credit requires the Taxpayer to provide a “bill of sale signed by all parties to the transaction which reflects the total consideration paid to the seller of the vehicle” Ark. Code Ann. § 26-52-510(b)(1)(C)(iii) (Repl. 2014). Further, the Department has the authority to promulgate rules for the enforcement of the motor vehicle tax credit. Ark. Code Ann. § 26-52-105 (Repl. 2012). Arkansas Gross Receipts Tax Rule GR-12.1 was promulgated for enforcement of this tax credit. Discussing a qualifying bill of sale for purposes of the motor vehicle tax credit, that rule provides as follow, in pertinent part:

The bill of sale must be signed by both the consumer and the purchaser. The bill of sale must include name and address of purchaser and seller, vehicle description and VIN, sales price, and date of sale. Failure to provide a bill of sale will result in disallowance of the deduction.

Arkansas Gross Receipts Tax Rule GR-12.1(D)(1)(a).

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. *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 he or she 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. *Weiss v. American Honda Finance Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Here, the State of Arkansas Vehicle Bill of Sale/Odometer Disclosure Statement fulfills the rules' requirements for a qualifying bill of sale. Additionally, that document, the Bill of Sale from the back of the title, and an invoice provided with the Taxpayers' protest all support the assertion that [REDACTED] purchased Vehicle B from the Taxpayers on March 13, 2019 for [REDACTED]. The Department has not provided any sales records to contradict those documents nor has it been asserted that any contradictory records exist. Further, no question of the authenticity of these documents has been raised by the Department. It is uncertain why a sales price of zero dollars (\$0) for the purchase of Vehicle B was entered by the Revenue Office employee as it appears, based on the record, that all associated sales documents provided by the Department and contained within the record for this proceeding provide a sales price of [REDACTED]. Further, while the Notice of Claim Disallowance stated that [REDACTED] was both the buyer and the seller of Vehicle B, that assertion is also not supported by the sales documents or the Application for title to Vehicle B that was provided as Department's Exhibit D.

Based on the documents presented, the Taxpayers purchased Vehicle A on February 12, 2019 from [REDACTED] for [REDACTED]. The Taxpayers registered that vehicle on March 13, 2019 and paid all applicable sales taxes without any reduction in the sales price. Further, the Taxpayers sold Vehicle B to [REDACTED] for [REDACTED] on March 13, 2019. The Taxpayers have provided a qualifying bill of sale as required by Arkansas Gross Receipts Tax Rule GR- GR-12.1(D)(1)(a). The record preponderates in favor of a finding that the Taxpayers fulfilled the requirements of the motor vehicle tax credit. Consequently, the Taxpayers are entitled to the motor vehicle tax credit and that credit was improperly denied. The refund claim denial is not sustained.

DECISION AND ORDER

The refund claim denial is not 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 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.¹²

OFFICE OF HEARINGS & APPEALS

A handwritten signature in blue ink, appearing to read "T. Evans", is written over a horizontal line.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: July 29, 2019

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