

**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.: 19-446

AMOUNT DENIED: [REDACTED]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received March 20, 2019, signed by [REDACTED], the Taxpayer. The Taxpayer protested a refund claim denial issued by the Department of Finance and Administration (“Department”). The Department was represented by Michelle Bridges-Bell, Attorney at Law, Revenue Legal Counsel (“Department’s Representative”).

A hearing was held in this matter on June 20, 2019, at 2:00 p.m. in Little Rock, Arkansas. The Department was represented by Michelle Bridges-Bell, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Deborah Livingston, Fiscal Support Analyst. Both the Department’s Representative and the Fiscal Support Analyst appeared at the hearing by telephone. The Taxpayer appeared at the hearing by telephone and represented himself.

ISSUE

Whether the Taxpayer demonstrated that he qualified for the motor vehicle tax credit¹ by a preponderance of the evidence. No.

PRESENTED FACTS AND ARGUMENTS

Prehearing Filings

Within her Answers to Information Request, the Department's Representative provided her rendition of the facts in this matter, stating as follows in pertinent part²:

On April 25, 2018, the Taxpayer bought a [REDACTED] [“Vehicle A”] from [REDACTED] for [REDACTED]. See **Certificate of Origin** attached as **Exhibit 1**. Taxpayer then registered the [REDACTED] paying sales tax in the amount of [REDACTED]. See **Vehicle Registration Certificate** and **Application for Title** attached collectively as **Exhibit 2**. On June 7, 2018, Taxpayer executed a Bill of Sale (BOS) in favor of [REDACTED] [“Buyers”] for a [REDACTED] [“Vehicle B”] for [REDACTED]. See **BOS** attached as **Exhibit 3**.

On June 11, 2018, Taxpayer submitted a Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle form to the Department of Finance and Administration (DFA or the Department) requesting a refund of the tax paid on the selling price of the [REDACTED]. See **Claim Form** attached as **Exhibit 4**. On July 12, 2018, the Department mailed Taxpayer a letter requesting proof or payment for the [REDACTED], such as a bank deposit slip or cancelled check. See **Request Letter** attached as **Exhibit 5**. On February 14, 2019, the Department mailed the Taxpayer a “notice of Claim Disallowance for Refund” because the “vehicle was not purchased within 45 day of selling your old vehicle.” **Exhibit 6**.

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 Several of the Exhibits referenced by the Department in the statement below were originally cumulative, containing documents not referenced within the Department's explanation of the Exhibits within the following text and sometimes containing documents duplicative of later exhibits. Prehearing, the Department's Representative reduced the size of the referenced Exhibits to only include the documents that were described within the following paragraphs and utilized the same numbering for those Exhibits. The Exhibits, as amended, support the statements for which they are cited.

Taxpayer timely filed a protest of the Notice Letter dated March 13, 2019, and received March 20, 2019. See **Protest** attached as **Exhibit 7**. In their Protest Taxpayer stated:

I sold the vehicle before the 45 days.

Id. Additional documentation was provided with the protest, including four checks attached collectively as **Exhibit 8**. The checks are dated June 11, June 13, June 18, and June 26, 2018. At no time did the taxpayer include a promissory note. The sale of the [REDACTED] was **not** complete until June 26, 2018, which is outside the statutorily required 45 days. "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. Arkansas Gross Receipts Rules GR-12.1 (8)(3). A sale for purposes of GR-12.1 does not occur without the exchange of actual cash or the equivalent or cash.

Within her Answers to Information Request, the Department's Representative asserted that the Taxpayer must prove that he transferred title for Vehicle B to the Buyers' within forty-five (45) days of Vehicle A's purchase. She asserted that the allowable time period for the sale expired on June 9, 2018. She noted that payments toward Vehicle B's sale did not begin until June 11, 2018, and ended June 26, 2018. She asserted that a qualifying sale under the motor vehicle tax credit must be made in exchange for cash or a cash equivalent, not the promise of future payment under Arkansas Gross Receipts Tax Rule GR-12.1(B)(3). Since full payment for Vehicle B was not provided until June 26, 2018, she asserted that it had not been sold within forty-five (45) days of Vehicle A's purchase. She asserted that, since the Taxpayers have not proven entitlement to the motor vehicle tax credit, the refund claim was appropriately denied.

Within his Answers to Information, the Taxpayer provided additional detail regarding his objection to the refund claim denial, stating as follows:

Was told I had 45 days to collect refund if I purchased a vehicle and sold a vehicle within 45 days to purchasing vehicle. Sold vehicle before 45 days

and would have collected money for vehicle if I had known about money regulation. I have never seen this regulation posted in plain view in any revenue office in the State of Arkansas. This is the only case [REDACTED] Rev. Ofc. heard about the money reg. They always use the 45 calendar days. I am the only person turned down because of the money, the know about.

Never heard of the regulation about money. [REDACTED] Revenue Agent never heard of Reg. [REDACTED] never heard of Reg.

Hearing Testimony

A. Fiscal Support Analyst's Testimony

The Fiscal Support Analyst provided testimony consistent with the statement of facts and exhibits provided within the Department's Answers to Information Request. She further explained that, initially, the Department was uncertain of the correctness of the Taxpayer's refund claim because Vehicle B had not been registered by the Buyers at the time of the claim's filing. Consequently, the Department requested proof of payment by the Buyers to verify that the sale occurred. After receipt of the proof of payment, the Department realized that the sale had not been completed within forty-five (45) days of Vehicle A's purchase, resulting in a denial of the motor vehicle tax credit. While the Taxpayer's Bill of Sale was dated June 7, 2018, she explained that is not the actual date of sale utilized by the Department because payment for Vehicle B occurred later, completing June 18, 2018. She asserted that fifty-four (54) days had elapsed between the purchase of Vehicle A and the sale of Vehicle B due to the later payments.

B. Taxpayer's Testimony

Initially, the Taxpayer testified the check from the [REDACTED] [REDACTED] was not related to the sale of Vehicle B. He asserted that he did

not file a false claim. He thought that he had forty-five (45) calendar days to sell Vehicle B. Since he sold Vehicle B within forty-five (45) days and proved the payments totaled the amount contained upon the bill of sale, he thought he qualified for the motor vehicle tax credit. An individual at his local revenue office helped him complete his refund claim form. He stated that individuals at his local revenue office³ and his state representative were unaware that payment also must occur within forty-five (45) days. If he had known that payment must also occur within forty-five (45) days, he would have made sure the payments happened sooner. Vehicle B was sold to his [REDACTED], so he is certain the payment dates could have been adjusted. On June 7, 2018, his [REDACTED] took possession of Vehicle B and received a signed title.⁴ After June 7, 2018, he testified that the twin brother had ownership of Vehicle B. He was certain that his [REDACTED] would eventually pay for Vehicle B in a timely manner; however, if [REDACTED] became ill or was otherwise unable to pay, the Taxpayer would have forgiven the debt. The Taxpayer further noted that he had never seen Arkansas Gross Receipts Tax Rule GR-12.1 and asserted the rule should be conspicuously posted within revenue offices to inform taxpayers. He acknowledged that ignorance is not an excuse but stated that he would have complied with the rule if he had known. Since ownership of Vehicle A transferred on June 7, 2018, he reasoned that the motor vehicle tax credit should be allowed.

³ This statement appears to refer to conversations that occurred during completion of the refund claim form and not instructions that were given at an earlier time.

⁴ At this point in the administrative hearing, the Department's Representative explained that the Department does not question whether Taxpayer transferred ownership of Vehicle B to the Buyers on June 7, 2018. She stated that the Department's position is that the June 7th transfer of Vehicle B was not a qualifying sale because the Buyer did not provide cash or a cash equivalent within the forty-five (45) day timeframe as required by Arkansas Gross Receipts Tax Rule GR-12.1. Since the payments did not occur within forty-five (45) days of Vehicle A's purchase, she reasoned that the credit should be denied.

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:

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 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 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.

The Department is endowed with the authority to promulgate rules for the enforcement of Ark. Code Ann. § 26-52-510 (Repl. 2014). Ark. Code Ann. § 26-

52-105 (Repl. 2012). Arkansas Gross Receipts Tax Rule GR-12.1 provides the requirements of a sale for purposes of the motor vehicle tax credit, stating as follows:

"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. [Emphasis supplied.]

Id. at (B)(3).

Under the governing regulation, the Taxpayer was required to sell Vehicle B for "cash or the equivalent of cash, such as a check or money order." Here, while the Taxpayer signed and provided the vehicle title to Vehicle B with a Bill of Sale on June 7, 2018, no payment was received until June 11, 2018. Those payments continued until June 18, 2018. None of the payments were received within forty-five (45) days of the Taxpayer's purchase of Vehicle A on April 25, 2018. The forty-five (45) day period ended on June 9, 2018. An oral promise from the buyer to eventually pay for Vehicle B would not qualify as a cash or cash equivalent. While the Taxpayer stated that neither he nor several other individuals were aware of rule's definition of a qualifying sale, lack of knowledge of publicly available statutes and rules cannot be recognized as a defense to their enforcement. 29 Am. Jur. 2d Evidence 290; see also *Edward v. US*, 334 F.2d 360 (1964) and *Jellico Coal Min. Co. v. Commonwealth*, 96 Ky. 373, 29 S.W. 26 (Ky. App. 1895). The Arkansas Supreme Court has also provided the maxim that lack of knowledge of the law is no defense applies in equal force "to acts committed or

omitted in violation of the criminal or civil laws of the land.” *State v. Simmons*, 1 Ark. 265, 266 (1839).

Since the June 7th transaction was not a qualifying sale under GR-12.1 and no payments were received within forty-five (45) days of Vehicle A’s purchase, the Taxpayer has not proven entitlement to the motor vehicle tax credit, and, thus, the credit was properly denied. The refund claim denial is sustained.

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 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

A handwritten signature in blue ink, appearing to read 'T. Evans', is written over a horizontal line.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: June 27, 2019

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