

**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.: 19-527

AMOUNT DENIED: [REDACTED]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received August 15, 2018, [REDACTED] on behalf [REDACTED] the Taxpayers. The Taxpayers protested a refund claim denial issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on July 24, 2019, at 11:00 a.m. in Little Rock, Arkansas. The Department was represented by Nina Carter, 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. [REDACTED] at the hearing by telephone and represented the Taxpayers.

ISSUE

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

PRESENTED FACTS AND ARGUMENTS

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.

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 February 1, 2018, [REDACTED] ("Taxpayer") sold a [REDACTED] [REDACTED] ["Vehicle A"] for [REDACTED]. See Bill of Sale, attached as **Exhibit 1**. Taxpayer then purchased a [REDACTED] [REDACTED] ["Vehicle B"] from [REDACTED] ["Seller"] for [REDACTED] on April 10, 2018. The Retail Buyer's Order from the dealership is attached as **Exhibit 2**. Taxpayers financed [REDACTED] of the purchase price through [REDACTED]. See Commercial Promissory Note attached as **Exhibit 3**.

Taxpayer registered the [REDACTED] on May 18, 2018 and paid sales tax on the [REDACTED] purchase price. See Application for Title, attached as **Exhibit 4**. Taxpayer then filed a Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle, dated July 20, 2018. See Claim Form, attached as **Exhibit 5**. 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. The reverse side clearly states that "Act 1232 of 1997, as amended by Act 1047 of 2001, provides for a sales and use tax credit for new and used motor vehicles, trailers, or semi trailers purchased on or after January 1, 1998, **if within 45 days** either **before or after** the date of purchase, the consumer sells a used motor vehicle, trailer, or semi trailer." See Claim Form side 2, attached as **Exhibit 6**. Between the date of the Taxpayer's purchase of the [REDACTED] (April 10, 2018) and the date the [REDACTED] was sold (February 1, 2018) sixty-eight (68) days elapsed.

In a letter dated August 8, 2018, the Department advised Taxpayer that their claim for refund of the motor vehicle sales tax had been denied. The reason for the denial of the claim was that the vehicle was not purchased within 45 days of selling the old vehicle. See Notice of Claim Disallowance letter, attached as **Exhibit 7**.

Taxpayer disagrees with the Claim Denial and asks for reconsideration. Taxpayer states, "I did not know there was a deadline, and also it took longer to find another truck." A copy of the Protest is attached as **Exhibit 8**.

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

Based on these facts, the Taxpayer did not sell the Ford within the 45 days required for him to be able to take the private sale tax credit. Accordingly, the credit refund was disallowed.

Within her Answers to Information Request, the Department's Representative asserted that the Taxpayers must prove that they sold Vehicle A within forty-five (45) days of Vehicle B's purchase to qualify for the motor vehicle tax credit. She asserted that the forty-five (45) day timeframe had ended before the Taxpayer's purchase of Vehicle B. She asserted that, since the Taxpayers have not proven entitlement to the motor vehicle tax credit, the refund claim was properly denied.

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 also asserted that sixty-eight (68) days had elapsed between the sale of Vehicle A and the purchase of Vehicle B.

B. [REDACTED] Testimony

[REDACTED] testified that he intended to purchase a [REDACTED] truck shortly after his sale of Vehicle B; however, that deal fell apart. Consequently, he had to wait for the Seller to [REDACTED] before a replacement vehicle could be purchased. He noted that he is a small businessman. He explained that unfortunate things happen and hoped that the motor vehicle tax credit could be allowed in this unique circumstance.

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 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 B, 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.

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 record provides that the Taxpayers sold Vehicle A on February 1, 2018, and the Taxpayers purchased Vehicle B on April 10, 2018. More than forty-five (45) days elapsed between the sale of Vehicle A and the purchase of Vehicle B. Consequently, the Taxpayers are not entitled to the motor vehicle tax credit and that credit was properly denied.

While the Taxpayers stated that they were not aware of the forty-five (45) day time limitation, 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). To the extent that the Taxpayers assert that the law causes an unfair result, 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. *Snowden v. JRE Investments, Inc.*, 2010 Ark. 276, 370 S.W.3d 215. The Taxpayers have failed to demonstrate a defense to the enforcement of the tax law.

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 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.³

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: July 25, 2019

³ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.