

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]

**GROSS RECEIPTS TAX
REFUND CLAIM DENIAL**

DOCKET NO.: 21-223

DENIED AMOUNT: [REDACTED]
LETTER ID: [REDACTED]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon written protest received October 21, 2020, 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 Caroline Calvert, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”).

This matter was originally scheduled for an administrative hearing; however, on March 5, 2021, the Taxpayer requested that the hearing be cancelled and that this matter be considered based on the prehearing submissions. This request was granted without objection from the Department. The matter was submitted for a decision on March 5, 2021.

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

A. Filings

The Taxpayer provided his objection to the refund claim denial within his Answers to Information Request, stating the following:

There is no doubt that the COVID 19 pandemic had an adverse effect on the American economy during 2020 and it's ongoing even now.

Arkansas is no exception to an economic downturn as well as specifically [REDACTED] Arkansas, my [REDACTED]

[REDACTED] Arkansas was in the [REDACTED] of virus infected citizens ranked as an Arkansas County and ranked in the [REDACTED] attributed to the virus as well during 2020.

Arkansas unemployment numbers starting climbing rapidly in 2020. During the spring of 2020, April peaked at 10.3% unemployment versus 2.9% the previous year (2019). By June 2020 the month I purchased my [REDACTED] and attempted to sell my [REDACTED] it was 8.00 %, followed by July 7.10% and August 7.0% 2020. The unemployment rate right now is 4.20%

Although I made every effort to advertise [REDACTED] few potential buyers called or appeared. One left immediately when I informed him he had to wear a mask to talk to me in person about my vehicle.

Nevertheless my [REDACTED] sold after much effort and I filed for the reimbursement for some of my sales tax back from the [REDACTED] [REDACTED] It took [REDACTED] longer than your required time of 45 days to complete my sale.

My appeal is based on the fact that the COVID Virus had an adverse effect on or nation our State and [REDACTED] causing buyers to be limited. Finding the right person to complete my sale required me to exceed the allotted time it took to sell my vehicle by 4 days.

¹ The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Supp. 2019) shall be referred to as the "motor vehicle tax credit" in this decision.

I ask for your consideration and recognition of the fact that the virus and the publicity surrounding it created a diminished economy and a negative dilemma in my efforts to sell within the given time of 45 days.

On March 4, 2021, the Taxpayer provided an additional submission stating the following in relevant part:

I will not be in a position to move forward with this hearing. It is a bit daunting for me to pursue over the requested refund. As I may have mentioned, I am [REDACTED] and I no longer look for battles to conquer. I find it quite unbelievable that our Governor has ordered numerous extensions, to include the filing of tax returns, due to the COVID-19 pandemic but the ADF&A cannot consider and honor my request for my sales tax refund. As I stated previously, the car was sold ***within 4 days of the time frame to be eligible*** for the refund, the delay was a result of the pandemic and the issues at hand. I do not intend to retain a lawyer to argue this point on my behalf, which would undoubtedly exceed legal fees beyond the refund amount.

However, I do respectfully request reconsideration of my claim on the basis of following the Governor's path in honoring an extension, such as those he has in place over the state of Arkansas.

The Department's Representative provided a statement of relevant facts and an analysis within her Answers to Information Request, stating as follows, in pertinent part²:

On August 14, 2020, [REDACTED] ("Taxpayer") sold a [REDACTED] ["Vehicle B"] for [REDACTED]. See Bill of Sale, attached as **Exhibit 1**. Taxpayer purchased a [REDACTED] ["Vehicle A"] from [REDACTED] for [REDACTED] on June 26, 2020. The Retail Buyer's Order from the dealership is attached as **Exhibit 2**.

Taxpayer registered the [REDACTED] on July 17, 2020, and paid sales tax on the [REDACTED] purchase price. See Application for Title, attached as **Exhibit 3**. Taxpayer then filed a Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle, dated August 21, 2020. 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

² Except as noted, all exhibits support the statements for which they are cited.

³ According to the referenced exhibit, the actual VIN number was [REDACTED].

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 5**. Between the date of the Taxpayer’s purchase of the [REDACTED] (June 26, 2020) and the date the [REDACTED] was sold (August 14, 2020), forty-nine (49) days elapsed.

In a letter dated September 25, 2020, 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 6**.

Taxpayer disagrees with the Claim Denial and asks for reconsideration. Taxpayer states, “Due to COVID 19 it is extremely hard for citizens to sell their autos to private citizens in a timely fashion.” A copy of the Protest is attached as **Exhibit 7**.

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

Within her Answers to Information Request, the Department’s Representative further asserted that sales of motor vehicles are generally taxable as sales of tangible personal property. She argued the forty-five (45) day time limitation is mandatory and the application of any other time frame would be impermissible. Since more than forty-five (45) days elapsed between the purchase of Vehicle A and the sale of Vehicle B, she declared that the motor vehicle tax credit should not be allowed.

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) (Repl. 2020) 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) (Repl. 2020). 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) (Repl. 2020). 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) (Repl. 2020). Ark. Code Ann. § 26-18-507 (Repl. 2020) 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 (Repl. 2020). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(31)(A) (Repl. 2020). For purchases of trailers, the consumer is responsible for payment of the accompanying sales tax liability to the Department on or before the time of registration. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020). A purchased trailer is required to be registered within thirty (30) days of the release of a lien by a prior lienholder or within thirty (30) days after the date of the transfer if no lien is present. Ark. Code Ann. § 27-14-903 (Repl. 2014).

Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020). Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) authorizes a sales tax credit for the private sale of a used motor vehicle or trailer 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. [Emphasis supplied.]

See also Arkansas Gross Receipts Tax Rule GR-12.1.

Under the statutory subdivision, the forty-five (45) day time limitation is mandatory, 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. 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. Absent a contrary statute, rule, or other legal authority to the contrary, this Office must follow the forty-five (45) day time limitation and has no authority to do otherwise.

Here, the record shows that the Taxpayer purchased Vehicle A on June 26, 2020, for [REDACTED]. The record also establishes that the Taxpayer sold Vehicle B on August 14, 2020. The Taxpayer has not proven that he sold Vehicle B within forty-five (45) days of Vehicle A's purchase. Consequently, the Taxpayer's motor vehicle tax credit claim was correctly denied. The refund claim denial is sustained.


DECISION AND ORDER

The refund claim denial issued by the Department 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 (Repl. 2020), 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 (Repl. 2020) 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


TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 8, 2021

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