

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF** [REDACTED]  
[REDACTED]  
**(LICENSE ID: [REDACTED] )**

**GROSS RECEIPTS TAX  
REFUND CLAIM DENIAL**

**DOCKET NO.: 21-245**

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

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon written protest received October 28, 2020, signed by [REDACTED] (“Owner”) on behalf of the [REDACTED], the Taxpayer. The Taxpayer protested a refund claim denial issued by the Department of Finance and Administration (“Department”). The Department was represented by Nina Carter, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated February 1, 2021. The Department’s Representative filed her Opening Brief on February 3, 2021. The Taxpayer did not file a response, but its protest was received into evidence. The record was closed and this matter was submitted for a decision on March 25, 2021.

**ISSUE**

Whether the Taxpayer demonstrated that it qualified for the motor vehicle tax credit<sup>1</sup> by a preponderance of the evidence. No.

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

### A. Opening Brief

The Department's Representative provided a statement of relevant facts and an analysis within his Opening Brief, stating as follows, in pertinent part<sup>2</sup>:

On July 11, 2020, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Vehicle A"] for [REDACTED] purchase price plus [REDACTED] service and handling fees) from [REDACTED]. The Vehicle Purchase Order from the dealership is attached as **Exhibit 1**. Taxpayer registered the [REDACTED] on August 13, 2020. See Application for Title, attached as **Exhibit 2**.<sup>3</sup>

Taxpayer filed a Claim for Sales or Use Tax Refund Credit for Sale of Used Vehicle, dated September 23, 2020, on the sale of a [REDACTED] [REDACTED] ["Vehicle B"]. See Claim Form, attached as **Exhibit 3**. The Bill of Sale for the [REDACTED] dated August 26, 2020, was provided by Taxpayer with the Claim Form and reflects a sale price of [REDACTED]. A copy of the Bill of Sale is attached as **Exhibit 4**.<sup>4</sup> 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 5**. Between the date of the Taxpayer's purchase of the [REDACTED] on July 11, 2020, and the date the [REDACTED] was sold on August 26, 2020, forty-six (46) days elapsed.

In a letter dated October 15, 2020, Vickie Wainwright, a DFA Service Representative, advised the Taxpayer that its claim for refund of the motor vehicle sales tax had been denied. The reason for the denial of the claim provided was that the vehicle was not purchased within 45 days of selling

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<sup>1</sup> The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) shall be referred to as the "motor vehicle tax credit" in this decision.

<sup>2</sup> All exhibits support the statements for which they are cited.

<sup>3</sup> The registration indicates that the Taxpayer paid applicable sales taxes based on a purchase price of [REDACTED] without claiming any tax deductions or credits.

<sup>4</sup> The date of sale appears to have been written twice on this document by the Owner.

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:

*I am protesting the claim denial of my motor vehicle refund. The claim denial states the new vehicle was not purchased within 45 days of selling the old vehicle. The new vehicle was purchased on July 11, 2020 and the old vehicle was sold August 15, 2020. The lending institution for the buyer of the old car was working with half staff because of COVID19 and therefore loan approval took longer than normal. In normal circumstances the transfer of title would have been within the required 45 days.*

A copy of the Protest is attached as **Exhibit 7**.

Within her Opening Brief, the Department's Representative asserted that sales of motor vehicle are generally taxable as sales of tangible personal property. She further argued the forty-five (45) 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 (including motor vehicles) and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2019). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(31)(A) (Repl. 2020). For purchases of motor vehicles, 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 motor vehicle 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) (Supp. 2019) 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 July 11, 2020, for [REDACTED]. The record also establishes that the Taxpayer sold Vehicle B on August 26, 2020. The Taxpayer has not proven that it 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](mailto: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.<sup>5</sup>

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: March 29, 2021

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<sup>5</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.