

**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
LETTER ID:** [REDACTED]

DOCKET NO.: 21-267

DENIED AMOUNT: [REDACTED]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received October 30, 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 Parker Cope, 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 8, 2021. The Department’s Representative filed his Opening Brief on March 10, 2021. The Taxpayer did not file a response, but her protest was received into evidence. The record was closed and this matter was submitted for a decision on April 28, 2021.

ISSUE

Whether the Taxpayers demonstrated that they qualified for the motor vehicle tax credit¹ 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 within his Opening Brief, stating as follows, in pertinent part²:

[REDACTED] and [REDACTED] are husband and wife. On or about June 27, 2020, [REDACTED], individually, sold two vehicles in a private sale: a [REDACTED] ["Vehicle B"] and a [REDACTED] ["Vehicle C"].

On or about July 28, 2020, [REDACTED] ("Taxpayer"), individually, purchased a [REDACTED] ["Vehicle A"] for [REDACTED] in a private sale. **Exhibit C.** The Taxpayer applied for title noting [REDACTED] of total taxes and fees and indicating [REDACTED] as the owner of the [REDACTED]. **Exhibit D.** The Taxpayer subsequently registered the [REDACTED] in her name only. **Exhibit E.**

The Taxpayer then submitted two Credit for Sale of Used Vehicle forms on August 2, 2020 claiming a tax credit for the sale of the [REDACTED]. On both forms, the Taxpayer represented that she was the owner and the seller of vehicles listed therein. **Exhibits F & G.**

After review, the Department determined that the Taxpayer was not the legal owner or the seller of the [REDACTED] or [REDACTED]. Accordingly, the Department denied the Taxpayer's refund claim and issued the Taxpayer a Notice of Claim Disallowance on September 10, 2020 stating:

You are claiming a refund for taxes paid on a replacement vehicle that was registered by [REDACTED]. One of the requirements

¹ 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.

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

under Act 1232 is that the vehicle sold and the vehicle purchased must have the same name on the Motor Vehicle Registration.

See **Exhibit H**.

The Taxpayer filed a timely protest on October 28, 2020, stating: “My husband [REDACTED] and I file federal income tax and state tax as a married couple, and I am a dependent considering that he is the household head, and most of the taxes we pay are from his income. I want to ask you to reconsider the petition.” **Exhibit I**. In support of her protest, the Taxpayer attached an IRS Form 1040 for year 2019. **Exhibit I**.

Within his Opening Brief, the Department’s Representative asserted that the Taxpayer has not demonstrated that she was the owner of Vehicles B and C at the time of their sale. He highlighted that [REDACTED] was the only signatory of the bills of sale for those vehicles. He further noted that [REDACTED] did not purchase Vehicle A with the Taxpayer. Since the Taxpayer was not an owner of Vehicles B and C, he reasoned that the Taxpayer was not entitled to the motor vehicle tax credit against her purchase of Vehicle A.

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

CONCLUSIONS OF FACT AND 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 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(b)(1)(C)(i) (Repl. 2020) 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. [Emphasis supplied.]

Ark. Code Ann. § 26-52-103(4)(A) (Repl. 2020) defines “consumer” as “the person to whom the taxable sale is made or to whom taxable services are furnished.” “Person” means “any **individual**, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity. . . . [Emphasis supplied].” Ark. Code Ann. § 26-52-103(24) (Repl. 2020). Under the provisions cited above, Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) creates an entity-specific sales tax credit for the sale of a used motor vehicle in lieu of a trade-in. Stated differently, in order to qualify for the relevant sales tax credit, the same person or entity must be the consumer

who pays the sales tax on the purchase of a motor vehicle and the consumer who subsequently sells (or previously sold) a used motor vehicle in lieu of a trade-in.

In Arkansas, motor vehicle titles and registrations are not definitive proof of ownership. *See House v. Hodges*, 227 Ark. 458, 462, 299 S.W.2d 201, 204 (1957). *See also Beatty v. USAA Cas. Ins. Co.*, 330 Ark. 354, 359-360, 954 S.W.2d 250, 253 (1997) (stating, a vehicle “[t]itle indeed establishes a *prima facie* case of ownership; however, ultimate ownership is to be established by all evidence regarding property.”).

As the sole basis for her objection, the Taxpayer has asserted that Vehicles B and C were owned by her spouse. The date of the Taxpayer’s marriage is unknown. It is also unknown whether Vehicles B and C were acquired by [REDACTED] before or during his marriage to the Taxpayer. If the property was purchased prior to the marriage, it would be treated as [REDACTED] separate property even after the marriage. *See Ark. Code Ann. § 9-12-315(b)(1)* (Repl. 2015). Consequently, it is uncertain if Vehicles B and C became part of the jointly owned, marital estate or were the separate property of [REDACTED]. It is not evident, that Vehicles B and C were purchased and owned by the Taxpayer at the time of their sale. The Taxpayer bears the burden of proving entitlement to the motor vehicle tax credit.

At the time of sale, the record demonstrates that Vehicles B and C were registered in the name of [REDACTED], not the Taxpayer. Further, no evidence has been submitted to demonstrate that the Taxpayer ever obtained an ownership interest in Vehicles B and C. A review of the records associated with Vehicle A establishes that the Taxpayer purchased and registered Vehicle A in her

name. Since the Taxpayer has not proven that she owned and sold Vehicles B and C by a preponderance of the evidence, the Taxpayer have not proven entitlement to the motor vehicle tax credit based on the presented record and arguments. The assessment is sustained.

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained.

DECISION AND ORDER

The assessment 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.³

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: April 28, 2021

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