

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

**IN THE MATTER OF** [REDACTED]

**GROSS RECEIPTS TAX  
REFUND CLAIM DENIAL**

**DOCKET NO.: 21-378**

**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 June 18, 2020, from [REDACTED], the Taxpayer. The Taxpayer protested a refund claim denial issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on May 18, 2021, at 3:00 p.m. in Little Rock, Arkansas. The Department was represented by Caroline Calvert, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Ebony Morgan, Fiscal Support Analyst. The Taxpayer appeared at the hearing and represented himself. All individuals appeared at the hearing by telephone.

**ISSUE**

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

**FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES**

**A. Prehearing Filings**

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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.

The Department's Representative provided a statement of relevant facts and an analysis within her Answers to Information Request, stating as follows, in pertinent part<sup>2</sup>:

On February 28, 2020, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Vehicle A"] from [REDACTED] for [REDACTED]. See attached Purchase Order and Certificate of Title as **Exhibit 1** and **Exhibit 2**, respectively. Taxpayer then sold a [REDACTED] ["Vehicle B"] for [REDACTED] on April 22, 2020. See Bill of Sale, attached as **Exhibit 3**.

Taxpayer registered the New Vehicle on March 25, 2020, 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 April 22, 2020. 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 New Vehicle (February 28, 2020) and the date the Used Vehicle was sold (April 22, 2020), fifty-four (54) days elapsed.

In a letter dated June 3, 2020, the Department advised Taxpayer that his 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 timely protested the assessment. Taxpayer disagrees with the Claim Denial and asks for reconsideration because he received conflicting information regarding requirements for eligibility to the forty-five (45) day sales tax credit for the sale of a used vehicle. Specifically, Taxpayer states:

I purchased a used [REDACTED] on February 28, 2020. When I went to the State Revenue Office in [REDACTED] to register my new vehicle and pay my taxes, the clerk that took my case told me that I had 45 days from the date on the new [REDACTED]

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

title (March 10th) to sell my old vehicle [REDACTED] to help offset the tax burden. When I questioned whether it was date of purchase or title date, another SRO employee overheard our conversation and confirmed that the 45 days started from title date.

With that in mind, I set my selling strategy to make sure I sold my old vehicle by April 24th (45 days from March 10).

I sold my old vehicle [REDACTED] on April 22<sup>nd</sup>. I printed off the Claim for Sales or Use Tax Refund form from your website, and I called your office on April 23<sup>rd</sup> as the form asks for Date Purchased. I wanted clarification if I was to put purchase date or title date in that spot. I spoke with [REDACTED], and she informed me that I needed to fill in the date I actually purchased the vehicle (2/28/20), and that my 45 days started from that point. If that is the case, my 45 day deadline for a refund/credit would have been April 13th and I would not be eligible for a refund/credit.

A copy of the Protest is attached as **Exhibit 8**.<sup>3</sup>

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

Within her Answers to Information Request, the Department's Representative asserted that purchases of motor vehicles (like Vehicle A) are generally taxable. She further asserted that the forty-five (45) time limitation is mandatory, preventing the application of any other time frame. Since more than forty-five (45) days appears to have 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.

### **Hearing Testimony**

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<sup>3</sup> The Taxpayer further stated the following: "I am asking your office to reconsider a tax refund in this case, as the information I was given was directly from a State Revenue Office employee. I do not have the name of the employee and realize this was just a conversation while I was registering my vehicle and paying my tax, but feel that I should be able to trust the information I was given. I've also attached a picture of my notes from that day (next page). Had I realized that my actual deadline was April 13<sup>th</sup> I could have planned accordingly, instead I was trying to maximize the sale (price) of my vehicle to the last possible day." No picture of any notes are contained within the record.

### **A. Fiscal Support Analyst's Testimony**

The Fiscal Support Analyst provided testimony consistent with the rendition of facts provided within the Department's Answers to Information Request. She also certified the exhibits attached thereto. She further testified that Vehicle B was sold outside the forty-five (45) day time limitation. The information within Taxpayer's protest did not change her opinion in this matter.

### **B. Taxpayer's Testimony**

The Taxpayer averred that the Department should reconsider this matter based on the statements provided by the Revenue Office employees. He testified that two different employees told him that the forty-five (45) day deadline was calculated based on title date. He does not know the name of either employee. One employee may have been named [REDACTED].<sup>4</sup> He calculated his deadline based on that advice and attempted to maximize his selling price. He conceded that Vehicle B was not sold within forty-five (45) days of his purchase of Vehicle A. He did not discover the employees' error until he was completing the refund request form.

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.

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<sup>4</sup> Based on his protest, it appears that [REDACTED] was the individual that assisted him with the refund claim form and told him the forty-five (45) day were calculated based on the purchase date.

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 (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.]

*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 for this Office to utilize a different time limitation. This requirement for the motor vehicle tax credit was created by the

Arkansas General Assembly, is mandatory, and does not allow a waiver even for extenuating circumstances. 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.

Here, the record shows that the Taxpayer purchased Vehicle A on February 28, 2020 for [REDACTED]. Vehicle B was sold on April 22, 2020. The sale of Vehicle B did not occur within forty-five (45) days of Vehicle A's purchase. Consequently, the Taxpayer is not entitled to the motor vehicle tax credit based on this sale under the applicable statutory provision.

To the extent that the Taxpayer's description of a conversation with someone within the Department might implicate an estoppel claim, the Arkansas Court of Appeals has provided the following guidance, in part:

Four elements are necessary to establish estoppel. They are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that the conduct be acted on or must act so that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting the estoppel must rely on the other's conduct and be injured by that reliance. *State v. Wallace*, 328 Ark. 183, 941 S.W.2d 430 (1997); *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323 (1980).

*Duchac v. City of Hot Springs*, 67 Ark. App. 98, 105, 992 S.W.2d 174, 179 (1999).

Additional discussion from the Arkansas Supreme Court states that an agency should not be estopped in the absence of "clear proof of an affirmative misrepresentation by the agency." *Ark. Dept. of Human Services v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996).

Here, it is entirely uncertain what the Taxpayer told the employees during the alleged conversation, who those employees were, and what exactly was stated by the employees to the Taxpayer. Based on these uncertainties, an estoppel defense has not been established by a preponderance of the evidence.

As a result of the above conclusions, 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



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TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: May 19, 2021

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