

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

**IN THE MATTER OF** [REDACTED]  
**LICENSE NO.:** [REDACTED]

**GROSS RECEIPTS TAX  
ASSESSMENT**

**DOCKET NO.: 18-084**

**LETTER ID:** [REDACTED]  
**ASSESSED AMOUNT:** [REDACTED]<sup>1</sup>

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE  
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated January 23, 2017, signed by [REDACTED] (“Owners”) on behalf of [REDACTED] the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on October 10, 2017, at 10 a.m. in Little Rock, Arkansas. The Department was represented by Jeffrey Weber, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. The Owners appeared at the hearing by telephone and represented the Taxpayer.

**ISSUE**

Whether the Taxpayer demonstrated that it qualified for the motor vehicle tax credit<sup>2</sup> by a preponderance of the evidence. No.

**FINDINGS OF FACT/CONTENTIONS OF THE PARTIES**

The Department’s Representative provided some relevant facts in his Answers to Information Request, stating as follows, in part:<sup>3</sup>

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<sup>1</sup> This amount represents [REDACTED] (Tax) and [REDACTED] (Interest) after a payment of [REDACTED].

<sup>2</sup> 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.

<sup>3</sup> All exhibits support the statements for which they were cited.

On June 11, 2016, [REDACTED] sold a [REDACTED] [“Vehicle A”] to [REDACTED] [“Buyer”] for [REDACTED]. The Certificate of Title is attached as Exhibit 1. The Bill of Sale is attached as Exhibit 2.

That same day, the Taxpayer bought a [REDACTED] [“Vehicle B”] from [REDACTED] for [REDACTED]. The Certificate of Origin, Bill of Sale, and Invoice are attached collectively as Exhibit 3.

On June 17, 2016, either [REDACTED] submitted an Application for Title, as a principal of the Taxpayer, in order to register the vehicle. On the application, a trade-in credit of [REDACTED] was claimed for the sale of the [REDACTED]. A copy of the Application for Title is attached as Exhibit 4.

The Taxpayer argues that the [REDACTED] had been previously gifted to it from the [REDACTED]. There is no evidence of that transaction, however, and the title to the car was never changed from [REDACTED] [REDACTED]. The Department acknowledges that a check from [REDACTED] was to the Taxpayer and that the funds were deposited into the Taxpayer's account. See Exhibit 5. However, because the Taxpayer was not the seller of the [REDACTED] that was used for the trade-in credit, it is not entitled to the credit.

In their protest, the Owners asserted the Taxpayer's defense, stating as follows in relevant part:

The [REDACTED] was licensed under [REDACTED] and was gifted to my family corporation; however, the title was never transferred into the [REDACTED]. The vehicle was also assessed and taxes paid under [REDACTED]. Knowing this gifting had been done, the proceeds were deposited into that corporation.<sup>4</sup>

We ask that consideration be given for our negligence in not transferring the title and inattention to details. The new vehicle was titled under [REDACTED] and all proceeds were deposited into that corporation.

This defense was reasserted by the Owners in their Answers to Information Request and during the administrative hearing. Prior to the administrative

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<sup>4</sup> Prior to the Administrative Hearing, the Taxpayer submitted a copy of the buyer's check and a copy of a deposit slip dated June 14, 2016 by email. These documents show that the buyer's check was made out to the Taxpayer and deposited into the Taxpayer's account.

hearing, the Owners submitted a letter (received September 18, 2017) providing a payment of [REDACTED] under protest towards the assessment.

In his Answers to Information Request and during the Administrative Hearing, the Department's Representative argued that the Taxpayer was not entitled to the motor vehicle tax credit since it did not own Vehicle A when it was sold, citing Arkansas Gross Receipts Tax Rules GR-12.1 and Ark. Code Ann. § 26-52-510 (Repl. 2014).

During the administrative hearing, [REDACTED] testified that [REDACTED] simply failed to register the gift of this car from them to their corporation. In recent years, he and his wife have been divesting themselves of their personal property as part of their estate planning and paying all applicable taxes. He believes that the buyers of Vehicle A bought the car in good faith, timely registered the vehicle, and paid all applicable sales taxes. He questioned why he should be required to pay the applicable sales taxes a second time. He explained the [REDACTED] is a seventy-five (75) year old woman who simply did not think of changing the registration. He argued that the assessment was a stringent penalty for a minor oversight in one of thousands of details that [REDACTED] manages each day. All efforts were made to properly sell the vehicle and deposit the proceeds into the corporate account, which they thought owned the vehicle. He does not begrudge the state for appropriately collecting taxes but argued that this assessment is excessive based on the circumstances.

During the administrative hearing, [REDACTED] testified that all money received from the sale of the Vehicle A was appropriately deposited into the

Taxpayer's bank account as corporate funds. She explained that the failure to change the registration was clearly an oversight without any malice aforethought.

During the administrative hearing, the Revenue Supervisor testified that she works for the Tax Credits Department and is familiar with this matter. On June 11, 2016, the Owners sold Vehicle A to the Buyer for [REDACTED]. On that same day, Vehicle B was purchased from [REDACTED] for [REDACTED]. Vehicle B was bought by the Taxpayer. She asserted that the Taxpayer is not allowed to utilize the motor vehicle tax credit because Vehicle A was owned by the Owners individually and not the Taxpayer.

During the administrative hearing, the Department's Representative argued that Vehicle A was owned by the Owners at the time of the sale; therefore, the sale did not qualify for the motor vehicle tax credit. He stated that there is no indication that the title to Vehicle A ever transferred to the corporation. He noted that, even on the bill of sale on the back of Vehicle A's title, [REDACTED] signed it as an individual and not as an officer of the Taxpayer.

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. 2015) 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. 2015). 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. 2015). 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. 2015).

### **Legal Analysis**

Arkansas sales tax generally applies to 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). 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. [Emphasis supplied.]

*See also* Arkansas Gross Receipts Tax Rule GR-12.1.

Ark. Code Ann. § 26-52-103(4)(A) (Supp. 2017) 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(22) (Supp. 2017). Under the provisions cited above, Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) 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. The statutory law specifically distinguishes between corporations and individuals as separate consumers.

With respect to the Arkansas Motor Vehicle Title and Registration Laws, the Arkansas Supreme Court has explained as follows:

The failure of appellee to obtain the certificate of title at the time [a person] received the bill of sale does not deprive him of title, for the certificate of title is not title itself but only evidence of title. Section 79 of the Motor Vehicle Act provides several grounds under which the department is authorized to suspend or revoke a certificate of title, registration certificate, or registration plate. Such a provision in the statute, of course, negatives any argument that the certificate of title is the only evidence of ownership.

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.”).

██████████ have asserted that Vehicle A was previously gifted to the Taxpayer even though the registration did not reflect the change in ownership. While Arkansas is an evidence of title state, the burden is on the Taxpayer to prove entitlement to the motor vehicle tax credit by a preponderance of the evidence. Additionally, the Arkansas Supreme Court has explained that a gift is not effective until delivery which is defined as “act or acts on the part of the putative donor displaying an intention or purpose to part with dominion over the object of the gift and to confer it on some other person.” *Kelly v. Kelly*, 2011 Ark. 259, at 12-13, 381 S.W.3d 817, 826.

Here, the presented evidence demonstrates that, though ██████████ ██████████ intended to transfer Vehicle A to the Taxpayer, no acts were taken to accomplish the transfer of ownership prior to its sale. Since the transfer of ownership to the Taxpayer did not occur, the title to Vehicle A remained with the Owners at the time of the sale to the Buyer. Consequently, the Taxpayer was not

entitled to the motor vehicle tax credit against the tax liability on its subsequent purchase of Vehicle B. Though the proceeds of the sale of Vehicle A were deposited into the Taxpayer's account, this evidence does not prove by a preponderance of the evidence that [REDACTED] had transferred ownership of Vehicle A to the Taxpayer prior to the sale.

Additionally, the Owners asserted that the assessment is a significant penalty for the failure to transfer the title of Vehicle A to the Taxpayer prior to the sale. This Office, however, is bound by the legislative requirements for the motor vehicle tax credit and cannot grant a tax credit that is not authorized by the legislature. The Arkansas Supreme Court has explained that the Arkansas General Assembly is sole arbitrator of policy decisions within Arkansas and it would be inappropriate for a court to refuse to enforce the law based on a policy disagreement. *Snowden v. JRE Investments, Inc.*, 2010 Ark. 276, 370 S.W.3d 215.

Based on the above analysis, the Taxpayer was not entitled the motor vehicle tax credit. Thus, the Department correctly denied the tax credit and the assessment 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 (Supp. 2015), 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. The Taxpayer may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on a final assessment of a tax deficiency by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: October 16, 2017