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

ADMINISTRATIVE DECISION

IN THE MATTER OF [redacted]	GROSS RECEIPTS (SALES) REFUND CLAIM DENIAL LETTER ID: [redacted]
DOCKET NO.: 19-347	AMOUNT DENIED: [redacted]

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated November 28, 2018, signed by [redacted] on behalf of herself and [redacted] the Taxpayers. The Taxpayers protested a refund claim denial issued by the Department of Finance and Administration ("Department"). The Department was represented by Alicia Austin Smith, Attorney at Law, Revenue Legal Counsel ("Department's Representative").

At the request of the Taxpayers, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated January 30, 2019. The Department filed its opening brief on February 15, 2019. The Taxpayers filed a response brief on March 28, 2019. The Department filed its reply brief on April 8, 2019. The record was closed and this matter was submitted for a decision on April 22, 2019.

ISSUE

Whether the Taxpayers demonstrated that they qualified for the motor vehicle tax credit[1] by a preponderance of the evidence. No.

PRESENTED FACTS AND ARGUMENTS

Within her opening brief, the Department's Representative provided her rendition of the facts in this matter, stating as follows in pertinent part[2]:

> On or about October 2, 2018, [REDACTED][3] (the "Taxpayer") purchased a [REDACTED] ("ATV 1") from [REDACTED]. The Bill of Sale reflects that the sales price or ATV 1 was [REDACTED]. See the Bill of Sale attached as **Exhibit 1.** The Taxpayer registered ATV 1 with the Arkansas Department of Finance and Administration (the "Department") on October 19, 2018. See the Application for Title attached as **Exhibit 2.** The Taxpayer did not pay sales tax to the Department when they registered ATV 1, only a registration fee and a title fee. A copy of the Certificate of Title for ATV 1, issued November 19, 2018, is attached as **Exhibit 3.**
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> On October 24, 2018, Taxpayer submitted a Claim for Sales or Use Tax Refund for Credit for Sale of Used Vehicle. See **Exhibit 4.** The Taxpayer included a copy of a Certificate or Title and a check reflecting that they sold a [REDACTED] ("ATV 2") to a third party on October 19, 2018 for [REDACTED]. The Taxpayer also included copies of a receipt and check reflecting that they paid sales tax in the amount of [REDACTED] to [REDACTED] on their purchase or ATV 1.
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> In order to qualify for the motor vehicle sales tax credit for a private sale in lieu of a trade-in, in addition to other requirements, the motor vehicle purchased must be of a type required by Arkansas law to be licensed and registered with the Department, and all applicable sales and use tax due must have been paid to the Department upon registration of the new vehicle. The Department determined that the Taxpayer did not purchase a motor vehicle of a type required by Arkansas law to be licensed and registered with the Department, and did not pay sales tax to the Department when they registered ATV 1 since sales tax was paid to the seller. The Department determined that the Taxpayer was not entitled to the motor vehicle sales tax credit. The Department issued a Notice of Claim Disallowance on October 30, 2018, denying the Taxpayer's Claim for Sales or Use Tax Refund in full. **Exhibit 5**.

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[1] 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.
[2] All exhibits support the statements for which they are cited.
[3] The Department noted that both [REDACTED] were listed as the purchasers.

> The Taxpayer timely filed a Protest of the Notice of Claim Disallowance on November 28, 2018. **Exhibit 6.** In their Protest, the Taxpayer does not provide proof that they purchased a motor vehicle of a type required by Arkansas law to be licensed and registered with the Department. The Taxpayer does not provide proof that they paid sales tax to the Department. The Taxpayer simply alleges that if they had traded in their used ATV (ATV 2) to the dealership when they purchased the new ATV (ATV 1), that they would have only been required to pay tax on the difference.
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> Based on these facts, the Taxpayer did not purchase a vehicle required to be licensed and registered with the Department and did not pay sales tax to the Department. The Taxpayer is not entitled to the motor vehicle sales tax credit for a private sale in lieu of a trade-in. Accordingly, the refund claim was properly denied.

In her Opening Brief, the Department's Representative asserted that the Taxpayers' purchase of ATV 1 was generally taxable on the full purchase price absent an applicable tax deduction or credit. She noted that the trade-in deduction does not apply to vehicles not required to be license and registered for use on public streets and highways, citing Arkansas Gross Receipts Tax Rule GR-12(B)(2)(a). She further noted that "three and four-wheel, all terrain cycles, and motorized bicycles" are specifically excluded under Arkansas Gross Receipts Tax Rule GR-12(A)(2)(ii). She asserted that, since the Taxpayers have not proven entitlement to the motor vehicle tax credit, the refund claim was appropriately denied.

Within their response brief, the Taxpayers said that they contacted the Tax Credits/Special Refunds Section on October 22, 2018, and were informed that they were entitled to the motor vehicle tax credit due to their subsequent sale of ATV 2. They then asserted that, if they had traded-in ATV 2, sales tax would only have been due on the difference between the value of ATV 1 and ATV 2.

Within her reply brief, the Department's Representative reasserted the contentions contained within her opening brief. She also declared that the Taxpayers have not met the elements of an estoppel claim because they have not received a written opinion under Arkansas Gross Receipts Tax Rule GR-75 and lack a compelling reason and substantial proof to support its application.[4]

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. 2017) 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

[4] In support of these requirements, the Department's Representative cited *Everett v. Jones*, 277 Ark. 162, 639 S.W.2d 739 (1982).

entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2017). 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. 2017). 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. 2017). Ark. Code Ann. § 26-18-507 (Repl. 2012) 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

Initially, though not raised by the Department, it should be noted that, for refund claims, taxpayers generally must either pay a state tax directly to the Department or receive an assignment of a vendor's rights to pursue a refund regarding a tax collected and remitted to the Department by the vendor. Arkansas Gross Receipts Tax Rule GR-81.1(C)(1). Here, the Taxpayers paid the relevant tax directly to the vendor of ATV 1 and this file does not currently contain a copy of an assignment if it has been provided to the Department. Since the Department has not asserted that the Taxpayers failed to comply with the procedural requirements for a refund claim, this decision shall proceed to address the underlying arguments with the assumption that the Taxpayers fulfilled the procedural requirements for the consideration of this refund claim.

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). ATVs qualify as tangible personal property and, thus, generally taxable.

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.

See also Arkansas Gross Receipts Tax Rule GR-12.1.

Ark. Code Ann. § 26-52-103(20) (Supp. 2017) defines a motor vehicle as "a vehicle that is self-propelled and is required to be registered for use on the highway . . .."

The Department is endowed with the authority to promulgate rules for the enforcement of Ark. Code Ann. § 26-52-510 (Repl. 2014). Ark. Code Ann. § 26-52-105 (Repl. 2012). Arkansas Gross Receipts Tax Rule GR-12.1(C)(1) implements the motor vehicle tax credit, stating as follows:

> If a consumer purchases a vehicle and within forty-five (45) days of the date of purchase, either prior to or after such purchase, sells a different vehicle in lieu of a trade-in, the consumer will be entitled to a credit against the sales or use tax due on his or her newly purchased vehicle.

For purposes of the credit, Arkansas Gross Receipts Tax Rule GR-12.1(B)(2) defines a qualifying vehicle as an "automobile, truck, motorcycle (registered for highway use), trailer and semitrailer."

Neither the statutory definition of a qualifying vehicle nor the definition of a qualifying vehicle within the governing rule supports the Taxpayers' assertion that the motor vehicle tax credit applies to private sales of ATVs as well. Consequently, it is evident that the motor vehicle tax credit did not apply to the Taxpayers' private sale of their ATV. The Taxpayers have not proven entitlement to the motor vehicle tax credit by a preponderance of the evidence. Absent an applicable deduction or credit, the entire consideration remitted by the Taxpayers for their purchase of ATV 1 was taxable. Thus, the Department appropriately denied that credit.

Though not expressly asserted by the Taxpayers, the Taxpayers' presentation may implicate an estoppel claim. In *Duchac v. City of Hot Springs*, 67 Ark. App. 98, 992 S.W.2d 174, the Arkansas Court of Appeals discussed the requirements for an estoppel claim against a governmental entity, stating as follows in pertinent part:

> In *City of Russellville v. Hodges*, 330 Ark. 716, 957 S.W.2d 690 (1997), our supreme court set out the elements of estoppel:
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>> 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. [Citations omitted.] Additionally, we have specifically held that a sovereign is not bound by the unauthorized acts of its employees. [Citations omitted.] ....

> 330 Ark. at 719, 957 S.W.2d at 691–92. The trial court also cited *Hope Educ. Ass'n v. Hope School Dist.*, 310 Ark. 768, 839 S.W.2d 526 (1992), which applied the same elements of estoppel, with a few wording changes, to a sovereign. In applying these elements of estoppel to the facts of this case, the chancellor found they were not all satisfied.
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> …
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> According to appellant, the second element of estoppel, that the party to be estopped must intend that the conduct be relied on, is satisfied by the City billing and collecting occupational taxes, thereby acquiescing in appellant's use of the house as an apartment building. The Arkansas Supreme Court has held that estoppel may only be applied against the State when there has been an "affirmative misrepresentation by an agent or agency of the State." *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996). See also *Foote's Dixie Dandy, Inc. v. McHenry*, supra. Estoppel should not be applied where there was no clear proof of an affirmative misrepresentation. *Everett, Director v. Jones*, 277 Ark. 162, 639 S.W.2d 739 (1982). These requirements are equally applicable to municipal corporations. *Miller v. City of Lake City*, 302 Ark. 267, 789 S.W.2d 440 (1990). In the instant case there is no allegation of any affirmative misrepresentation by any agent of the City. The chancellor was correct in not applying estoppel to the City because of the City's acquiescence in appellant's use of the house as an apartment for many years.
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> As to the third element of estoppel, the party asserting the estoppel must be ignorant of the facts, appellant argues that he was justifiably ignorant of the zoning violation because the house was divided into apartments that were fully occupied when he purchased it, and, in the thirty years he has owned the house, the City never informed him that he was violating a zoning ordinance. Again, appellant is not claiming an affirmative misrepresentation by an agent of the City, only acquiescence. The chancellor found that since the zoning ordinance was law, and one is presumed to know the law, appellant could not rely on his ignorance. It has long been held that every person is presumed to know the law and that ignorance of its mandates is no excuse. *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939). See also *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989); *Dunkin v. Citizens Bank of Jonesboro*, 291 Ark. 588, 727 S.W.2d 138 (1987).

Duchac, 67 Ark. App. at 105–107, 992 S.W.2d at 179–180.

Here, the Taxpayers have said that, after the purchase of ATV 1 and the sale of an ATV 2, they first contacted the Department and were told by an unnamed employee of the Department that they were entitled to the motor vehicle tax credit based on their sale of ATV 2. As stated above, among the

various elements of an estoppel claim, the Taxpayers must rely upon the Department's assertion and be injured by that reliance. Even accepting the Taxpayers' description of their conversation with an employee of the Tax Credits office as accurate, it is not evident that the Taxpayers detrimentally relied on that statement since both transactions had already been completed at the time of their first contact with the Department regarding these matters. Consequently, the Taxpayers have not established an estoppel claim.[5]

DECISION AND ORDER

The refund claim denial 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. 2017), unless the Taxpayers request 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 Taxpayers have requested a revision.

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[5] The remaining elements of an estoppel claim and the additional arguments raised by the Department's Representative against the applicability of an estoppel claim shall not be analyzed as they are rendered moot.

Ark. Code Ann. § 26-18-406 (Supp. 2017) 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.[6]

OFFICE OF HEARINGS & APPEALS

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: April 22, 2019

[6] *See Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.