

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

**ADMINISTRATIVE DECISION**

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

**GROSS RECEIPTS TAX  
REFUND CLAIM DENIAL**

**LETTER ID: [REDACTED]**

**DOCKET NO.: 19-372**

**DENIED AMOUNT: [REDACTED]**

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received November 19, 2018, signed by [REDACTED] on behalf of [REDACTED], the Taxpayer. The Taxpayer protested a refund claim denial issued by the Department of Finance and Administration (“Department”). The Department was represented by Lisa Ables, 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 on February 26, 2019. The Department’s Representative filed her Opening Brief on February 27, 2019. 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 May 15, 2019.

## 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

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

On or about August 20, 2018, Taxpayer, [REDACTED] (the "Taxpayer" or the "Trust") registered a [REDACTED] ["Vehicle A"] for an Arkansas certificate of title. See Application and Certificate of Title attached as **Exhibit 1**. The Ford was purchased from [REDACTED] on July 27, 2018 for [REDACTED]. See Bill of Sale attached as **Exhibit 2**. Soon thereafter, Taxpayer requested a sales tax refund from the Department of Finance and Administration (the "Department") claiming entitlement to a sales tax credit for the sale of a [REDACTED] ["Vehicle B"] by [REDACTED], individually. See Claim for Refund attached as **Exhibit 3**. The Bill of Sale reflects that [REDACTED], individual, sold the GMC to a third party on August 4, 2018 for [REDACTED]. See Bill of Sale as **Exhibit 4**.

In a letter dated November 2, 2018, Lisa Watts, DFA Service Representative, advised Taxpayer that no credit could be allowed because the Department's records reflect that the [REDACTED] was not registered to the Trust, but rather to [REDACTED], individually. See Notice of Claim Disallowance as **Exhibit 5**. The Taxpayer timely protested the refund claim denial on November 15, 2018. See **Exhibit 6**. As its basis of protest, the Taxpayer states:

[REDACTED] are one in the same as [REDACTED]. We are not different customers. Attached are copies of the 2 checks with which we paid taxes on each of the vehicles.<sup>3</sup> Same name - Same account. The reason we didn't have the [REDACTED] in the name of the trust is because when we presented the clerk at the [REDACTED] office with our trust papers, she said she didn't know how to put a title in the name of a trust. We let her proceed to put the title in our names with our

<sup>1</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>2</sup> All exhibits support the statements for which they are cited.

<sup>3</sup> Each check lists the drawers for the checks as [REDACTED] in their individual capacity.

daughter designated as beneficiary. Please reverse your decision of “Claim Disallowance.”

In her Answers to Information Request, the Department’s Representative asserted that the Taxpayer has not demonstrated that it was the owner of Vehicle B at the time of Vehicle B’s sale. Since the Taxpayer was not the owner of Vehicle B, she reasoned that the Taxpayer was not entitled to the motor vehicle tax credit based on the sale of Vehicle B.

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

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**

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 (Supp. 2017). Motor vehicles generally qualify as tangible personal property. A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(26)(A) (Supp. 2017). 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. 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.]

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<sup>4</sup> 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 relevant statutes specifically distinguish between individuals and trusts.

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

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<sup>4</sup> While the Taxpayer asserted that the statutory provision should not require the same person or entity to both purchase a vehicle and sell another vehicle to qualify for the motor vehicle tax credit so long as the entities were closely related, the code provision specifically discusses the same “consumer” performing both actions. Consequently, this argument is not persuasive.

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.”).

Here, it is not evident that Vehicle A was purchased by and owned by the same entity that sold Vehicle B. Though the associated Bill of Sale for the purchase of Vehicle A indicates that the vehicle was purchased by ██████████ in his individual capacity, subsequent actions during registration indicate that ██████████ actually purchased Vehicle A as a trustee on behalf of the Taxpayer, a point seemingly conceded by ██████████ within the protest. A review of the records associated with Vehicle B demonstrates the ██████████ purchased, registered, and sold Vehicle B in their individual capacity. Since the Taxpayer has not demonstrated that the same entity that purchased Vehicle A also sold Vehicle B by a preponderance of the evidence, the Taxpayer has not proven entitlement to the motor vehicle tax credit.

To the extent that the Taxpayer’s description of the events within the ██████████ Revenue Office 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 uncertain whether the employee of the [REDACTED] Revenue Office actually made an affirmative misrepresentation. It is also not proven that any of the other elements of an estoppel claim have been satisfied by a preponderance of the evidence. Consequently, an estoppel defense has not been established.

### **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 (Supp. 2017), 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 (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.<sup>5</sup>

OFFICE OF HEARINGS & APPEALS

A handwritten signature in blue ink, appearing to read 'T. Evans', is written over a horizontal line.

TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: May 16, 2019

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