

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

**ADMINISTRATIVE DECISION**

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

**GROSS RECEIPTS TAX  
ASSESSMENT  
LETTER ID:** [REDACTED]

**DOCKET NO.: 20-436**

[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 April 27, 2018, signed by [REDACTED] on behalf of [REDACTED], the Trust. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on March 18, 2021, at 1:00 p.m. in Little Rock, Arkansas. The Department was represented by Lauren Ballard, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”)<sup>2</sup>. Also present for the Department was Barbara Montgomery, Revenue Supervisor. The Trustee appeared at the hearing and represented the Taxpayer.

**ISSUE**

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<sup>1</sup> This amount represents [REDACTED] (tax) and [REDACTED] (interest) after application of a payment of [REDACTED].

<sup>2</sup> The Department was originally represented by Chris McNeal, Attorney at Law, who filed the Department’s Answers to Information Request in this matter.

Whether the Trust demonstrated that it qualified for the [REDACTED] motor vehicle tax credit<sup>3</sup> claimed at the time of registration of a new vehicle to offset the otherwise applicable sales tax by a preponderance of the evidence. No.

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

### A. Prehearing Filings

Mr. McNeal provided a statement of relevant facts within his Answers to Information Request, stating as follows, in pertinent part<sup>4</sup>:

The [REDACTED] (the "Taxpayer") purchased a [REDACTED] [REDACTED] ["Vehicle A"], on February 2, 2016<sup>5</sup> for [REDACTED]. **Exhibit 2.** When the Taxpayer registered the Vehicle, it claimed a credit of [REDACTED]. **Exhibit 3.** In support of the claimed credit, the Taxpayer provided a Bill of Sale, in which is evidence the sale of a [REDACTED] ["Vehicle B"] from [REDACTED] to [REDACTED] ["Buyer"]. **Exhibit 4.**<sup>6</sup>

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

Within his protest, the Trustee provided his rendition of facts and objection to the assessment, stating:

When I bought my new truck, [REDACTED] wanted to buy my trade-in for [REDACTED]. We didn't know how to handle the sales tax. He and I went to:

State Revenue Office

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<sup>3</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>4</sup> Except as noted, all exhibits support the statements for which they are cited.

<sup>5</sup> The actual date of sale is February 5, 2017.

<sup>6</sup> This exhibit states that the Trustee, as an individual, sold Vehicle B to [REDACTED] on February 13, 2017, for [REDACTED].

[REDACTED]

They made out the paper work and told [REDACTED] he should pay the sales tax on the [REDACTED], which he did and I should pay the sales tax on the rest, which I did.

I have made out the Protest Form for a hearing in [REDACTED]. Please let me know the date and if I should bring my attorney.

...

This was all completed at the above office. Richard that works for you, told [REDACTED] and my self how to do this. We made out paper work out at the Arkansas Revenue Office. [REDACTED] paid the sales tax on the [REDACTED] on the [REDACTED] and I paid the sales tax on the rest for the [REDACTED]. [REDACTED] and [REDACTED] are one and the same. The State has lost no sales tax.

Do you want me to change the Dodge title over to [REDACTED], this would cost [REDACTED] I believe. I don't owe any more taxes.

You can see I renewed these tags last year, with no trouble. (see attached)<sup>7</sup>

## **Hearing Testimony**

### **A. Revenue Supervisor's Testimony**

The Revenue Supervisor testified that the Trust purchased Vehicle A on February 2, 2016. At the time of registration, however, the Trust claimed a credit for the sale of Vehicle B by the Trustee on or about February 13, 2016. Vehicle B was owned by and registered to the Trustee individually, not the Trust. Since the Trust did not own Vehicle B, she asserted that it was not entitled to the motor vehicle tax credit that was claimed at registration based on Vehicle B's sale. As a result of the denial of that credit, she explained that the Taxpayer had an

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<sup>7</sup> The Trustee included a copy of his [REDACTED] Vehicle Registration Renewal Notice and the Notice of Proposed Assessment.

additional tax liability. The Department issued a Summary of Findings and Notice of Proposed Assessment to collect the additional tax amount.

### **B. Trustee's Testimony**

The Trustee testified that he and the Buyer registered Vehicles A and B at the same time at the revenue office in [REDACTED] Arkansas. He paid the calculated sales tax liability for Vehicle A and the Buyer paid the calculated sales tax liability on Vehicle B. The Trustee received his title and license plate at the revenue office. When he needed to renew the registration of Vehicle A, he was told by the revenue office that he owed an additional [REDACTED], but that office could not explain the additional balance. The revenue office instructed him to protest that amount in order to be contacted regarding the basis for the amount. Eventually, Mr. McNeal from the Office of Revenue Legal Counsel contacted him and told the Trustee the assessed amount arose from a titling issue and that an administrative hearing would not be allowed due to timing. An administrative hearing was allowed after the Trustee filed a small claims case in district court. That case was later dismissed by the judge.

The Arkansas State Police did not require the Trustee to pay the additional sales tax to drive Vehicle A while his protest was pending. He chose to pay the tax amount and pursue his claim since he did not want to be pulled over while driving. He was particularly concerned about his wife ([REDACTED]) being stopped [REDACTED]. The Trustee eventually closed the Trust and re-registered Vehicle A in his individual name since the Trust had been liquidated to [REDACTED].

The Trustee asserted that all taxes were paid on Vehicles A and B, and the state has not lost any money. If he traded-in Vehicle B on Vehicle A's purchase, the dealership would have charged the Buyer an additional [REDACTED] to purchase it, so he decided to help the Buyer. The Trustee argued that he relied on the people at the [REDACTED] Revenue Office when registering Vehicle A and would have corrected any errors if given notice of them. He testified that the revenue office employees believed the Trustee and Trust were considered the same entity. He declared that the Department should be responsible for the training of its employees, not him. He considers his assessment to be unfair. He noted that a similar issue happened to one of his friends.

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.

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).

### **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). 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(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). In the absence of an offsetting deduction or credit, Vehicle A was taxable based on the full purchase price of [REDACTED].

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). The relevant statutes specifically distinguish between individuals and trusts. The Arkansas Court of Appeals explained the separate nature of grantors and trusts, stating:

However, grantors of trusts create a legal entity separate and apart from themselves. *Payless Bldg. Ctr. v. L. Dean Wilmoth*, 581 N.W.2d 450 (Neb.1998). Except as the law may otherwise provide, such grantors are not free to alternately embrace or disown their creation as their individual interests may dictate at a particular moment. *Id.* As long as the trust exists, its separate nature must be respected. *Id.* *Dalton v. Dalton*, CA01-69, 2001 WL 1091127, at 2 (Ark. Ct. App. Sept. 12, 2001).

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.

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. *Cook, Commissioner of Revenue v. Walters Dry Good Company*, 212 Ark. 485, 206 S.W.2d 742 (1947); and *Kansas City Southern Ry. Co. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990). A taxpayer claiming a deduction or credit bears the burden of proving that it is entitled to the deduction or credit by bringing itself clearly within the terms and conditions imposed by the statute that contains the deduction or credit. *Weiss v. American Honda Finance Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

While the Trustee questioned the fairness of treating grantors and trusts as separate entities, 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, it is not evident that Vehicle A was purchased by and owned by the same entity that sold Vehicle B. Vehicle A was purchased by the Trust; however, Vehicle B was personally owned by the Trustee at the time of its sale. Since the Trust has not demonstrated that the same entity that purchased Vehicle A also sold Vehicle B by a preponderance of the evidence, the Trust has not proven entitlement to the motor vehicle tax credit.



To the extent that the Trustee's description of the events within the [REDACTED] 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, at the time that the Trustee was assisted at the revenue office, Vehicle A was already purchased by the Trust, and Vehicle B was owned and sold by the Trustee individually. Thus, the sale Vehicle B could not be utilized for the motor vehicle tax credit. It is not evident that the transactions could be undone and reformed at that time. Consequently, detrimental reliance upon any of the employees at the local revenue office has not been established. The actual assertions and employees' knowledge of the preexisting ownership of associated vehicles is another uncertainty. An estoppel defense has not been established.<sup>8</sup>

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Repl. 2020), interest must be assessed upon tax deficiencies for the use of the State's

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<sup>8</sup> The remaining elements of an estoppel claim shall not be analyzed as they are rendered moot.

tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained after the adjustment required under Ark. Code Ann. § 26-18-405(d)(1)(C) (Repl. 2020).

### **DECISION AND ORDER**

Subject to the adjustment required under Ark. Code Ann. § 26-18-405(d)(1)(C) (Repl. 2020), 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](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>9</sup>

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: March 19, 2021

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<sup>9</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.