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

ADMINISTRATIVE DECISION

IN THE MATTER OF [redacted] **(ACCT. NO.:** [redacted] **)**	**GROSS RECEIPTS TAX ASSESSMENT**
DOCKET NO.: 21-155	**LETTER ID:** [redacted] **($** [redacted] **)**[1]

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated October 5, 2020, and signed by [redacted] (hereinafter "Co-Trustees"), on behalf of [redacted] (hereinafter "the Trust" or "the Taxpayer"). The Taxpayer protested an assessment of Gross Receipts Tax ("sales tax") issued by the Department of Finance and Administration ("Department").

This case was submitted on written documents at the request of the Taxpayer. The Department was represented by Daniel L. Parker, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer was represented by the Co-Trustees. A Briefing Schedule was mailed to the parties on November 23, 2020. The Department's Opening Brief was filed on November 24, 2020. The Taxpayer did not file a Response Brief but the Taxpayer's Protest Form and an attached

[1] The reflected amount consists of tax ($[redacted]) and interest ($[redacted]) with credit for "Payments" in the amount of $[redacted].

letter were received into evidence. The matter was submitted for a decision on February 26, 2021.

ISSUE

Whether the tax assessment issued against the Taxpayer on the purchase of a motor vehicle, resulting from the denial of a claimed sales tax credit, should be sustained? Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on September 21, 2020. The Department's Opening Brief summarized the facts of the case involved in this case (including the basis for the Taxpayer's disagreement with the assessment as reflected by the handwritten statement on the Taxpayer's Protest Form and portions of a Letter of Protest dated October 5, 2020) and stated, in pertinent part, as follows:

> On December 19, 2018, the [redacted] ("Taxpayer") purchased a [redacted] . . . (the "[redacted]") for $[redacted] (including the extended warranty), as evidenced by the Application for Title, Assignment of Title, Order of Sale, and Trustee's Statement for Certificate of Title attached as **Exhibit 1.** The Trustee's Statement was executed on behalf of Taxpayer by [redacted] as Principal and Co-Trustee, respectively, of the [redacted]. The Application for Title, executed by [redacted] lists "[redacted]" as the Owner of the [redacted], and reflects a trade-in allowance of $[redacted]. Attached as **Exhibit 2** is the Department's official record of the title issued to Taxpayer.
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> Attached as **Exhibit 3** is a Vehicle Bill of Sale and Assignment of Title reflecting the transaction for which the trade-in allowance was sought, i.e., the December 18, 2018, sale of a [redacted] . . . (the "[redacted]") registered in the name of "[redacted]" to a third party for the sum of $[redacted]. The original Certificate of Title was issued to the [redacted] on February 27, 2003.

By letter dated September 17, 2020, the Department advised Taxpayer that: (1) the $[redacted] trade-in allowance deduction for the sale of the [redacted] had been disallowed because Taxpayer was not the registered owner of the [redacted]; and (2) the requirements for a sales tax credit under Gross Receipts Tax Regulation GR-12.1 had not been satisfied. *See* Deduction from New Purchase letter, attached as **Exhibit 4.** On September 21, 2020, the Department issued: (1) a Notice of Proposed Assessment to Taxpayer **(Exhibit 5)** in the amount of $[redacted], reflecting a sales tax of $[redacted] interest of $[redacted], and credit for Taxpayer's previous payment of $[redacted]; (2) a Billing Statement **(Exhibit 6);** and (3) an Explanation of Tax Adjustment **(Exhibit 7**), reflecting no trade-in allowance for the [redacted]. The assessment consisted of tax in the amount of $[redacted] and interest in the amount of $[redacted]. No penalty was assessed. *See* Notice of Proposed Assessment attached as **Exhibit 5.**

Taxpayer timely filed a Protest Form with attachments (the "Protest") **(Exhibit 8)** which the Department received on October 14, 2020 including a check for payment of the $[redacted] assessment for which it seeks a refund. The Protest requests consideration based upon the documents included with the Protest, and, on page one, the following handwritten statement why Taxpayer disagrees with the assessment:

> *We clearly owned both vehicles - at time of transfer and registration it should have been brought to our attention that there was going to be an issue, not 1 1/2 years later.*

In Taxpayer's typed Letter of Protest dated October 5 2020 **(Exhibit 8,** p.2), Taxpayer states that "[b]oth vehicles were owned by [redacted] individually and a co trustees of the [redacted] dated 9/24/2013)." Taxpayer further states that "[a]t the time of registration we were not informed that there was a discrepancy in ownership (personal name or trust on title ownership) and that this would cause us to owe additional taxes" and "[i]f we needed to register the [redacted] in only our name and transfer the title later,[Footnote 1 stated that, "The Department notes that this approach would result in two 'sales' under Ark. Code Ann. § 26-52-103(26) and the payment of the sales tax on each of the two transactions."] so we were able to use the trade tax credit we would have done so at the time of registration . . . ." Taxpayer also provides various documents that the Department does not dispute including:

1. The Trust Agreement for the [redacted] created on

April 24, 2013;

2. An auto policy Declarations and Policy Schedule term sheet for the [redacted] for the period 3/1/18 - 9/1/18 with the "Named Insured" being "[redacted] individually and as co trustee of the [redacted] dated 4-24-2013;[Footnote 2 stated that, "The Department has no record of any transfer of the [redacted] into the [redacted] or any payment of sales taxes pursuant to any such transfer."]
3. The 12/18/18 [redacted] Bill of Sale and Assignment of Title,[Footnote 3 stated that, "The original Certificate of Title was issued to the [redacted] on February 27, 2003, over ten years before the [redacted] was created."] reflecting the sale of the [redacted] by its registered owner [redacted];
4. The first page of a 2/14/2003 Retail Installment Contract and Security Agreement showing the purchase of the [redacted] by the [redacted];
5. A Supplemental Bill for premium due to insure the [redacted] with the " Insured" being "[redacted] individually and as co trustees of the [redacted] dated 4-24-2013;
6. An Agreement dated 12/19/20 for the purchase of the [redacted] by [redacted]";
7. A 2018 Tax Statement for [redacted] labeled "Corrected Copy" which appears to be addressed to "[redacted]" for unspecified "Personal Property" in the name of "[redacted]" and three parcels of real estate in the name of "[redacted]
8. A [redacted] on 1/7/19 on behalf of "[redacted] which includes the [redacted]; and
9. A 2018 [redacted] executed by [redacted] on 4/23/18 on behalf of [redacted] which includes the [redacted].

The undisputed facts that can be gleaned from the Department's records and the Taxpayer's Protest are that:

1. In 2003 the [redacted] purchased the [redacted] (for which a trade-in allowance deduction was taken to reduce the sales tax liability for the purchase of the [redacted]) in their individual names, there being no [redacted] in existence at that time;
2. The [redacted] remained owned by and registered in the names of the [redacted] individually through its 12/18/19 sale, there being no record of any sale or transfer of the [redacted] to the

[redacted] or any other entity - or the payment of any sales tax on any such sale or transfer;

3. In 2013, the [redacted] established the [redacted];
4. On December 19, 2019, the [redacted] purchased the [redacted] and completed an Application for Title and Trustee's Statement for Certificate of Title for the specific purpose of registering ownership of the [redacted] by the [redacted] [Footnote 4 stated that, "As previously noted, the purchase and registration of the [redacted] directly by the Trust avoids paying sales tax on separate transfers under the suggested scenario 'to register the [redacted] in only our names and transfer the title later.'"] and thereby avoiding paying sales tax on two separate transfers of the [redacted]; and
5. The [redacted] and the [redacted] were owned by the [redacted] individually and the [redacted], respectively, two distinct legal entities for sale tax purposes.

. . .

DISCUSSION

The General Assembly established the parameters of the sales tax credit for private sales in lieu of trade-ins in Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Supp. 2019) by providing that the credit is available only when the purchase and sale transactions are made by the same "consumer." The mandatory language of Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Supp. 2019) leaves the Department no discretion to treat an individual as the same legal entity as the individual's trust for purposes of applying the sales tax credit.

Taxpayer bears the burden of proving by a preponderance of the evidence that a claimed refund was erroneously paid in excess of the taxes lawfully due under Ark. Code Ann.§ 26-18-507 (Repl. 2020). In this case the Taxpayer is required to prove that the [redacted] was both the owner of the [redacted] that was sold and the [redacted] that was purchased. There is no proof that the [redacted] for which the trade-in allowance was taken was ever transferred to Taxpayer. Taxpayer is not the registered owner of the [redacted] but *is* the registered owner of the [redacted]. Taxpayer is not entitled to pick and choose which entity it desires to be in order to avoid paying sales tax. The [redacted] and the [redacted] are separate legal entities for tax purposes. Given the Taxpayer's expressed desire to ultimately hold title to the [redacted] in the name of the Trust, its decision to register the [redacted] in the name of the [redacted] is both consistent with its intent and expedient in avoiding sales tax on more than one transfer of the [redacted].

CONCLUSION

> Applying the law to the facts of this case, the Taxpayer is not entitled to a sales tax credit related to the sale of the [redacted] which was owned by the [redacted] individually and never transferred to the [redacted]. Both the documents submitted at the time of registration and the Protest filed by Taxpayer evidence Taxpayer's intent to transfer the [redacted] into the [redacted]. As such, the Taxpayer failed to prove entitlement to the claimed tax credit and the Department's disallowance of the trade-in allowance was proper. [P. 1 – 6].

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).

Sales Tax Assessment

As a general rule, all sales of tangible personal property in the State of Arkansas are taxable unless a specific statutory exemption is applicable. See Ark. Code Ann. § 26-52-101 et seq. (Repl. 2020). Ark. Code Ann. § 26-52-103(35)(A) (Repl. 2020) defines "tangible personal property" as "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses." A motor vehicle is tangible personal property. The liability for sales tax on sales of tangible personal property is upon the seller in most circumstances. See Ark. Code Ann. § 26-52-517 (Repl. 2020). However, the liability for sales tax on sales of motor vehicles required to be licensed is upon the purchaser pursuant to Ark. Code Ann. § 26-52-510 (Repl. 2020).

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, as reflected in Arkansas Gross Receipts Tax Rule GR-12.1(C)(1),[2] in order to qualify for the relevant sales tax credit, the same person or

[2] GR-12.1(C)(1) states that, "[i]f 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

entity must be the customer who pays sales tax on the purchase of a motor vehicle and the customer who subsequently sells (or previously sold) a used motor vehicle in lieu of a trade-in.

Arkansas Gross Receipts Tax Rule GR-3(J) defines "person" to mean "any **individual**, partnership, limited liability company, limited liability partnership, corporation, estate, **trust**, fiduciary, **or any other legal entity**. [Emphasis added]." Based upon the same rationale used to support a conclusion that a corporation and its shareholders are separate and distinct legal entities,[3] the Office of Hearings and Appeals has consistently held that a trust and the settlor or trustee of the trust are separate and distinct legal entities.[4] On October 12, 2017, the Commissioner of Revenues issued a Revision Decision involving the sales tax credit for the private sale of a vehicle in lieu of a trade-in and the Revision Decision held that a Trust and a Trustee were not the same consumer for purposes of the credit.

The legal analysis and arguments presented by the Department, regarding the distinctions recognized or not recognized by Arkansas trust law, are persuasive. Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. See Cook, Commissioner of Revenue v. Walters Dry Good

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trade-in, the consumer will be entitled to a credit against the sales or use tax due on his or her newly purchased vehicle."

[3] In Mountain Valley Superette, v. Bottorff, 4 Ark. App. 251, 254 – 255, 629 S.W.2d 320, 322 (1982), the opinion of the Court of Appeals of Arkansas stated, "[i]n the case at bar, the stockholders who created the corporation in order to enjoy the advantages from its existence as a separate legal entity are asking that its existence be disregarded where it works a disadvantage to them. They ask us to treat the corporation as if it were a partnership. The corporate structure cannot be so lightly disregarded. A corporation is a legal entity separate and apart from its shareholders. [Citations omitted]." See also, Atkinson v. Reid, 185 Ark. 301, 306, 47 S.W.2d 571, 573 (1932) (stating, "the fact that one person owns all the stock in a corporation, does not make him and the corporation one and the same person.").

[4] As demonstrated by GR-3(J), a trust is distinguished from an individual as a separate and distinct legal entity.

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 he or she is entitled to the deduction or credit by bringing himself or herself clearly within the terms and conditions imposed by the statute that contains the deduction or credit. See Weiss v. American Honda Finance Corp., 360 Ark. 208, 200 S.W.3d 381 (2004). While the Co-Trustees clearly had an interest in the Trust, that fact does not allow the separate legal existence of the Trust to be disregarded in order to satisfy the requirements of Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) or Arkansas Gross Receipts Tax Rule GR-12.1(C)(1). Furthermore, the case file does not contain documentary evidence to establish that the Co-Trustees ever transferred title/ownership of the [redacted] to the Trust.

Applying the law to the facts of this case, the Taxpayer was not entitled to claim the sales tax credit on its purchase of the [redacted] (in the name of the Trust) when the vehicle sold in lieu of a trade-in (the [redacted]) was owned by different legal entities (the Co-Trustees - individually).

Estoppel

While the Taxpayer did not expressly assert the defense of estoppel, the legal doctrine may be implicated by the contention regarding the failure of the employees of the Department to inform the Co-Trustees of the requirements for properly claiming the entity-specific sales tax credit. With respect to the estoppel defense, the Arkansas Supreme Court has held that the State can be estopped by the actions of its agents. See Foote's Dixie Dandy, Inc. v. McHenry, 270 Ark. 816, 607 S.W.2d 323 (1980). However, the doctrine of estoppel should only be

applied against the State where there is substantial proof and a compelling reason. See Everett v. Jones, 277 Ark. 162, 639 S.W.2d 739 (1982). In Duchac v. City of Hot Springs, 67 Ark. App. 98, 992 S.W.2d 174 (1999), the Arkansas Court of Appeals addressed the requirements for an estoppel defense against a governmental entity and stated, as follows:

> . . . In *City of Russellville v. Hodges*, 330 Ark. 716, 957 S.W.2d 690 (1997), our supreme court set out the elements of estoppel:
>
> > 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.] ....
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> 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). . . .
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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.

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

Lack of actual or constructive knowledge of a tax levy is inadequate to avoid imposition of the tax. Every person is presumed to know the law and lack of knowledge is not an excuse for failure to comply with the mandates of the law. See Duchac v. City of Hot Springs, supra. The failure of employees of the Department to provide informational assistance to the Co-Trustees does not relieve the Co-Trustees of this presumption or the requirement of compliance. Consequently, the record does not support a finding that the elements of an estoppel claim have been met. Under the facts and circumstances of this case, the Department correctly assessed sales tax against the Taxpayer.

Interest was properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). No penalty was assessed against the Taxpayer.

DECISION AND ORDER

The proposed 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. 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.[5]

OFFICE OF HEARINGS & APPEALS

RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 2, 2021

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