

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]

ACCT. NO.: [REDACTED]

DOCKET NO.: 21-217

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

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 July 21, 2020, and signed by [REDACTED], on behalf of himself and [REDACTED], the Taxpayers. The Taxpayers protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”). The Department was represented by Caroline Calvert, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayers, the matter was submitted for a decision based upon consideration of written documents. A Briefing Schedule was mailed to the parties on January 12, 2021. The Department’s Opening Brief was filed on February 12, 2021. The Taxpayers did not file a Response Brief but the Taxpayers’ Protest Form and an attached letter were received into evidence. The matter was submitted for a decision on March 31, 2021.

¹ The reflected amount included tax (\$ [REDACTED]) and interest (\$ [REDACTED]) with credit for “payments” in the amount of \$ [REDACTED] . A letter attached to the Taxpayers’ Protest Form stated that, “[w]e are enclosing a check for \$ [REDACTED] but we object to this charge . . .”

ISSUE

Whether the assessment issued by the Department against the Taxpayers should be sustained? Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayers on June 25, 2020.² The Department's Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayers' disagreement with the assessment as reflected by the typewritten letter attached to the Taxpayers' Protest Form) and stated as follows:

On or about September 24, 2018, [REDACTED], individually, (the "Taxpayers") purchased a [REDACTED] in [REDACTED] . . . (the [REDACTED] from [REDACTED] in [REDACTED] Arkansas for \$ [REDACTED]. At the time the [REDACTED] was registered on October 19, 2018, Taxpayers presented a Bill of Sale in order to claim the motor vehicle private sale credit. The Bill of Sale reflected the sale of a [REDACTED] . . . (the [REDACTED] [REDACTED]) by the [REDACTED] (the "Trust") to [REDACTED] Vaught for \$ [REDACTED] on September 24, 2018. At the time of registration, Taxpayers paid sales tax on the purchase of the [REDACTED] in the amount of \$ [REDACTED], which was based on the taxable purchase price of \$ [REDACTED] and the trade in credit of \$ [REDACTED] for the sale of the [REDACTED]. A copy of the title work is attached collectively as **Exhibit 1**.

After reviewing the submitted Bill of Sale, the Department discovered that the [REDACTED] was owned and registered to the Trust and not to Taxpayers individually. The Department disallowed the credit. An Explanation of Tax Adjustment was sent on June 25, 2020 and is attached as **Exhibit 2**. In addition, the Department sent a Notice of Proposed Assessment on June 25, 2020 (attached as **Exhibit 3**). The Notice of Proposed reflected the removal of the credit for the [REDACTED], which resulted in an additional tax liability of \$ [REDACTED] and interest in the amount of \$ [REDACTED].

In a letter dated June 19, 2020, the Department advised Taxpayers that the deduction of motor vehicle sales tax they received at the

² See Department Exhibit 3.

time of registration of the [REDACTED] had been disallowed because the Department's records reflect that the [REDACTED] that was sold was not registered to Taxpayers individually, but rather to the Trust. See Deduction from New Purchase Letter, attached as **Exhibit 4**.

Taxpayers disagreed with the assessment of additional sales tax and timely protested on August 21, 2020. Taxpayers state in their protest:

Approximately [REDACTED] when we had a revocable trust created, we were advised to put our cars into our revocable trust. When we purchased a new car in September of 2018, we were in the process of updating our revocable trust. The legal advisor recommended that there was no need to have our cars listed in our revocable trust. So, when we purchased our [REDACTED] we put it into our names, not our revocable trust. For all practical purposes, there is no difference between us and our revocable trust. We are the revocable trust and the revocable trust is us. Based on logic, deducting the [REDACTED] trade in from the sale of the [REDACTED] seems like it should be legitimate.

A copy of the Protest is attached as **Exhibit 5**. Based on these facts, Taxpayers have failed to establish that they were entitled to the motor vehicle sales tax credit for the private sale of the [REDACTED]. The Department's assessment of additional tax and interest was proper and should be sustained in full.

...

ANALYSIS

In this case, [REDACTED], individually, and the [REDACTED] are two separate and distinct consumers. They are separate legal entities, with separate legal rights and obligations. Arkansas law does not provide for transfers of credit between two different consumers. Here, as provided in the attached documentation, the [REDACTED] was bought and registered in the name of the Taxpayers as individuals. Accordingly, Taxpayers were ineligible for a sales tax credit on the transaction involving the sale of the [REDACTED] owned by and registered in the name of the Trust. The private sale of the [REDACTED] owned by the Trust cannot be applied against the purchase price of the [REDACTED] purchased by the Taxpayers individually. Therefore, the Department's disallowance of the sales tax credit was proper and the assessment of additional tax should be sustained.

. . . Interest was assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Supp. 2019). Consequently, the assessment of interest on the tax balance should be sustained. [P. 1 – 5].

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),³ in order to qualify for the relevant sales tax credit, the same person or 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.

³ 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 trade-in, the consumer will be entitled to a credit against the sales or use tax due on his or her newly purchased vehicle.”

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. See 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 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).

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,⁴ 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.⁵ In a Revision Decision issued in October of 2017, the Commissioner of Revenues held that a Trustee and a Revocable Trust were “not the same consumer for purposes of the credit[.]”⁶

⁴ 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.”).

⁵ As demonstrated by GR-3(J), a trust is distinguished from an individual as a separate and distinct legal entity.

⁶ This is controlling authority for the Office of Hearings and Appeals.

Even though the Taxpayers may have been the trustees of 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). Applying the law to the facts of this case, the Taxpayers were not entitled to claim the sales tax credit on their purchase of the [REDACTED] (in their individual names) when the vehicle sold in lieu of a trade-in (the [REDACTED]) was owned by a different legal entity (the Trust). Consequently, the Department correctly assessed sales tax against the Taxpayers and interest was also properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020).

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 (Repl. 2020), 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.

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.⁷

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 31, 2021

⁷ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.