

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

ADMINISTRATIVE DECISION

IN THE MATTER OF THE [REDACTED]
[REDACTED]

**GROSS RECEIPTS
TAX ASSESSMENT
(ACCT. NO.: [REDACTED])**

DOCKET NO.: 21-229

**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 December 4, 2020, and signed by [REDACTED] [REDACTED] (hereinafter “Co-Trustees”), on behalf of [REDACTED] [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 January 19, 2021. The Department’s Opening Brief was filed on January 20, 2021. The Taxpayer did not file a Response Brief but the Taxpayer’s Protest Form and attached

¹ The reflected amount consists of tax (\$ [REDACTED]) and interest (\$ [REDACTED] with credit for “Payments” in the amount of \$ [REDACTED].

documents were received into evidence. The matter was submitted for a decision on March 30, 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? No.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on November 24, 2020. The Department's Opening Brief summarized the facts and issues 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 stated, in pertinent part, as follows:

On January 11, 2019, The [REDACTED] (the "Taxpayer" or "Trust") purchased a [REDACTED] . . . (the "[REDACTED]") from [REDACTED] for \$ [REDACTED]. A copy of the Bill of Sale is attached as **Exhibit 1**. A copy of the Title Assignment is attached as **Exhibit 2**.

On January 8, 2019, [REDACTED] (the [REDACTED]) privately sold a [REDACTED] . . . (the "[REDACTED]") for \$ [REDACTED]. A copy of the Bill of Sale is attached as **Exhibit 3**. [REDACTED] are listed as the sellers on the Bill of Sale, and the title was in the name of [REDACTED]. A copy of the Certificate of Title for the [REDACTED] is attached as **Exhibit 4**.

When registering the [REDACTED] Taxpayer deducted the [REDACTED] sale price of \$ [REDACTED] from the purchase price of the [REDACTED], and paid tax on the difference of \$ [REDACTED]. A copy of the Application for Title is attached as **Exhibit 5**.

In a letter dated November 24, 2020, the Department advised Taxpayer that the claimed tax credit had been denied because the Department's records reflect that the vehicle sold was not registered in Taxpayer's name. The vehicle sold was registered to [REDACTED]

██████████, and the vehicle purchased is registered to ██████████. The Department further explained, "Office of Motor Vehicle records show that you received a tax credit for a vehicle that is not registered in your name." See Explanation of Tax Adjustment letter, attached as **Exhibit 6**. Contemporaneously, the Department issued a Notice of Proposed Assessment (**Exhibit 7**) and Billing Statement (**Exhibit 8**) for the \$██████████ balance owed.

Taxpayer timely protested the tax credit denial. Taxpayer's Protest states: "Prior to establishing a trust, we purchased this ██████████. We established the trust on December 15, 2015 (included), and all of our jointly held assets were rolled into the possession of the trust. Once the trust was established, all future purchases have been named in the trust. Therefore, after visiting ██████████ DMV tax collector, we followed the steps to sell/buy a vehicle, as they instructed." A copy of the Taxpayer's Protest and supporting documents is attached as **Exhibit 9**.

...

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) (Repl. 2020) 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) (Repl. 2020) 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.

The Taxpayer has failed to prove by a preponderance of the evidence that the Trust was both the owner of the ██████████ that was sold and the ██████████ that was purchased. The ██████████ for which the trade-in allowance was taken was registered in the name of the ██████████, and the ██████████ are the sellers on its Bill of Sale. Taxpayer was not the registered owner of the ██████████ but *is* the registered owner of the ██████████.

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 ██████████ which was registered to and subsequently transferred to a new owner by the ██████████ individually. Both the documents submitted at the time of registration and the Protest filed by Taxpayer evidence a

sale (by the [REDACTED]) and purchase (by the Trust) by separate legal entities. [P. 1 – 4].

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

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

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,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

The legal analysis and arguments presented by the Department, regarding the distinctions recognized or not recognized by Arkansas trust law, are not persuasive under the facts of this case. In prior decisions issued by the Office of Hearings and Appeals, which were not revised by a Commissioner’s Revision, the decisions stated as follows:

With respect to the Arkansas Motor Vehicle Title and Registration Laws, the Arkansas Supreme Court has explained as follows:

³ See 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.

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 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.”).

In the instant matter, the case file contains documentary evidence to establish that the Co-Trustees transferred ownership of the [REDACTED] to the Trust on December 22, 2015. See Department Exhibit 9 – P. 10 – 11. Based on the record and binding Arkansas Supreme Court precedent, it is apparent that ownership of the [REDACTED] transferred to the Taxpayer even though the Certificate of Title was not formally issued in the Taxpayer’s name. Based on the conclusion that ownership of the [REDACTED] rested with the Taxpayer, the transfer of title to the [REDACTED] would have been within the authority of the Co-Trustees under the provisions of the Trust. See Department Exhibit 9 – P. 5 – 8.

Based on the above analysis, the Taxpayer sold the [REDACTED] on January 8, 2019, and purchased the [REDACTED] on January 11, 2019. Consequently, the Taxpayer is entitled to the sales tax credit for the private sale of a used motor vehicle under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) and the assessment of tax is not sustained. Due to the removal of the tax assessment, the assessment of interest should also be set aside.

DECISION AND ORDER

The proposed assessment is not 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 31, 2021

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