

**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**

DOCKET NO.: 21-258

**ASSESSED AMOUNT: [REDACTED]¹
LETTER ID: [REDACTED]**

**TODD EVANS, ADMINISTRATIVE LAW JUDGE
APPEARANCES**

This case is before the Office of Hearings and Appeals upon written protest received November 23, 2020, from [REDACTED] (“Owner”) on behalf of [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Daniel Parker, 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 by letter dated February 3, 2021. The Department’s Representative filed his Opening Brief on February 3, 2021. The Taxpayer did not file a response, but the protest was received into evidence. The record was closed and this matter was submitted for a decision on March 26, 2021.

ISSUE

Whether the Taxpayer demonstrated that it qualified for the motor vehicle tax credit² by a preponderance of the evidence. No.

¹ This amount represents [REDACTED] (tax) and [REDACTED] (interest) after application of a payment in the amount of [REDACTED].

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

A. Opening Brief

The Department's Representative provided a statement of relevant facts and an analysis within his Opening Brief, stating as follows, in pertinent part³:

On December 10, 2018, [REDACTED] (the "Taxpayer") purchased a [REDACTED] ["Vehicle A"] from [REDACTED] for [REDACTED], which includes a vehicle purchase price of [REDACTED] plus a handling fee of [REDACTED]. Copies of the Certificate of Title, Title Assignment, Retail Installment Sale Contract, and Odometer Disclosure Statement are attached as **Exhibit 1**.⁴

At registration, Taxpayer paid sales tax on [REDACTED] after claiming a sales tax credit of [REDACTED] from the [REDACTED] vehicle price. The claimed sales tax credit was based upon two (2) separate Bills of Sale, each stating they were signed and dated on January 15, 2019, and reflecting a private sale by Taxpayer to the same purchaser on January 15, 2019, of: (1) a [REDACTED]⁵ ["Vehicle B"] for [REDACTED]; and (2) [REDACTED] ["Vehicle C"] for [REDACTED]. Copies of the Application for Title and two (2) Bills of Sale are attached as **Exhibit 2**.

According to the Department's records, on February 4, 2019, Taxpayer privately sold a [REDACTED] ["Vehicle D"] to a different third party for [REDACTED].⁶ A copy of the [REDACTED] Title Assignment and Bill of Sale is attached as **Exhibit 3**. Also according to the Department's records, on April 19, 2019, [REDACTED], a registered owner of the [REDACTED], privately sold the [REDACTED] to a different third party for [REDACTED]. A copy of the [REDACTED] Title Assignment and Bill of Sale is attached as **Exhibit 4**.

By letter dated November 3, 2020, the Department advised Taxpayer that the claimed sales tax credits had been denied and that Taxpayer "received

² The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) shall be referred to as the "motor vehicle tax credit" in this decision.

³ All exhibits support the statements for which they are cited.

⁴ All documents list [REDACTED] as the purchaser, not the Owner operating under a sole proprietorship.

⁵ The Department noted that its records reflect that Vehicle B has not been registered to the Taxpayer since 2013.

⁶ The Department noted that the Taxpayer's protest stated that: "I sold a [REDACTED] and not a [REDACTED]. The vin number for my [REDACTED] was sold on Feb 4th, 2020."

a tax credit for a vehicle that was not registered in [Taxpayer's] name.” See Explanation of Tax Adjustment attached as **Exhibit 5**. The Department's records also reflect that neither sale was within 45 days of Taxpayer's December 10, 2018, purchase of the [REDACTED]. On November 3, 2020, the Department sent Taxpayer a Notice of Proposed Assessment (**Exhibit 6**) and Billing Statement (**Exhibit 7**) for the [REDACTED] sales tax owed after disallowing the claimed [REDACTED] sales tax credits.

Taxpayer timely protested the tax credit denial and requested consideration on written documents. See Protest and supporting documents (the “Protest”) attached as **Exhibit 8**. As grounds for the Protest, Taxpayer asserts that:

1. [REDACTED] is one and the same as [REDACTED];⁷
2. Because Taxpayer paid the amount reflected on the Application for Title when registering the [REDACTED], Taxpayer should not be charged interest on the outstanding sales tax due;⁸ and
3. The “45 day time frame” should be reconsidered because Taxpayer “did not take immediate possession of the vehicle due to extenuating circumstances” and “was out of town for most of the time from December 10th until the time [Taxpayer] took possession ... Dec. 27th, 2020 [d]ealing with [REDACTED] and extenuating circumstances [that] caused [Taxpayer] to not be able to sell [the] [REDACTED] until Feb. 4th, 2019.”

Within his Opening Brief, the Department's Representative asserted that purchases of motor vehicles (like Vehicle A) are generally taxable. He further asserted that the forty-five (45) time limitation is mandatory, preventing the application of any other time frame. Since more than forty-five (45) days appears to have elapsed between the purchase of Vehicle A and the sale of Vehicles C and D, he declared that the motor vehicle tax credit should not be allowed. He additionally argued that the Taxpayer has not proven that it was the same entity

⁷ The Department noted that [REDACTED] a duly registered corporation in good standing with the Arkansas Secretary of State. The Owner stated that: [REDACTED] are one in the same and used interchangeably.”

⁸ The Owner further argued that he followed the instructions of the revenue office employee as an additional basis for removing the interest.

that sold Vehicles B and C as a secondary argument preventing application of the motor vehicle tax credit.

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 (including motor vehicles) and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Repl. 2020). 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). A purchased motor vehicle is required to be registered within thirty (30) days of the release of a lien by a prior lienholder or within thirty (30) days after the date of the transfer if no lien is present. Ark. Code Ann. § 27-14-903 (Repl. 2014).

Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020). 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.]

See also Arkansas Gross Receipts Tax Rule GR-12.1.

Under the statutory subdivision, the forty-five (45) day time limitation is mandatory, leaving no discretion for this Office to utilize a different time limitation. This requirement for the motor vehicle tax credit was created by the Arkansas General Assembly, and the statutory language is mandatory and does not allow a waiver even for extenuating circumstances. 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.

Further, 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 corporations. It is settled law that a corporation and its shareholders are separate and distinct entities. 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, in part:

In 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.”).

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.

Here, the record shows that the Taxpayer purchased Vehicle A on December 10, 2018 for [REDACTED].⁹

Vehicle B was sold on January 15, 2019, and the Taxpayer does not appear to have been the owner of this vehicle at the time of sale. The Taxpayer cannot claim entitlement to the motor vehicle tax credit based on the sale of Vehicle B since it has not established by a preponderance of the evidence that the Taxpayer owned and sold Vehicle B.

Vehicle C appears to be individually owned and sold by [REDACTED] [REDACTED] on either January 15, 2019 or April 19, 2019. The Taxpayer cannot

⁹ While [REDACTED] may have intended to state that he purchased Vehicle A as a sole proprietorship, the record clearly demonstrates that the Taxpayer (an Arkansas domestic corporation) purchased Vehicle A. The separate corporate existence cannot be disregarded or ignored under the provided citations.

claim entitlement to the motor vehicle tax credit based on the sale of Vehicle C since it is not evident that the Taxpayer owned and sold that vehicle. It is also uncertain whether that vehicle's sale occurred within forty-five (45) days of Vehicle A's purchase. Consequently, the Taxpayer is not entitled to the motor vehicle tax credit based on this sale.

Vehicle D appears to be jointly owned by the Owner and the Taxpayer and was sold by the Taxpayer on February 4, 2019. It does not appear that the Taxpayer claimed entitlement to the motor vehicle tax credit on this sale at registration. Even if it had, however, the sale of Vehicle D did not occur within forty-five (45) days of Vehicle A's purchase. Consequently, the Taxpayer is not entitled to the motor vehicle tax credit based on this sale.

To the extent that the Owner'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, at the time that the Owner was assisted at the revenue office, Vehicle A was already purchased by the Taxpayer, and the sales of Vehicles B and C could not be utilized to claim the motor vehicle tax credit based on the reasons outlined above. Additionally, the actual assertions at the time of registration and the Department's employees' knowledge of the preexisting ownership of the associated vehicles is another uncertainty. An estoppel defense has not been established by a preponderance of the evidence.

As a result of these conclusions, the Taxpayer's motor vehicle tax credit claims were correctly denied. The assessment of tax is sustained.

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). That code section provides the following statement, in pertinent part:

Interest **shall be collected on tax deficiencies** and paid on overpayments as follows:

- (1) **A tax levied under any state tax law which is not paid when due is delinquent.** Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment;
- (2) Interest on a tax deficiency shall be assessed at the same time as the tax deficiency. The tax deficiency together with the interest shall be paid upon notice and demand by the Secretary of the Department of Finance and Administration; . . . [Emphasis supplied.]

Based on the above analysis, the Taxpayer did not pay the full amount of sales tax that was owed on the purchase of Vehicle A. The use of the term "shall" indicates that this Office lacks authority to otherwise waive or set aside an assessment of interest upon a sustained tax deficiency. Further, this Office does not possess the

settlement authority authorized under Ark. Code Ann. § 26-18-705 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained.

DECISION AND ORDER

The assessment 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 (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.¹⁰

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 29, 2021

¹⁰ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.