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

ADMINISTRATIVE DECISION

IN THE MATTER OF [redacted] ACCT. NO.: [redacted] DOCKET NO.: 21-301	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 February 1, 2021, and signed by [redacted] (individually "Taxpayer MGN"), on behalf of herself 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 Daniel L. Parker, Attorney at Law, Office of Revenue Legal Counsel.[2]

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 March 5, 2021. The Department's Opening Brief was filed on March 8, 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 May 6, 2021.

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[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 assessed that Taxpayer MGN "had to pay the $[redacted] before I could get my new tag issued. [P. 1]."
[2] He is no longer an employee of the Department.

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 January 26, 2021.[3] A letter signed by Taxpayer MGN was attached to the Taxpayers' Protest Form stated, as follows:

> Please find enclosed the Protest Form for the above mentioned case number, etc, a copy of documentation where I sold my [redacted] and paid sales tax on my [redacted] dated 2/13/19.
>
> Your letter said I owed [redacted] On February 13, 2019 I took all the enclosed information to your Revenue Office here in [redacted] and I paid exactly what they said I owed . . . $[redacted]. No one mentioned there would be any issue with me getting credit for the price of the [redacted] vehicle I sold. Nothing on the Bill of Sale indicated there would be a problem. I owned and sold my [redacted]. Copy of title shows [redacted].
>
> So two years later I get a letter saying I owe $[redacted] PLUS interest of [redacted]. I feel I do not owe the $[redacted] and certainly don't owe any interest $[redacted], as it was definitely not my fault if the correct amount owed was not collected at the time when this transaction was done. I did exactly what your revenue agent told me to do to get the tax credit.
>
> When I got your letter I went to the Revenue Office and had to pay the $[redacted] before I could get my new tag issued. I feel that I did what I was supposed to do to get the sold vehicle credit, and definitely do not feel I owe interest on something that was not my fault.
>
> I am asking that you refund the $[redacted] plus the interest of $[redacted], I just paid and explain why this is now being addressed after two years. [P. 1].

[3] See Department Exhibit 7.

The Department's Opening Brief set forth the Department's position in this matter and stated, in pertinent part, as follows:

> On February 13, 2019, (the "Taxpayers") purchased a . . . (the " ") from of Arkansas, for $. A copy of the Bill of Sale is attached as **Exhibit 1.** A copy of the Certificate of Title showing Taxpayers as the purchasers is attached as **Exhibit 2.**
>
> On February 13, 2019, , as Trustee of the (the "Trust") privately sold a . . . (the " ") for $. A copy of the Bill of Sale is attached as **Exhibit 3.** A copy of the Certificate of Title and Title Assignment showing the Trust as the seller is attached as **Exhibit 4.**
>
> On February 13, 2019, Taxpayers registered the and paid sales tax on the purchase price, less a deduction of $ for the sale of the . *See* Application for Title attached as **Exhibit 5.**
>
> By letter dated December 7, 2020, the Department advised Taxpayer that the sales tax credit and deduction of $ for the sale of the from the sales price of the had been disallowed because the Department's records reflect that the vehicle sold was not registered to the same consumer. *See* Deduction from New Purchase Letter attached as **Exhibit 6.**
>
> The vehicle sold was registered to the " and the vehicle purchased is registered to ." On January 26, 2021, the Department sent Taxpayer a Notice of Proposed Assessment **(Exhibit 7**), Explanation of Tax Adjustment **(Exhibit 8),** and Billing Statement **(Exhibit 9)** for after disallowing the sales tax credit.
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> By Protest Form and letter dated February 1, 2021, with accompanying documents (the "Protest" - attached as **Exhibit 10),** Taxpayers timely protested the Notice of Proposed Assessment and requested a determination based upon written documents. As grounds for the Protest, Taxpayers assert: (1) that Taxpayers paid exactly the amount computed at the time of registration and "[n]o one mentioned there would be any issue with . . . getting credit for the price of the sold"; (2) that Taxpayers should not be required to pay an assessment issued "two years

later" or any interest because it was not Taxpayers' fault the proper amount was not collected at the time of registration; and (3) incorrectly that Taxpayers owned the [redacted] and its "title shows [redacted]." Taxpayers request a refund of the $[redacted] ($[redacted] assessment and $[redacted] interest) they paid to renew the [redacted] registration.

. . .

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)(l)(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 when applying the sales tax credit to: (1) treat one or more individuals as the same legal entity as a trust; or (2) restructure a taxpayer's transaction after the fact.

Taxpayers bears the burden of proving by a preponderance of the evidence that the claimed sales tax credit was proper. Taxpayers have failed to prove that they were the owners of both the [redacted] that was sold and the [redacted] that was purchased. Taxpayers were not the registered owner of the [redacted] but *are* the registered owners of the [redacted]. The law does not allow Taxpayers' purchase and sale transactions to be restructured or recharacterized in order to avoid paying sales tax. The Taxpayers and the [redacted] are separate legal entities for tax purposes.

CONCLUSION

Applying the law to the facts of this case, the Taxpayers are not entitled to a sales tax credit related to the sale of the [redacted] which was owned by the Trust. The Taxpayers failed to prove entitlement to the claimed tax credit and therefore the Department properly disallowed the sales tax credit and charged interest on the unpaid amount. [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),[4] 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 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

[4] 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."

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,[5] 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.[6] 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[.]"[7]

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

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[5] 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.").

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

[7] This is controlling authority for the Office of Hearings and Appeals.

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.

Estoppel

While the Taxpayers did not expressly assert the defense of estoppel, the legal doctrine may be implicated by the contention regarding a statement or statements of a "revenue agent." The Office of Hearings and Appeals has analyzed the legal doctrine in numerous cases involving alleged errors made by employees of the Department. 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.] ....

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.

. . .

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). These requirements are equally applicable to municipal corporations. *Miller v. City of Lake City*, 302 Ark. 267, 789 S.W.2d 440 (1990). In the instant case there is no allegation of any affirmative misrepresentation by any agent of the City. The chancellor was correct in not applying estoppel to the City because of the City's acquiescence in appellant's use of the house as an apartment for many years.

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. *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939). See also *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989); *Dunkin v. Citizens Bank of Jonesboro*, 291 Ark. 588, 727 S.W.2d 138 (1987).

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

The Taxpayers failed to obtain a binding Legal Opinion, under Arkansas Gross Receipts Tax Rule GR-75, regarding the credit for the private sale of a motor vehicle in lieu of a trade-in. 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. Absent a binding Legal Opinion issued pursuant to Arkansas Gross Receipts Tax Rule GR-75, informational assistance provided by an employee of the Department (or even no communication) does not relieve the Taxpayers 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. The Department correctly disallowed the claimed credit and assessed sales tax against the Taxpayers.

Interest

With respect to the Taxpayers' arguments concerning the assessment of interest, Ark. Code Ann. § 26-18-508 (Repl. 2020) states, in 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 added].

It is noteworthy that the statute establishing the assessment and collection of interest on a tax deficiency utilizes the term "shall." Utilization of the term "shall" indicates a mandatory action. Based on the mandatory statutory

language, in the absence of the authority provided in Ark. Code Ann. § 26-18-705(b) (Repl. 2020), the Office of Hearings and Appeals does not have the discretion to waive the assessment of interest. 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).

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.[8]

OFFICE OF HEARINGS & APPEALS

RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 11, 2021

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