

**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.: 21-312**

**LETTER ID: [REDACTED]  
(\$ [REDACTED])<sup>1</sup>**

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**RAY HOWARD, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated January 13, 2021, and signed by [REDACTED], 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 Nina Samuel Carter, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented himself. A Briefing Schedule was mailed to the parties on March 9, 2021. The Department’s Opening Brief was filed on March 15, 2021. The Taxpayer did not file a Response Brief but the Taxpayer’s Protest Form was received into evidence. The matter was submitted for a decision on May 6, 2021.

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

## 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 November 16, 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 December 27, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . (the [REDACTED] ") from [REDACTED] of [REDACTED] for \$ [REDACTED] (\$ [REDACTED] purchase price plus \$ [REDACTED] service and handling fee). Taxpayer financed \$ [REDACTED] of the purchase price through the dealership, with an assignment to [REDACTED]. Copies of the Bill of Sale, the Installment Contract, and the Certificate of Title are attached collectively as **Exhibit 1**.

On January 29, 2019, Taxpayer registered the [REDACTED] with the Arkansas Office of Motor Vehicle. A copy of the Application for Title is attached as **Exhibit 2**. Using a Bill of Sale reflecting the sale of a used [REDACTED] (the "[REDACTED]"), the Taxpayer received a trade-in sales tax credit in the amount of \$ [REDACTED]. A copy of the Bill of Sale for the [REDACTED] is attached as **Exhibit 3**. [REDACTED] was listed as the seller on the Bill of Sale, however, when the [REDACTED] was sold, the title was solely in the name of [REDACTED] and not [REDACTED] in his individual capacity. Copies of the Certificate of Title and Title Assignment for the [REDACTED] are attached as **Exhibit 4**. The Title Assignment is signed by [REDACTED] and [REDACTED]. Upon information and belief, [REDACTED] is an officer of [REDACTED].

On or about November 4, 2020, the Department of Finance and Administration (the "Department") determined that the Taxpayer was **not** the registered owner of the [REDACTED] and mailed a letter to the Taxpayer regarding the sales tax credit for the vehicle. See Deduction from New Purchase letter, attached as **Exhibit 5**. The

letter advised the Taxpayer that because he was not the registered owner of the [REDACTED], he could not be the *consumer* who sold the vehicle. As a result, the Taxpayer was informed that no credit on the [REDACTED] would be allowed toward the purchase price of the [REDACTED].

On November 16, 2020, the Department issued a Notice of Proposed Assessment to Taxpayer in the amount of \$ [REDACTED]. The assessment consisted of tax in the amount of [REDACTED] and interest in the amount of \$ [REDACTED] with a credit for payments made in the amount of \$ [REDACTED]. No penalty was assessed. See Notice of Proposed Assessment, attached as **Exhibit 6**. The assessment was based on the purchased vehicle price of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment. See the Explanation of Tax Adjustment, dated November 16, 2020, attached as **Exhibit 7**.

The Taxpayer timely protested the assessment claiming:

*I own [REDACTED] and had put my [REDACTED] in that name. I knew I was closing my DBA business and put my [REDACTED] in my name. I believe I do not owe this. I pay taxes on [REDACTED] myself.*

A copy of the Protest is attached as **Exhibit 8**.

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In order to prevail on the refund claim herein, the Taxpayer must demonstrate, by a preponderance of the evidence, that he sold the [REDACTED] in a private sale within 45 days of the date of purchase of the [REDACTED]. The Department's records indicate that (1) the [REDACTED], purchased on December 27, 2018, for \$ [REDACTED], is registered to [REDACTED], individually; (2) the [REDACTED] was sold to a third party on January 11, 2019, for \$ [REDACTED]; and that (3) Taxpayer was not the registered owner of the [REDACTED], as it was registered to [REDACTED], the business.

[REDACTED] and [REDACTED], an individual, are two separate and distinct consumers. Moreover, they are separate legal entities, with separate legal rights and obligations. Arkansas law does not provide for transfers of credit between two different consumers.

Applying the law to the facts of this case, the Taxpayer is not eligible to claim the credit for the sales prices of the [REDACTED] to be applied against the purchase price of the [REDACTED]. Therefore, the Department's denial of the trade in which resulted in an assessment is proper. [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),<sup>2</sup> 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);

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<sup>2</sup> 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.”

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].” 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].<sup>3</sup>

Applying the law to the facts of this case, the Taxpayer was not entitled to claim a sales tax credit on his purchase of the [REDACTED] when the vehicle sold in lieu of a trade-in (the [REDACTED]) was owned by a separate and distinct legal entity [REDACTED]. The Taxpayer failed to prove entitlement to the claimed sales tax credit. Consequently, the Department correctly assessed sales tax against the Taxpayer.

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<sup>3</sup> 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.”).

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](mailto: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.<sup>4</sup>

**OFFICE OF HEARINGS & APPEALS**



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**RAY HOWARD**  
**ADMINISTRATIVE LAW JUDGE**

DATED: May 11, 2021

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<sup>4</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.