

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

██████████
(ACCT. NO.: ██████████)

DOCKET NO.: 16-187

**GROSS RECEIPTS
TAX ASSESSMENT**

**LETTER ID: ██████████
ASSESSED AMOUNT: ██████████**

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated November 16, 2015, signed by ██████████ (Registered Agent) on behalf of ██████████, the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

At the request of the Taxpayer, this case was taken under consideration of written documents submitted by the parties. A briefing schedule was approved for the parties on November 30, 2015. The Department was represented by Greg Ivester, Attorney at Law, Office of Revenue Legal Counsel. The Department’s Opening Brief was filed on December 2, 2015. The Taxpayer filed its Response Brief on January 22, 2016. The Department filed its Reply Brief on February 11, 2016.

ISSUE

Whether the remaining balance of the assessment issued against the Taxpayer should be sustained? Yes.¹

¹ In the Department’s Reply Brief, it waived the penalty originally assessed in this matter. Consequently, this decision will not address that portion of the assessment.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department's Opening Brief discussed the relevant facts of this case and stated, in part:

On April 16, 2015, [REDACTED], an individual consumer different than the Taxpayer, sold a [REDACTED] (the "individual's vehicle") ["VEHICLE A"] for [REDACTED] in a private sale to another individual. The Arkansas Certificate of Title is attached as **Exhibit 1**. An Affidavit in regard to the title was completed on April 17, 2015, indicating that the "Date of purchase should have been '2015' not '2005'. No intent for fraud." The Affidavit of Alteration is attached as **Exhibit 2**. On April 24, 2015, [REDACTED] ("Taxpayer") purchased a [REDACTED] [REDACTED] [REDACTED] [REDACTED] (the "business truck") ["VEHICLE B"] for [REDACTED]. The Arkansas Certificate of Title, indicating an authorized person acting in his official capacity to purchase the truck "[REDACTED]", is attached as **Exhibit 3**.

When the Taxpayer registered the business truck, a motor vehicle sales tax credit for [REDACTED] for the private sale of the individual's vehicle was initially applied. As a result, the Taxpayer paid sales taxes only on the net difference of [REDACTED] at the time of registration of the business truck. *See* Taxpayers' signed Application for Title for the business truck, attached as **Exhibit 4**. Additionally, a Truck Registration Signature Document was signed regarding the business truck, indicating the sole owner was [REDACTED]. *See* Truck Registration Signature Document, attached as **Exhibit 5**.

A copy of the front and back of the title to VEHICLE A (attached as Exhibit 1 to the Department's Opening Brief) demonstrates that "[REDACTED]" was the registered owner and was listed as the Seller on the back of that title. A copy of the back of the title to VEHICLE B is attached as Exhibit 3 to the Department's Opening Brief and provides the purchaser name as "[REDACTED]."

In the Department's Opening Brief, the Department contends that the Taxpayer is not entitled to the motor vehicle sales tax credit under Ark. Code Ann. § 26-52-510(b)(1)(C) (Repl. 2014) because VEHICLE A was owned individually by the Registered Agent and not the Taxpayer. Consequently, the Department argues that the

Taxpayer did not sell VEHICLE A and was not entitled to the motor vehicle sales tax credit against the taxes that it owed on its purchase of VEHICLE B.

In its Response Brief, the Registered Agent contended that the Taxpayer and Registered Agent should be treated as the same person for purposes of the motor vehicle sales tax credit because the Taxpayer is a single member LLC that is disregarded in the Registered Agent's income tax returns and the Registered Agent is ultimately liable for the Taxpayer's tax liabilities as a result; though the Taxpayer claimed the credit at registration, the Taxpayer was not negligent because it is not knowledgeable of the State's tax laws and the Department's Revenue Office employee at the time of registration did not object to the Taxpayer claiming the credit²; and the Department waited over five (5) months before assessing the Taxpayer and the Taxpayer would have addressed the issue immediately if the Taxpayer had known of the issue, so the interest amount should be removed.

In the Department's Reply Brief, the Department asserted that stockholders and corporations are legally distinct entities (citing *Mountain Valley Superette v. Bottorff*, 4 Ark.App. 251, 254–255, 629 S.W.2d 320, 322 (1982)) and must be treated as legally distinct entities under Ark. Code Ann. § 26-52-510(b)(1)(C) (Repl. 2014). Further, the Department stated the penalty had been waived in this matter and that interest must be assessed on tax deficiencies under Ark. Code Ann. § 26-18-508 (Repl. 2012).

² This argument appears to be related to the negligence penalty that the Department stated it assessed in the Department's Opening Brief. That penalty, however, was waived and removed from this assessment in the Department's Reply Brief.

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2015) 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) (Supp. 2015). 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) (Supp. 2015). 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) (Supp. 2015).

Legal Analysis

Arkansas sales tax generally applies to entire gross receipts of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Repl. 2014). For purchases of motor vehicles, the consumer is required to directly pay the accompanying sales tax liability to the Department. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2014). Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) 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.

See also Arkansas Gross Receipts Tax Rule GR-12.1.

Ark. Code Ann. § 26-52-103(3)(A) 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.” Under the provisions cited above, Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) 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, it is apparent that the Taxpayer purchased VEHICLE B; however, VEHICLE A was personally owned and sold by the Registered Agent. While the Taxpayer might be a single member limited liability company owned by the Registered Agent that is filed as a disregarded entity for income tax purposes, Ark. Code Ann. § 4-32-701(a) (Repl. 2001) discusses property ownership by limited liability companies and specifically provides: “Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.” Consequently, the Taxpayer was not entitled to the motor vehicle sales tax credit and the Department correctly assessed the additional sales tax against the Taxpayer.

Interest must be assessed against tax deficiencies pursuant to Ark. Code Ann. § 26-18-508 (Repl. 2012).

DECISION AND ORDER

The assessment is sustained (excluding the penalty portion which was previously waived by the Department). 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 (Supp. 2015), 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 - Policy & Legal, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. 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. The Taxpayer may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on an assessment by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: February 18, 2016