



STATE OF ARKANSAS
**BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Jessica Whittaker, Assistant Director
for Research Services
Eric Sanders, Assistant Director
for Information Technology Services

***Claims Review/Litigation Reports Oversight Subcommittee
of the Arkansas Legislative Council
Claims Subcommittee of the Joint Budget Committee
Statement of Redaction of Confidential Information***

Style of Case: Jim Hudson, Secretary, DFA v. Richard Whitsitt

Docket Number: 60CV-23-7617

Type of Matter (please circle one): Claims Review **Litigation Reports Oversight**

As indicated by my signature below:

- I acknowledge that all documents submitted to the Subcommittee may be considered a public record pursuant to Arkansas Code § 25-19-103(7)(A) and may be published or disseminated by the Subcommittee for purposes of its consideration.
- I further acknowledge that it is my responsibility to review each document submitted to the Subcommittee and make any necessary redactions.
- I certify that I have reviewed each document submitted herein and have redacted any information in which an individual may be considered to have a reasonable expectation of privacy under state or federal law or that is considered confidential and required to be redacted under state or federal law.

Brad Young
Signature

Bradley B. Young
Name

Managing Attorney, DFA
Title and Agency

May 19, 2025
Date



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

State Agency Litigation Notification Form

Dear Agency Director:

Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."

In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to desikans@blr.arkansas.gov.

DATE REPORTING:			
Agency:		Phone:	
E-mail:		Contact:	
1. STYLE OF THE CASE BEING LITIGATED			
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)			
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED			
3A. OTHER DESCRIPTION INFORMATION			
Docket Number			
Date Filed			
Defendant			
Defendant Attorney			
Plaintiff			
Plaintiff Attorney			
4. ANY OTHER RELEVANT INFORMATION			
4A. OTHER RELEVANT INFORMATION			
Case History			
Relief Sought			
Current Status			

A.C.A. § 10-3-312

Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 10 General Assembly
- Chapter 3 Committees
- Subchapter 3-- Legislative Council

10-3-312. NOTIFICATION OF LAWSUITS AFFECTING STATE.

- (a) In order that the General Assembly may take whatever steps it deems necessary concerning lawsuits which may affect the State of Arkansas, its officials, or its financial resources:
 - (1) The Attorney General shall notify the Director of the Bureau of Legislative Research who is the Executive Secretary to the Legislative Council as soon as possible after the Attorney General becomes involved in such litigation;
 - (2) **When any state agency or any entity which receives an appropriation of funds from the General Assembly becomes involved in litigation without representation by the Attorney General, the director or administrative head of the agency shall notify the Director of the Bureau of Legislative Research as soon as possible.**
- (b) The notice given by the Attorney General or by the director or administrative head of a state agency to the Director of the Bureau of Legislative Research shall include the style of the case being litigated, the identity of the tribunal before which the matter has been filed, a brief description of the issues involved, and other information that will enable the Legislative Council or the Joint Budget Committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter.
- (c) Upon receipt of the notice, the Director of the Bureau of Legislative Research shall during the interim between legislative sessions transmit a copy of the notice to the cochairs of the Legislative Council and to the cochairs of the Joint Budget Committee during legislative sessions in order that those committees may schedule that matter upon their respective agendas at the earliest possible date.
- (d) During the interim between legislative sessions, the Legislative Council shall determine, and during legislative sessions the Joint Budget Committee shall determine, whether the General Assembly has an interest in the litigation and, if so, take whatever action deemed necessary to protect the General Assembly's and the state's interest in that matter.

HISTORY

Acts 1987, No. 798, §§ 1, 2.

Arkansas Code of 1987 Annotated Official Edition
© 2018 by the State of Arkansas All rights reserved.

A.C.A. § 10-3-312 (Lexis Advance through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission)

MEMORANDUM

TO: Arkansas Legislative Council
Litigation Reports Oversight Subcommittee
Sen. Jim Dotson, Co-Chair
Rep. DeAnn Vaught, Co-Chair

FROM: Brad Young, Managing Attorney
Arkansas Department of Finance & Administration

DATE: May 19, 2025

RE: Jim Hudson, Secretary, DFA v. Richard Whitsitt
Pulaski County Circuit Court No. 60CV-23-7617
REQUEST FOR REVIEW AND APPROVAL OF SETTLEMENT BY
THE LEGISLATIVE COUNCIL OF THE ARKANSAS GENERAL ASSEMBLY
Ark. Code Ann. § 10-3-312(d)

SETTLEMENT AGREEMENT

This case arises from a request for judicial review of a decision by the Tax Appeals Commission. The defendant, Richard Whitsitt, bought and registered a vehicle in his individual capacity. At the time of registration, Whitsitt claimed a vehicle trade-in credit on the sale of a vehicle owned by a company called Greg's Too, Inc. Because Whitsitt, who was the consumer who claimed the credit when he registered the new vehicle, was not the same consumer as Greg's Too, which was the consumer that sold the used vehicle, the Department determined that Whitsitt was not entitled to claim the credit.

The Department issued a tax assessment in the amount of \$2,600.00 in additional taxes, \$0.00 in penalties, and \$606.90 in interest. The Tax Appeals Commission reversed the tax assessment, and the Department appealed. The parties have reached a settlement. A copy of the Settlement Agreement is attached. Whitsitt has agreed to pay the remaining tax in the amount of \$2,600.00, and the Department has agreed to waive the interest.

The parties request that this matter be placed on the Legislative Council's agenda for review at the earliest possible date.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of May 12, 2025 by and between Jim Hudson, in his official capacity as Secretary for the Arkansas Department of Finance and Administration (the "Department") and Richard Whitsitt ("Whitsitt"). The Department is the plaintiff, and Whitsitt is the defendant, in Case No. 60CV-23-7617, *Jim Hudson, in his Official Capacity as Secretary for the Arkansas Department of Finance and Administration v. Richard Whitsitt*, in the Circuit Court of Pulaski County, Arkansas. The terms of this Agreement are authorized by law, including Ark. Code § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

1. Within thirty (30) calendar days of the effective date of this Agreement, Whitsitt will pay the full principal amount of outstanding sales tax for the proposed assessment dated March 14, 2023 in the amount of \$2,600.00, and the Department will accept this payment as full and final settlement of all of Whitsitt's sales tax liability relating to this assessment.

2. Upon receipt of payment, the Department will waive and release all claims against Whitsitt for interest related to the assessment.

3. This Agreement will be submitted for approval to the Legislative Council. The Department and Whitsitt agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent to the enforceability of this Agreement. Whitsitt authorizes disclosure of this Agreement as may be required to obtain approval from the Legislative Council.

4. Within thirty (30) calendar days from the date that this Agreement receives legislative approval, the parties will submit a proposed order to the circuit court that substantially conforms to the attached Exhibit A. Each party is responsible for its own costs and attorney's fees.

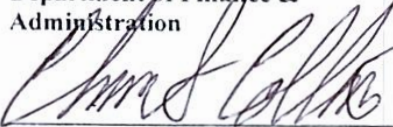
SIGNED this 12th day of May 2025.

Richard Whitsitt



Richard Whitsitt

Department of Finance &
Administration



Charlie Collins
Commissioner of Revenue
Arkansas Department of Finance and
Administration

Exhibit A

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
THIRD DIVISION

JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY FOR THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

PLAINTIFF

v.

CASE NO.: 60CV-23-7617

RICHARD WHITSITT

DEFENDANT

ORDER

Comes before the Court, Plaintiff's Motion for Summary Judgment and Defendant's Counter-Motion for Summary Judgment. The Court, being well and fully advised, finds as follows:

1. The parties filed cross-motions for summary judgment.
2. The Court finds that there are no disputed issues of material fact. This case is ripe for decision.
3. The Plaintiff's Motion for Summary Judgment is GRANTED. Defendant was not entitled to receive a used vehicle trade-in credit pursuant to Ark. Code § 26-52-510. The consumer who purchased the 2020 Dodge Ram, Richard Whitsitt, was not the same consumer that sold the 2015 Dodge Ram, Greg's Too, Inc.
4. The Arkansas Tax Appeals Commission's September 7, 2023 decision, as corrected October 12, 2023, is overturned.

5. All other claims or requests for relief not hereby granted are denied.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Honorable Cathleen V. Compton
Circuit Court, 3rd Division

Date: _____

APPROVED:

/s/ Bradley B. Young

Bradley B. Young | ABN 2015028

Nina Samuel Carter | ABN 2001121

Office of Revenue Legal Counsel

PO Box 1272, Room 2380

Little Rock, Arkansas 72203

(501) 682-7030

brad.young@dfa.arkansas.gov

nina.carter@dfa.arkansas.gov

Counsel for plaintiff

David Charles Gean

GEAN, GEAN & GEAN

511 Garrison Avenue

Fort Smith, Arkansas 72901

(479) 783-1124

davidgean@geanlaw.com

Counsel for defendant

<p>ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2023-Oct-05 14:08:28 60CV-23-7617 C06D17 : 4 Pages</p>
--

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

**JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY FOR THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

PLAINTIFF

v. CASE NO.: 60CV-__-__

RICHARD WHITSITT

DEFENDANT

COMPLAINT

Now comes Jim Hudson, Secretary of the Arkansas Department of Finance and Administration (“Department”), and files this, his Original Complaint:

I. Introduction

1. This is a de novo appeal regarding a motor vehicle tax assessment. Arkansas law allows a consumer to claim a “trade-in credit” from the sale of a used vehicle against the sales tax due on the purchase of a new vehicle. The credit must be taken at the time of registration of the new vehicle. Ark. Code Ann. § 26-52-510 (Repl. 2020). The amount of the credit is the “amount received from the sale of [a] used vehicle” if the sale occurred within forty-five days from when the consumer purchased a new vehicle.” *Id.*¹ Put another way, if a consumer registers a new vehicle in Arkansas, normally the consumer has to pay sales tax on the full purchase price of the new vehicle. A properly claimed trade-in credit allows the consumer to subtract the sales price of the used vehicle from the purchase price of the new vehicle and only pay tax on the difference.

¹ In 2021, the General Assembly lengthened the time frame to sixty days.

2. In this case, the defendant, Richard Whitsitt (“Whitsitt”), registered a 2020 Dodge Ram (the “2020 Ram”) in his individual capacity. Whitsitt claimed a vehicle trade-in tax credit on the sale of a 2015 Dodge Ram (the “2015 Ram”) owned by a company called Greg’s Too, Inc. (“Greg’s Too”). Because Whitsitt, who was the consumer who claimed the credit when he registered the 2020 Ram, was not the same consumer as Greg’s Too, which was the consumer that sold the 2015 Ram, the Department determined that Whitsitt was not entitled to claim the credit.

3. The Department issued a tax assessment. Whitsitt appealed the assessment to the Arkansas Tax Appeals Commission. The Commission reversed the assessment. The Department files this de novo review of the Commission’s decision.

II. Parties

4. The Department is an agency of the State of Arkansas charged with administering the sales tax.

5. Whitsitt is a resident of Sebastian County, Arkansas. He may receive service of process at 3001 Ben Rainy Lane, Central City, Arkansas 72941-7634.

III. Jurisdiction, Venue, and Standard of Review

6. Because this is an appeal under the Arkansas Tax Procedure Act, the Court has subject matter jurisdiction under Ark. Code § 26-18-406(c)(1)(B) and § 26-18-1117(b)(1). Venue is proper under the same statutes.

7. The filing of this suit is timely under Ark. Code. § 26-18-406(b)(2).

8. The standard of review for an appeal of a decision by the Tax Appeals Commission is de novo. Ark. Code § 26-18-406(c) and § 26-18-1117(b)(3).

IV. Facts

9. In 2020, Whitsitt bought the 2020 Ram in his individual capacity. The purchase invoice, which Whitsitt signed, identified Whitsitt individually as the purchaser. Whitsitt signed the certificate of origin in his individual capacity. On November 13, 2020, Whitsitt signed a State of Arkansas “Application for Title” in his individual capacity on which he requested that the Department register the 2020 Ram in his individual name. As requested by Whitsitt in his application for title, the Department issued title to the 2020 Ram to Whitsitt individually as the owner. What Whitsitt did with the 2020 Ram after he registered it is not relevant to whether he was entitled to a motor vehicle trade-in credit on the date of registration.

10. On October 26, 2020, Greg’s Too sold the 2015 Ram. Whitsitt signed the front of the certificate of title issued to Greg’s Too by writing “Greg’s Too Greg Whitsitt.” Whitsitt signed the title assignment on the back of the certificate of title by writing “Greg’s Too Greg Whitsitt.” Whitsitt did not write “Greg’s Too Greg Whitsitt” on the purchase and registration paperwork for the 2020 Ram as he did for the 2015 Ram.

11. Because the consumer who purchased the 2020 Ram (Whitsitt, individually) was not the same consumer who sold the 2015 Ram (Greg’s Too), the Department correctly disallowed the trade-in credit and assessed Whitsitt for the unpaid difference in sales tax. Whitsitt timely appealed the assessment to the Arkansas Tax Appeals Commission. On September 7, 2023, the Tax Appeals Commission issued a decision reversing the Department’s tax assessment.

12. On September 20, 2023, the Department filed a motion for reconsideration with the Commission. The Commission has not ruled on the motion. Therefore, on October 4, 2023, the Department filed with the Commission a notice of intent to seek judicial review. The filing of the

notice stayed the implementation of the Commission's September 7, 2023 order. Ark. Code § 26-18-1116(c)(2).

13. The Department timely filed this appeal pursuant to Ark. Code § 26-18-406(b)(2).

V. Cause of Action

14. As a matter of law, Whitsitt was not entitled to claim a trade-in credit for the sale of a vehicle owned by another taxpayer. The Tax Appeals Commission erred when it ordered the Department to reverse the assessment resulting from the disallowed credit. The Department is entitled to a judgment sustaining the assessment.

PRAYER

FOR THESE REASONS, Plaintiff, Jim Hudson, Secretary of the Arkansas Department of Finance and Administration, prays that the Court enter judgment sustaining the tax assessment, that the Court award court costs pursuant to Ark. Code § 26-18-406(e), and for such other relief to which the Court determines the Department is entitled.

Respectfully Submitted,

Jim Hudson,
in his official capacity as Secretary
of the Arkansas Department
of Finance and Administration

By: 

Bradley B. Young | ABN 2015028
Nina Samuel Carter | ABN 20011121
Office of Revenue Legal Counsel
PO Box 1272, Room 2380
Little Rock, AR 72203
Phone: (501) 682-7030
brad.young@dfa.arkansas.gov
nina.carter@dfa.arkansas.gov

ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2023-Oct-30 16:53:03 60CV-23-7617 C06D17 : 13 Pages
--

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY FOR THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

PLAINTIFF

V.

CASE NO. 60CV-23-7617

RICHARD WHITSITT

DEFENDANT

ANSWER

Comes now the defendant, Richard Whitsitt, by and through his attorney, David Charles Gean, and for his Answer to the Complaint filed by the plaintiff, Jim Hudson, in his official capacity as Cabinet Secretary for the Arkansas Department of Finance and Administration, alleges and states:

1. That the defendant denies each and every allegation alleged in the plaintiff's Complaint not specifically admitted herein.

2. That see attached the corrected decision and the Order on DFA Motion for Reconsideration which was issued by the Arkansas Tax Appeals Commission in the following case: Richard Whitsitt v. Department of Finance and Administration, Docket No. 23-TAC-00776; Account No. 432ZNP; Letter ID: L1662893392.

3. That the defendant is entitled to the tax exemption, deduction or credit. That the defendant erroneously titled the 2020 Ram in his individual name and the true owner of the 2020 Ram is his company not him individually.

4. That the defendant alleges the affirmative defenses of statute of limitations, statute of frauds, waiver, laches, payment, release, set-off and any other matter constituting an avoidance or affirmative defense.

5. That the defendant reserves the right to file an amended answer.

WHEREFORE, PREMISES CONSIDERED, the defendant, Richard Whitsitt, prays that the plaintiff's Complaint be denied and held for naught, attorney fees, costs and for any and all proper relief to which the defendant may be entitled.

RICHARD WHITSITT, Defendant

GEAN, GEAN, & GEAN
Attorneys at Law
511 Garrison Avenue
Fort Smith, Arkansas 72901
Ph. (479) 783-1124
Fax (479) 783-2440

BY




David Charles Gean
Arkansas Bar No. 90126

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served a true and correct copy of the above and foregoing pleading upon the following parties in this action:

Bradley B. Young
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203
via: e-file

DATED this 31st day of October, 2023.



David Charles Gean



Docket No. 23-TAC-00776

Richard Whitsitt v.
Department of Finance and Administration

Account No.: 432ZNP
Letter ID: L1662893392

CORRECTED DECISION

This matter concerns whether the sale of a certain used vehicle qualifies for a trade-in sales tax deduction. Taxpayer Richard Greg Whitsitt seeks relief from a Notice of Proposed Assessment issued by the Department of Finance and Administration (“DFA”) disallowing the claimed deduction for a sale of a vehicle in-lieu of trade-in. Taxpayer’s petition is granted and the assessment issued by the DFA is overturned.

Procedural Background

The DFA issued the Notice of Proposed Assessment (“Assessment”) to Taxpayer on March 14, 2023. Taxpayer filed a Petition on March 22, 2023. An evidentiary hearing was held on August 16, 2023. Taxpayer represented himself. Also present was Lori Runyon from Taxpayer’s office. The DFA was represented by Nina Samuel Carter, Office of Revenue Legal Counsel. Testifying for the DFA was Barbara Montgomery, DFA Fiscal Support Supervisor, Office of Excise Tax.

Findings of Fact

On October 23, 2020, Taxpayer purchased a 2020 Ram 3500 (the “2020 Ram”), a large truck, for \$79,733 (\$79,604 purchase price plus \$129 service and handling fee). The purchase invoice listed Taxpayer individually as purchaser.

Application for title registration of the 2020 Ram listed the Taxpayer, individually, as owner. Certificate of title was issued on January 12, 2021.

The 2020 Ram was purchased for use in Taxpayer’s business, Greg’s Too, Inc., as a wrecker. The 2020 Ram is insured in his company’s name. Arvest Bank issued a loan to Taxpayer’s company to pay for the 2020 Ram, and all payments on the loan are made by Taxpayer’s company. The 2020 Ram is fitted with auto towing equipment for use in towing

and off-road recovery of disabled vehicles. The 2020 Ram is used exclusively for Taxpayer's company, an auto repair and off-road vehicle recovery business.

On October 26, 2023, Taxpayer as principal of his company sold a 2015 Ram 3500 (the "2015 Ram"). Certificate of Title for the 2015 Ram, at time of sale by Taxpayer's company, showed the company as owner and seller. The sale price for the 2015 Ram was \$40,000. The 2015 Ram was also a wrecker truck used in Taxpayer's business. The sale of the 2015 Ram was declared on registration of the 2020 Ram, and the Taxpayer received a deduction from sale price in assessment of sales tax on the purchase of the 2020 Ram.

Taxpayer testified that when he purchased the 2020 Ram he was lacking secretarial help and the purchase invoice and application for title erroneously stated his ownership individually, that it was always his intention that the vehicle be a replacement for the 2015 Ram, used in the business, and owned in the name of his company. Taxpayer testified that he did not realize the error until receiving notice from the DFA. The DFA issued a disallowance of the deduction from sales tax, by notice dated March 7, 2023, and an Explanation of Tax Adjustment issued March 14, 2023.

The Notice of Proposed Assessment, with the disallowance of the deduction for the sale of the 2015 Ram, assessed \$2,600.00 additional tax, zero penalty, and \$606.90 interest.

I find the Taxpayer credible and his testimony that the 2020 Ram was erroneously purchased and titled in his name individually is credible. The preponderance of the evidence is that the 2020 Ram is owned by Taxpayer's company, not Taxpayer individually, regardless of how it is currently titled and in whose name the purchase invoice was completed. The original payment of sales tax for the purchase of the 2020 Ram, based on a deduction for the sale price of the 2015 Ram, is supported by the preponderance of the evidence.

Conclusions of Law

Jurisdiction

The Petition seeks relief from a Notice of Proposed Assessment reversing a deduction on assessment of sales and use tax. The Petition was timely filed with the information required by Ark. Code Ann. § 26-18-1113. Accordingly, Commission jurisdiction is proper.

Burden of Proof

The burden of proof is a preponderance of the evidence. Ark. Code Ann. § 26-18-313(c) (West, WL current through acts effective Aug. 1, 2023.).¹ The DFA 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). This case concerns a deduction, so the burden is on Taxpayer to prove entitlement to the deduction.

Sales Tax Generally

The Arkansas Gross Receipts Tax generally applies to all sales of tangible personal property unless a specific statutory exemption is applicable. Ark. Code Ann. § 26-52-301. For a purchase of a motor vehicle, the consumer is responsible for payment of the accompanying sales tax liability under Ark. Code Ann. § 26-52-510(a)(1).

A sales tax deduction for the private sale of a used motor vehicle in lieu of a trade-in is authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i). The sales tax deduction is entity-specific or person-specific. For purposes of tax deduction applied against the sales and use taxes levied on new or used car purchases, the person in whose name the vehicle is registered is usually viewed as the taxpayer. Arkansas Gross Receipts Tax Rule GR-12.1; Ark. Code Ann. §§ 26-52-510(a)(1) and (2). The deduction is based on the documentation submitted by the taxpayer. Arkansas Gross Receipts Tax Rule GR-12.1(D); Ark. Code Ann. § 26-52-510(b)(1)(C)(ii). To qualify for the deduction, the person who is liable for payment of the sales tax on the purchase of a motor vehicle must be the same consumer that subsequently sells, or previously sold, a used motor vehicle in lieu of trading it in. See also, Gross Receipts Tax Rule GR-12.1(C)(1).²

A Certificate of Title is only evidence of title, and actual title may be refuted by other competent evidence. *Ford Motor Credit Co., LLC v First Nat'l Bank of Crossett*, 2016 Ark. App. 408, 500 S.W.3d 188 (citing cases); *Lafayette Ins. Co. v Alzheimer Oil Co.*, 2007 WL 896357 (E.D. Ark. Mar. 22, 2007)(Certificate of Title not controlling as to ownership); *Masterson v. Tomlinson*, 244 Ark. 2098, 424 S.W.2d 380 (1968), citing *Robinson v. Martin*, 231 Ark. 43, 328 S.W.2d 260 (1959) (“ . . . the certificate [of title] is not title itself but only evidence of title”)

¹ All citations to Arkansas Code Annotated are to this version unless otherwise specified.

² The Gross Receipts Tax Rules are part of DFA Excise Tax Rule 2008-3, Ark. Admin. Code 006.05.212, available at https://www.dfa.arkansas.gov/images/uploads/revenuePolicyLegalOffice/et2008_3.pdf.

and *House v. Hodges*, 227 Ark. 458, 299 S.W.2d 201 (1957)(same); see also *Johnson v. Sanders*, 2021 Ark. App. 227, 2021 WL 1774479, 3 (2021)(extrinsic evidence of sale resulting in change of ownership, without change of certificate of title prior to accident).

Taxpayer has met his burden to show that the 2020 Ram was erroneously titled in his name individually, and that the true owner of the 2020 Ram is his company, not him individually. Because the company also owned the 2015 Ram at the time of its sale, the same consumer (Taxpayer's company) bought the newer vehicle, and sold the older vehicle.

Interest

Interest is required to be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). 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. *Id.*

Final Decision and Order

The original deduction for the sale price of the 2015 Ram against the purchase price of the 2020 Ram was correct. Because the original tax due was assessed properly and paid timely, no interest is due in this case. Taxpayer's petition is granted and the proposed assessment is overturned.

Generally, a taxpayer may seek judicial relief from a final decision by the Tax Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., by filing suit for judicial relief within one hundred eighty (180) days of the date of the decision. A longer time period to file an appeal may apply, depending on the specific circumstances of the case. See Ark. Code Ann. § 26-18-406(a)(2) or (3).

A copy of this decision for publication on the Commission's website will be redacted to exclude personally identifiable information. Pursuant to Commission Rules of Procedure § 5-502, Taxpayer may submit proposed redactions within ten (10) days of the decision.

ARKANSAS TAX APPEALS COMMISSION

/s/ CLAY SLOAN

Clay Sloan, Commissioner

September 7, 2023,
as corrected October 12, 2023



Docket No. 23-TAC-00776

Richard Whitsitt v.
Department of Finance and Administration

Account No.: 432ZNP
Tax Period(s):
Letter ID: L1662893392

ORDER ON DFA MOTION FOR RECONSIDERATION

On September 6, 2023, a decision was issued in this case. On September 20, 2023, DFA filed a Motion for Reconsideration. On October 4, 2023, DFA gave notice of intent to file an appeal of the decision under applicable authority. I take notice that a Complaint seeking a trial de novo under applicable authority was filed in Pulaski County Circuit Court on October 5, 2023, Case No. CV 60CV-23-7617. DFA's motion is denied on two independent grounds:

- (1) With the filing of the Complaint in Circuit Court, which has as part of the action an assignment of error relating to a decision of the Commission, I find and conclude that I lack the authority to grant the motion for reconsideration to change the merits of the Decision;
- (2) In the alternative, and assuming that I continue to have jurisdiction to reconsider the Decision, having reviewed the DFA Motion, I do not see ground for changing the Decision on the merits.

However, if it may be of aid to the Circuit Court's action on this matter, and to the extent there is any remaining Commission jurisdiction, I have reviewed again the Commission's record and the September 6, 2023 Decision, and note two areas where the Decision should be corrected:

First, as pointed out by DFA in its Motion for Reconsideration, at two places in the Decision there is an incorrect recital of DFA action under review as a "Proposed Refund Claim Denial," when the record is clear (and was also correctly recited in some places in the Decision) the DFA action under review was a "Notice of Proposed Assessment;"

Second, the Decision inconsistently referred to the item at issue as either a deduction or a credit. The more recent Commission decisions have been characterizing this type of

case as involving a *deduction* from the determined sale price that forms the basis of sales tax, rather than as a *credit*. Without belaboring the distinction here, in most places where the word “credit” was used, “deduction” was a more consistent and appropriate word to use.

Accordingly, along with this Order is a Corrected Decision that addresses the two points above. In all other respects the Decision remains unchanged from the original, either in text or outcome. A redacted form of the Corrected Decision, and this Order, shall be appended and published with the original Decision.

ARKANSAS TAX APPEALS COMMISSION

/s D. Clay Sloan

D. Clay Sloan, Commissioner

October 13, 2023



Docket No. 23-TAC-00776

Richard Whitsitt v.
Department of Finance and Administration

Account No.: 432ZNP
Letter ID: L1662893392

CORRECTED DECISION

This matter concerns whether the sale of a certain used vehicle qualifies for a trade-in sales tax deduction. Taxpayer Richard Greg Whitsitt seeks relief from a Notice of Proposed Assessment issued by the Department of Finance and Administration (“DFA”) disallowing the claimed deduction for a sale of a vehicle in-lieu of trade-in. Taxpayer’s petition is granted and the assessment issued by the DFA is overturned.

Procedural Background

The DFA issued the Notice of Proposed Assessment (“Assessment”) to Taxpayer on March 14, 2023. Taxpayer filed a Petition on March 22, 2023. An evidentiary hearing was held on August 16, 2023. Taxpayer represented himself. Also present was Lori Runyon from Taxpayer’s office. The DFA was represented by Nina Samuel Carter, Office of Revenue Legal Counsel. Testifying for the DFA was Barbara Montgomery, DFA Fiscal Support Supervisor, Office of Excise Tax.

Findings of Fact

On October 23, 2020, Taxpayer purchased a 2020 Ram 3500 (the “2020 Ram”), a large truck, for \$79,733 (\$79,604 purchase price plus \$129 service and handling fee). The purchase invoice listed Taxpayer individually as purchaser.

Application for title registration of the 2020 Ram listed the Taxpayer, individually, as owner. Certificate of title was issued on January 12, 2021.

The 2020 Ram was purchased for use in Taxpayer’s business, Greg’s Too, Inc., as a wrecker. The 2020 Ram is insured in his company’s name. Arvest Bank issued a loan to Taxpayer’s company to pay for the 2020 Ram, and all payments on the loan are made by Taxpayer’s company. The 2020 Ram is fitted with auto towing equipment for use in towing

and off-road recovery of disabled vehicles. The 2020 Ram is used exclusively for Taxpayer's company, an auto repair and off-road vehicle recovery business.

On October 26, 2023, Taxpayer as principal of his company sold a 2015 Ram 3500 (the "2015 Ram"). Certificate of Title for the 2015 Ram, at time of sale by Taxpayer's company, showed the company as owner and seller. The sale price for the 2015 Ram was \$40,000. The 2015 Ram was also a wrecker truck used in Taxpayer's business. The sale of the 2015 Ram was declared on registration of the 2020 Ram, and the Taxpayer received a deduction from sale price in assessment of sales tax on the purchase of the 2020 Ram.

Taxpayer testified that when he purchased the 2020 Ram he was lacking secretarial help and the purchase invoice and application for title erroneously stated his ownership individually, that it was always his intention that the vehicle be a replacement for the 2015 Ram, used in the business, and owned in the name of his company. Taxpayer testified that he did not realize the error until receiving notice from the DFA. The DFA issued a disallowance of the deduction from sales tax, by notice dated March 7, 2023, and an Explanation of Tax Adjustment issued March 14, 2023.

The Notice of Proposed Assessment, with the disallowance of the deduction for the sale of the 2015 Ram, assessed \$2,600.00 additional tax, zero penalty, and \$606.90 interest.

I find the Taxpayer credible and his testimony that the 2020 Ram was erroneously purchased and titled in his name individually is credible. The preponderance of the evidence is that the 2020 Ram is owned by Taxpayer's company, not Taxpayer individually, regardless of how it is currently titled and in whose name the purchase invoice was completed. The original payment of sales tax for the purchase of the 2020 Ram, based on a deduction for the sale price of the 2015 Ram, is supported by the preponderance of the evidence.

Conclusions of Law

Jurisdiction

The Petition seeks relief from a Notice of Proposed Assessment reversing a deduction on assessment of sales and use tax. The Petition was timely filed with the information required by Ark. Code Ann. § 26-18-1113. Accordingly, Commission jurisdiction is proper.

Burden of Proof

The burden of proof is a preponderance of the evidence. Ark. Code Ann. § 26-18-313(c) (West, WL current through acts effective Aug. 1, 2023.).¹ The DFA 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). This case concerns a deduction, so the burden is on Taxpayer to prove entitlement to the deduction.

Sales Tax Generally

The Arkansas Gross Receipts Tax generally applies to all sales of tangible personal property unless a specific statutory exemption is applicable. Ark. Code Ann. § 26-52-301. For a purchase of a motor vehicle, the consumer is responsible for payment of the accompanying sales tax liability under Ark. Code Ann. § 26-52-510(a)(1).

A sales tax deduction for the private sale of a used motor vehicle in lieu of a trade-in is authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i). The sales tax deduction is entity-specific or person-specific. For purposes of tax deduction applied against the sales and use taxes levied on new or used car purchases, the person in whose name the vehicle is registered is usually viewed as the taxpayer. Arkansas Gross Receipts Tax Rule GR-12.1; Ark. Code Ann. §§ 26-52-510(a)(1) and (2). The deduction is based on the documentation submitted by the taxpayer. Arkansas Gross Receipts Tax Rule GR-12.1(D); Ark. Code Ann. § 26-52-510(b)(1)(C)(ii). To qualify for the deduction, the person who is liable for payment of the sales tax on the purchase of a motor vehicle must be the same consumer that subsequently sells, or previously sold, a used motor vehicle in lieu of trading it in. See also, Gross Receipts Tax Rule GR-12.1(C)(1).²

A Certificate of Title is only evidence of title, and actual title may be refuted by other competent evidence. *Ford Motor Credit Co., LLC v First Nat'l Bank of Crossett*, 2016 Ark. App. 408, 500 S.W.3d 188 (citing cases); *Lafayette Ins. Co. v Allheimer Oil Co.*, 2007 WL 896357 (E.D. Ark. Mar. 22, 2007)(Certificate of Title not controlling as to ownership); *Masterson v. Tomlinson*, 244 Ark. 2098, 424 S.W.2d 380 (1968), *citing Robinson v. Martin*, 231 Ark. 43, 328 S.W.2d 260 (1959) (“ . . . the certificate [of title] is not title itself but only evidence of title”)

¹ All citations to Arkansas Code Annotated are to this version unless otherwise specified.

² The Gross Receipts Tax Rules are part of DFA Excise Tax Rule 2008-3, Ark. Admin. Code 006.05.212, available at https://www.dfa.arkansas.gov/images/uploads/revenuePolicyLegalOffice/et2008_3.pdf.

and *House v. Hodges*, 227 Ark. 458, 299 S.W.2d 201 (1957)(same); *see also Johnson v. Sanders*, 2021 Ark. App. 227, 2021 WL 1774479, 3 (2021)(extrinsic evidence of sale resulting in change of ownership, without change of certificate of title prior to accident).

Taxpayer has met his burden to show that the 2020 Ram was erroneously titled in his name individually, and that the true owner of the 2020 Ram is his company, not him individually. Because the company also owned the 2015 Ram at the time of its sale, the same consumer (Taxpayer's company) bought the newer vehicle, and sold the older vehicle.

Interest

Interest is required to be assessed upon tax deficiencies for the use of the State's tax dollars. *See* Ark. Code Ann. § 26-18-508 (Repl. 2020). 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. *Id.*

Final Decision and Order

The original deduction for the sale price of the 2015 Ram against the purchase price of the 2020 Ram was correct. Because the original tax due was assessed properly and paid timely, no interest is due in this case. Taxpayer's petition is granted and the proposed assessment is overturned.

Generally, a taxpayer may seek judicial relief from a final decision by the Tax Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., by filing suit for judicial relief within one hundred eighty (180) days of the date of the decision. A longer time period to file an appeal may apply, depending on the specific circumstances of the case. *See* Ark. Code Ann. § 26-18-406(a)(2) or (3).

A copy of this decision for publication on the Commission's website will be redacted to exclude personally identifiable information. Pursuant to Commission Rules of Procedure § 5-502, Taxpayer may submit proposed redactions within ten (10) days of the decision.

ARKANSAS TAX APPEALS COMMISSION

/s/ CLAY SLOAN

Clay Sloan, Commissioner

September 7, 2023,
as corrected October 12, 2023