BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
BARRY D. SCHOENEMAN **No. 04-05**
DENIAL OF REFUND CLAIM

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on April 26, 2004, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Javier Lopez, Special Assistant Attorney General. Barry Schoeneman ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On May 15, 2001, the Taxpayer purchased a new 2002 Ford Explorer from an automobile dealer at a purchase price of $30,852.

2. The Taxpayer paid New Mexico's 3% motor vehicle excise tax on the full purchase price at the time the Ford Explorer was registered with the Motor Vehicle Division ("MVD") of the New Mexico Taxation and Revenue Department.

3. On April 12, 2003, the Taxpayer sold the 2002 Ford Explorer to a private party for a cash price of $18,500.

4. On the same day, April 12, 2003, the Taxpayer purchased a new 2003 Toyota Sequoia from an automobile dealer for a purchase price of $42,406.

5. The Taxpayer applied the $18,500 cash payment he received from the private sale of his Ford Explorer to the purchase price of the new Toyota Sequoia.

6. On May 29, 2003, the Taxpayer registered the Toyota Sequoia with MVD and paid a net excise tax of $1,272.18, representing 3% of the full purchase price of the vehicle.

7. The Taxpayer subsequently filed a claim for refund of $555 of the excise tax he had paid, based on his contention that the $18,500 cash payment he received from the sale of his Ford Explorer should be treated as a trade-in allowance on his purchase of the Toyota Sequoia.

8. On July 2, 2003, MVD denied the Taxpayer's refund request on the ground that the cash payment he received from his private sale of the Ford Explorer and applied to the purchase price of the Toyota Sequoia did not qualify as a "trade-in" for purposes of calculating the motor vehicle excise tax.

9. On June 9, 2003, the Taxpayer protested the denial of his claim for refund in a written letter to Javier Lopez, an attorney with the Taxation and Revenue Department.

DISCUSSION

The issue to be decided is whether the $18,500 cash payment the Taxpayer received from the private sale of his 2002 Ford Explorer and applied to the purchase of a new 2003 Toyota Sequoia qualifies as an allowance "granted for vehicle trade-ins" for purposes of calculating the motor vehicle excise tax due on the Toyota Sequoia.

NMSA 1978, § 7-14-3 imposes an excise tax "upon the sale in this state of every vehicle ...required under the Motor Vehicle Code to be registered in this state." The issuance of an original or subsequent certificate of title is presumed to constitute a sale for purposes of collecting the motor vehicle excise tax. The method of calculating the tax is set out in NMSA 1978, § 7-14-4, which states:

> The rate of the motor vehicle excise tax is three percent and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.

The Taxpayer maintains that the phrase "allowances granted for vehicle trade-ins" covers the situation where an owner sells his vehicle to a private party and then uses the cash proceeds of the sale to purchase a new vehicle from an automobile dealership. The Department disagrees, arguing that the reference to "vehicle trade-ins" is limited to situations where an automobile dealer accepts a customer's old vehicle as partial payment for a new vehicle, giving the customer a specified allowance or credit for the value of the old vehicle.

Plain Meaning Rule. In determining the meaning of a statute, the plain language of the statute is the primary indicator of legislative intent. *Amoco Production Co. v. New Mexico Taxation and Revenue Department*, 2003-NMCA-092, ¶ 12, 134 N.M. 162, 166, 74 P.3d 96, 100 (Ct. App.). Words in the statute should be given their ordinary meaning unless the legislature indicates a different intent. *State v. Rodriguez*, 101 N.M. 192, 194, 679 P.2d 1290, 1292 (Ct. App.), *cert. denied*, 101 N.M. 189, 679 P.2d 1287 (1984). The term "trade-in" is defined in **The American Heritage Dictionary of the English Language** (4th ed. 2000) as "merchandise accepted as partial payment for a new purchase" and in **The New Shorter Oxford English Dictionary**, Vol. 2 (1993) as "a transaction in which something is traded in; a part exchange." **Merriam Webster's Collegiate Dictionary** (10th ed. 1993) defines the verb "trade in" as "to turn in as payment or part payment for a purchase or bill (*trade* the old car *in* on a new one)."

These common dictionary definitions are consistent with the Department's interpretation of the term "trade-in" as set out in Regulation 3.11.4.8 NMAC, which makes the following distinction between sale/purchase transactions and trade-ins:

> **3.11.4.8 – Vehicles sold under certain agreements are not trade-ins.**
>
> A "factory repurchase agreement" is an agreement under which a person who maintains a fleet of vehicles purchased through one or more dealers sells used vehicles from its fleet directly to the manufacturer. Because two separate

> transactions with different parties are occurring, the value of the vehicles sold by the fleet owner to the manufacturer under a factory repurchase agreement may not be deducted for purposes of the motor vehicle excise tax as an allowance for vehicles traded in when the fleet owner purchases new vehicles from a dealer.

NMSA 1978, § 9-11-6.2(G) states that any regulation issued by the Department "is presumed to be a proper implementation" of the state's tax laws. Case law holds that an agency's reasonable interpretation of a statute the agency is charged with administering is persuasive and will be given deference by the courts. *Gonzales v. Allstate Ins. Co*., 1996-NMSC-041, 122 N.M. 137, 142, 921 P.2d 944, 949 (1996); *New Mexico Pharmaceutical Ass'n v. State*, 106 N.M. 73, 75, 738 P.2d 1318, 1320 (1987). When an administrative construction is of long standing, it is given even greater weight. *In re Application of Sleeper*, 107 N.M. 494, 498, 760 P.2d 787, 791 (Ct. App.), *cert. quashed*, 107 N.M. 413, 759 P.2d 200 (1988).

The issue here is not whether the Taxpayer's suggested interpretation of § 7-14-4 has merit. The issue is whether the Department's ten-year-old construction of the statute is reasonable and in accord with legislative intent. As stated by the Tenth Circuit Court of Appeals in *Board of Directors and Officers, Forbes Federal Credit Union v. National Credit Union Administration*, 477 F.2d 777, 784 (10th Cir. 1973), an administrative agency's interpretation "is to be accorded great deference and is controlling as long as it is one of several reasonable interpretations, and even though it may not appear quite as reasonable as some other." Examined in light of the commonly accepted definition of a vehicle trade-in, the Department's interpretation of § 7-14-4 is both reasonable and fully in accord with accepted principles of statutory construction.

Unequal Treatment. The Taxpayer argues that limiting the allowance for trade-in vehicles to automobile dealers results in unequal treatment of taxpayers. At the administrative hearing, the Department called Belinda Garland, the manager of its Dealer Services Bureau, as a witness. Although Ms. Garland testified that all of the trade-in transactions she sees are with automobile dealers, she

acknowledged that nothing in the statute limits the trade-in allowance to dealers. Ms. Garland stated that she would also allow a credit for a trade-in transaction between private parties. Assume, for example, that a driver with an eight-year-old Honda offers to purchase his neighbor's two-year-old BMW. The neighbor is looking for a used car for his teenage son and agrees to take the driver's Honda as part payment for the BMW. This transaction would qualify as a "trade-in" under the common dictionary definition of a trade-in and, based on Ms. Garland's testimony, would be accepted as such by the Department.

In this case, the Taxpayer's sale of his Ford Explorer to one person and his purchase of a Toyota Sequoia from a different person does not qualify as a "trade-in." For this reason, the trade-in allowance would not be available to the Taxpayer even if he were a licensed automobile dealer. At the administrative hearing, Ms. Garland confirmed that an automobile dealer who purchases a used vehicle from one customer and sells a new vehicle to another person would not be entitled to a trade-in allowance on the two transactions. Given the facts of this case, the Department's refusal to deduct the sales price of the Taxpayer's Ford Explorer when determining the amount of motor vehicle excise tax due on his Toyota Sequoia does not result in unequal tax treatment.

Double Taxation. Finally, the Taxpayer argues that refusing to allow him a credit for the value of his used Ford Explorer constitutes double taxation. There is no dispute that the Taxpayer paid the motor vehicle excise tax when he purchased the Explorer in May 2001. This complies with the requirements of NMSA 1978, § 7-14-3, which imposes the tax "upon the sale in this state of every vehicle...." Two years later, the Taxpayer purchased a Toyota Sequoia and paid the motor vehicle excise tax on this sale. Under these circumstances, it is difficult to see how the Taxpayer can argue that he was taxed twice on the same vehicle or on the same transaction.

Even assuming that the Department's refusal to deduct the value of the Ford Explorer from the price of the Toyota Sequoia could be seen as a second tax on the Explorer, this is not sufficient to invalidate the tax. It is a popular misconception that there is something inherently illegal or unconstitutional with double taxation. Almost 85 years ago, in *Ft. Smith Lumber Co. v. Arkansas*, 251 U.S. 532 (1920), the United States Supreme Court summarily disposed of the argument that the federal constitution prohibits a state from taxing the same transaction twice. As stated by Justice Oliver Wendell Holmes, writing for the majority:

> The objection to the taxation as double may be laid on one side. That is a matter of State law alone. The Fourteenth Amendment no more forbids double taxation than it does doubling the amount of a tax...."

251 U.S. at 533. New Mexico courts have also held, on numerous occasions, that there is no constitutional prohibition against double taxation. *New Mexico State Board of Public Accountancy v. Grant*, 61 N.M. 287, 299 P.2d 464 (1956); *Amarillo-Pecos Valley Truck Line, Inc. v. Gallegos*, 44 N.M. 120, 99 P.2d 447 (1940); *State ex rel. Attorney General v. Tittmann*, 42 N.M. 76, 75 P.2d 701 (1938). The Taxpayer's argument of double taxation does not provide a basis for granting his claim for a partial refund of the motor vehicle excise tax paid on his Toyota Sequoia.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to MVD's denial of his claim for a refund of $555.00 of motor vehicle excise tax, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer's sale of his used Ford Explorer to a private individual and his subsequent purchase of a new Toyota Sequoia from an automobile dealer does not qualify as a "vehicle trade-in" for purposes of calculating the value of the Toyota Sequoia under the Motor Vehicle Excise Tax Act.

3. Because the Department's interpretation of NMSA 1978, § 7-14-4 precludes both private individuals and licensed automobile dealers from treating the sale of a vehicle to one person and the purchase of a vehicle from a different person as a "vehicle trade-in" for purposes of calculating the motor vehicle excise tax, this interpretation does not result in unequal treatment of private individuals and automobile dealers.

4. New Mexico's imposition of the motor vehicle excise tax on the Taxpayer's 2001 purchase of a Ford Explorer and again on his 2003 purchase of a Toyota Sequoia does not constitute double taxation.

For the foregoing reasons, the Taxpayer's protest IS DENIED.

DATED April 28, 2004.