



# This Week in State Tax (TWIST)

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## Arkansas: Temporary Withdrawal from Inventory Triggered Use Tax

The Arkansas Supreme Court recently concluded that two vehicle dealers owed sales tax on vehicles that were temporarily used by employees and relatives of the owner and general manager before being sold to customers. The vehicles were driven over 5,000 in most cases, and were assigned dealer license tags, which the dealers conceded were misused. The issue before the court on appeal was whether the use by these individuals' constituted withdrawals from stock, which necessitated the payment of Arkansas sales tax. The dealers argued that no sale had occurred that would cause sales tax to apply, and the vehicles were always in fact available for sale when being used by the individuals. The Department's position was upheld by an administrative law judge; the dealers appealed to the circuit court where they prevailed. The Arkansas Department of Finance and Administration (ADFA) then appealed to the state supreme court.

The court first noted that the language in the statute was so plain and unambiguous that judicial construction was limited to what was said. Specifically, the statute provided that a taxable event was triggered by the "withdrawal or use of . . . tangible personal property from an established business or from the stock in trade of the established reserves of an established business for consumption or use in the established business or by any other person." Thus, contrary to the dealers' arguments, the statute did not require a permanent withdrawal from stock or consumption of the property at issue, and the court observed that the rules of statutory construction did not permit it to read words into the statute that were not there. The record, the court stated, demonstrated that these individuals enjoyed the benefits of the vehicles in question as any person would enjoy a vehicle they owned; they relied on the vehicles as their primary means of transportation, transported their families and pets, ran personal errands, drove to and from work, and went on vacations in the vehicles. In the court's view, it was clear that the vehicles were used, and therefore, withdrawn from stock based on the plain language of the statute. Accordingly, the withdrawal of each vehicle was subject to tax. In reaching this conclusion, the court rejected the lower court's conclusion that there were several more specific statutes in Arkansas law that governed the matter. One of those statutes required a consumer to pay sales tax on the purchase of a vehicle on or before the time for registration. The dealers argued that the ADFA was not entitled to assess tax twice –on both withdrawal and on the subsequent sale to a consumer. The court, however, noted that the tax at issue was assessed for the "use" of the vehicles and that a vehicle might be involved in multiple transactions during its lifetime that will trigger sales tax liability. Further, a statute imposing fines for the misuse of dealer tags did not preclude the ADFA from imposing sales tax on the use of the vehicles. Two justices dissented, asserting that it was absurd to call the use of the vehicles a withdrawal from stock when they were in fact sold and tax as collected on the sale. Please contact [Sadie Cuevas](#) with questions on *Arkansas Department of Finance and Administration v. Trotter Ford*.

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