IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 18, 2015 Session

SEARS, ROEBUCK & CO. v. RICHARD H. ROBERTS, COMMISSIONER, DEPARTMENT OF REVENUE

Appeal from the Chancery Court for Davidson County
No. 120612III Ellen H. Lyle, Chancellor

No. M2014-02567-COA-R3-CV – Filed May 11, 2016

This case involves a taxpayer's claim to a sales tax deduction under Tennessee Code Annotated § 67-6-507(e) for bad debts associated with private label and co-branded credit card programs. After an audit, the Tennessee Department of Revenue disallowed taxpayer's bad debt deductions and assessed additional tax. Taxpayer paid the assessment and filed a claim for a refund, which was denied. Taxpayer sued the Commissioner of the Department of Revenue ("Commissioner") in chancery court, seeking a declaration that it was entitled to the bad debt sales tax deduction and a monetary judgment for the additional assessed tax. On cross-motions for summary judgment, the chancery court granted the Commissioner's motion, holding the taxpayer was not entitled to claim the deduction. We affirm.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and RICHARD H. DINKINS, J., joined.

Carl E. Hartley, Chattanooga, Tennessee; James A. Delanis, and Brett A. Oeser, Nashville, Tennessee; and Brian R. Harris, Tampa, Florida, for the appellant, Sears, Roebuck & Co.

Herbert H. Slatery III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; and R. Mitchell Porcello, Assistant Attorney General, Nashville, Tennessee, for the appellee, Richard H. Roberts, Commissioner, Department of Revenue.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Sears, Roebuck & Co. ("Sears") owns a nationwide chain of retail and department stores with numerous locations in Tennessee. Sears also operates as an online business. As a registered dealer of tangible personal property, Sears collects sales tax from its customers and remits the tax to the Tennessee Department of Revenue (the "Department") on a monthly basis. Tenn. Code Ann. §§ 67-6-501, -504 (2013).

In the 1950s, Sears first began offering its customers the option of purchasing on credit through a private label credit card[2] program. Sears subsequently obtained a bank charter and operated the program through a wholly-owned subsidiary, Sears National Bank. For many years, through its subsidiary bank, Sears conducted all aspects of its private label credit card program and paid the sales tax attributable to purchases made with Sears credit cards. Sears made these tax payments even though customers might not ultimately pay the amount charged on the credit card. When Sears deemed a cardholder account uncollectible and wrote that account off as a bad debt, Sears claimed a deduction on its monthly Tennessee sales tax return. *See id.* § 67-6-507(e) (2013).

A. THE CITIBANK TRANSACTION

In 2003, Citibank (USA) N.A. ("Citibank") acquired all existing Sears private label cardholder accounts and receivables. Sears and Citibank also entered into an Amended and Restated Program Agreement ("Program Agreement"), setting forth the terms under which Citibank would offer, issue, and service Sears credit cards.[3] For its part, Sears agreed to accept Sears credit cards issued by Citibank as payment for merchandise. Soon after, Sears National Bank was dissolved, and Citibank assumed responsibility for issuing new Sears cards to customers and servicing the existing accounts.

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[1] Except as otherwise indicated, the facts are taken from the parties' statements of undisputed material facts. In some instances, the facts are undisputed only for the purposes of ruling on the motions for summary judgment. *See* Tenn. R. Civ. P. 56.03.

[2] A Sears private label credit card can only be used at Sears stores or affiliates, such as Kmart, or online at Sears.com.

[3] Under the Program Agreement, the term "Sears Credit Card" includes, among other types of credit cards, the Sears private label credit card and a co-branded card, a MasterCard with the Sears logo. The co-branded card can be used wherever MasterCard is accepted to purchase goods and services. When a co-branded card is used at a Sears store or affiliate or online at Sears.com, the transaction is treated the same as a charge using a Sears private label card.

The parties attempted to make the transition seamless for customers. After the Citibank transaction, customers could still apply for a Sears credit card at Sears stores or Sears affiliates and online at Sears.com. Customers could also make payments on their Sears credit card accounts at Sear stores, but the payments were directed to Citibank. Monthly statements sent to cardholders included promotional materials for Sears and its merchandise. Citibank also honored and continued rewards programs tied to the Sears credit card.

The Program Agreement specified service standards that Citibank was required to maintain while operating the program and service goals; fees, interest, and other amounts associated with the credit cards; responsibilities for marketing and promotional costs; and various other terms. However, Citibank had the sole and exclusive right to set credit policy for the Sears credit cards, including eligibility, credit limits, and annual percentage rates, fees, and other terms. Citibank also controlled policies impacting financial products offered with the credit cards, such as credit protection, life and health insurance, and property and casualty insurance.

Consistent with its desire to increase sales and customer satisfaction, Sears retained input in the operation of the program. The Program Agreement created a six member program committee, with three members each chosen by Sears and Citibank. The Program Committee's responsibilities included monitoring the credit card program, adopting a business plan describing the strategies for growth and the investment required for operation of the program, and adopting a marketing plan. Citibank and Sears employees communicated several times a day to discuss various issues related to the operation of the program, including current promotions in stores, marketing campaigns, email campaigns, generation of new accounts, sales within stores, and other issues.

While both parties had specific responsibilities with respect to the credit card program, the parties acknowledged that the Program Agreement was not intended to create "a relationship of partners or joint venturers, fiduciaries or any association for profit between and among [Citibank] and Sears or any of their respective Affiliates." Sears and Citibank also agreed "that in performing their responsibilities pursuant to [the Program] Agreement they are in the position of independent contractors."

B. BAD DEBT LOSSES UNDER THE CREDIT CARD PROGRAM

During the time period covered by this appeal, when a cardholder used a Sears private label or co-branded credit card to pay for merchandise at a Sears store or an affiliate, Sears electronically communicated the details of the transaction to Citibank. If the transaction was approved by Citibank, the cardholder financed the entire purchase price, including sales tax, through Citibank. At the end of each day, Sears electronically reported to Citibank all amounts charged to Sears cards. The next day, Citibank paid Sears in full for all purchases,

including sales tax.[4]

Under the parties' arrangement, Citibank did not have "recourse" against Sears for bad debts resulting from cardholders' failures to pay Citibank. Citibank bore all losses on cardholder accounts, except for chargebacks.[5] However, the economic terms between Citibank and Sears were influenced by anticipated bad debt loses. The Program Agreement called for adjustments in the amounts payable to Sears by Citibank based upon actual versus projected bad debt loses. Citibank also set the approval and authorization rates[6] based, at least in part, on the amount of bad debt losses. Thus, increased bad debt losses could negatively affect both amounts payable to Sears by Citibank and the ability of Sears to sell to customers on credit.

Sears did not carry cardholder accounts as accounts receivable on its books and records. The Program Agreement specified that Sears was not "considered a creditor with respect to any such [cardholder] Account for any purpose whatsoever." When it deemed a delinquent account worthless and uncollectible, Citibank charged off the account on its books and records and deducted it as a bad debt on its federal income tax return.

Despite this, beginning in March 2005, Sears began deducting from its monthly Tennessee sales tax return the amounts written off as bad debts by Citibank. After an audit, the Department disallowed the bad debt deductions for the period of January 1, 2004 to December 31, 2008, and assessed additional tax against Sears in the amount of $6,948,772.52. Sears paid the assessment and filed a claim for refund with the Commissioner. On October 28, 2011, the Commissioner denied Sears' refund claim.

C. THE PROCEEDINGS BELOW

On April 24, 2012, Sears filed a complaint in the Chancery Court for Davidson County, Tennessee, seeking a declaration that it is entitled to deduct the bad debts from the Sears credit card program under Tennessee Code Annotated § 67-6-507(e) and that it be awarded a monetary judgment for $6,948,772.52. Sears and the Commissioner filed cross-motions for summary judgment. Following a hearing, the trial court entered an order granting the motion of the Commissioner and denying the motion of Sears.

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[4] While the Merchant Agreement provides, under certain circumstances, Citibank's payment to Sears of the total amount of daily purchases charged to Sears cards could be reduced by a negotiated "Merchant Discount," at oral argument, both attorneys agreed Citibank reimbursed Sears during the time period at issue in this case for 100% of the purchase price plus sales tax without any discounts.

[5] Chargebacks are not included in Sears's claim for refund.

[6] The approval rate is the rate at which Citibank approves applications for new Sears credit cards.

The court determined Sears did not qualify for the deduction under either of the two versions of Tennessee Code Annotated § 67-6-507(e) effective during the time period at issue. First, for the period between January 1, 2004, and December 31, 2007, the court found Sears could not claim the tax deduction because it was not the entity that actually charged off the bad debts for federal income tax purposes. Second, for 2008, the court determined Sears and Citibank did not qualify as a single "claimant" within the meaning of the statute. The court issued a final judgment on November 26, 2014. Sears filed a notice of appeal, raising a single issue: whether the Chancery Court erred in holding Sears is not entitled to a refund of sales tax under Tennessee Code Annotated § 67-6-507(e).

II. ANALYSIS

A. STANDARD OF REVIEW

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04; *see also Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). Here, both parties moved for summary judgment, supported by statements of undisputed facts.

When considering cross-motions for summary judgment, the trial court "must rule on each party's motion on an individual and separate basis." *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 83 (Tenn. 2010). For the respective competing motions, the trial court must view the evidence in the light most favorable to the opposing party and draw all reasonable inferences in the opposing party's favor. *See Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). The court is not to "weigh" the evidence when evaluating a motion for summary judgment or substitute its judgment for that of the trier of fact. *Martin*, 271 S.W.3d at 87. The denial of a cross-motion for summary judgment does not necessitate the grant of the competing cross-motion. *CAO Holdings, Inc.*, 333 S.W.3d at 83.

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Martin*, 271 S.W.3d at 84; *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004). We review the summary judgment decision as a question of law. *Martin*, 271 S.W.3d at 84; *Blair*, 130 S.W.3d at 763. Accordingly, we must review the record de novo and make a fresh determination of whether the requirements of Tennessee Rule of Civil Procedure 56 have been met. *Eadie v. Complete Co.*, 142 S.W.3d 288, 291 (Tenn. 2004); *Blair*, 130 S.W.3d at 763. Likewise, statutory interpretation and the application of a statute to undisputed facts present a question of law, which we review de novo with no presumption of correctness. *Kyle v. Williams*, 98 S.W.3d 661, 663-64 (Tenn. 2003).

B. APPLICATION OF THE BAD DEBT STATUTE

As did the trial court, we must determine whether Sears is entitled to a deduction, under Tennessee Code Annotated § 67-6-507(e), for uncollectible cardholder accounts after its transaction with Citibank. Tennessee Code Annotated § 67-6-507(e) is sometimes referred to as the "bad debt statute."

"Every application of a text to particular circumstances entails interpretation." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 53 (2012) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed 60 (1803)) (hereinafter "*Reading Law*"). When interpreting statutory provisions, our goal is to "ascertain and effectuate the legislature's intent." *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). When a statute's language is unambiguous, we derive legislative intent from the statute's plain language. *Carson Creek Vacation Resorts, Inc. v. Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). However, when a statute's language is subject to several interpretations, we also consider the broader statutory scheme, the statute's general purpose, and other sources to ascertain legislative intent. *Wachovia Bank of N.C., N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000).

In addition to these general principles of statutory construction, we must also consider the rules of construction specifically applicable to tax statutes. Statutes imposing a tax should be construed strictly against the government. *Steele v. Industrial Dev. Bd.*, 950 S.W.2d 345, 348 (Tenn. 1997); *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992). However, statutes granting tax exemptions, credits, or deductions should be construed strictly against the taxpayer. *AFG Indus., Inc. v. Cardwell*, 835 S.W.2d 583, 584-85 (Tenn. 1992); *Hollingsworth, Inc. v. Johnson*, 138 S.W.3d 863, 869 (Tenn. Ct. App. 2003) (construing Tenn. Code Ann. § 67-6-507(e)); *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 224 (Tenn. Ct. App. 2000) (construing Tenn. Code Ann. § 67-6-507(e)). Because it seeks the benefit of a tax deduction, Sears bears the burden of proving the applicability of the deduction. *SunTrust Bank, Nashville*, 46 S.W.3d at 224.

Every dealer in Tennessee making sales of tangible personal property is responsible for payment of sales tax to the state of Tennessee. Tenn. Code Ann. § 67-6-501. The dealer must submit a monthly tax return to the Department showing the gross sales for the preceding month and remit the appropriate amount of tax. *Id.* § 67-6-504. From taxable sales, a dealer is allowed to deduct for bad debts attributable to those sales. *Id.* § 67-6-507(e). A dealer may also seek a refund of overpaid sales tax due to bad debts. *Id.* § 67-1-1802(a) (2013). The bad debt statute was amended during the time period covered by the Department's audit of Sears. 2007 Tenn. Pub. Acts 967, 1004 (ch. 602 § 107). Thus, we must interpret the statutory language effective prior to January 1, 2008, and the language effective as of January 1, 2008.

1. Sales Tax Credit for 2004 through 2007

Before January 1, 2008, Tennessee Code Annotated § 67-6-507(e) provided, in relevant part:

> (e)(1) A dealer who has paid the tax imposed by this chapter on any sale, as defined in § 67-6-102, may take credit in any return filed under the provisions of this chapter for the tax paid by the dealer on the unpaid balance due on accounts that, during the period covered by the current return, have been found to be worthless and are actually charged off for federal income tax purposes; provided, that, if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amounts so paid shall be included in the first return filed after such collection and the tax paid accordingly.
>
> (2) For the purposes of this subsection (e), "actually charged off for federal income tax purposes" includes, but is not limited to:
>
> (A) The charging off of bad debts and uncollectible accounts for federal income tax purposes by any dealer required to file federal income tax returns; and
>
> (B) In the instance of any dealer who is not required to file federal income tax returns, or files with the internal revenue service a return as a nonprofit tax-exempt organization, any municipal corporation or any agency, board or department thereof, any county, any instrumentality of local government, any electric membership corporation, any electric cooperative and similar nonprofit corporation, that charge off past due accounts or uncollectible bad debts against income or that, in lieu of charging off past due accounts and uncollectible bad debts on any federal income tax return, shall, by resolution of its governing board provide policies for charging off unpaid balances due on accounts as uncollectible, or declare from time to time as uncollectible such unpaid balance due on accounts.

Tenn. Code Ann. § 67-6-507(e) (2006).

Sears argues it is entitled to claim a tax credit because (1) Sears is a dealer who has paid the sales tax, and (2) the accounts have been found to be worthless and have been actually charged off for federal income tax purposes. According to Sears, the statute does

not explicitly require the dealer to be the entity that charges off the bad debts and the use of the phrase "includes, but is not limited to" in subpart (e)(2) evidences a legislative intent to include the current situation in which an entity other than the dealer has charged off the bad debt.

We conclude Sears's interpretation is not supported by the plain language of the bad debt statute. Although the statute allows a dealer to take a credit for the unpaid balance due on an account that was actually charged off, the statute also requires that, "if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amounts so paid shall be included in the first return filed after such collection and the tax paid accordingly." *Id.* The import of the quoted language is that the dealer retains some interest in the charged off account. Otherwise, the statute could have omitted the words "to the dealer" in Tennessee Code Annotated § 67-6-507(e)(1). We must give meaning to all of the statutory language. *See Hammond v. Harvey*, 410 S.W.3d 306, 310 (Tenn. 2013) (favoring a construction that avoids rendering any portion of the statute meaningless); *see also South Carolina Dep't of Revenue v. Anonymous Co. A*, 678 S.E.2d 255, 257 (S.C. 2009) (reaching same conclusion under South Carolina's bad debt tax credit statute). Sears's interpretation would render the phrase "to the dealer" mere surplusage.

Sears's position is not aided by the description of "actually charged off for federal income tax purposes" in subpart (e)(2). For purposes of the bad debt statute, "'actually charged off for federal income tax purposes' includes, but is not limited to:" certain examples, such as "[t]he charging off of bad debts and uncollectible accounts for federal income tax purposes by any dealer . . . ." Tenn. Code Ann. § 67-6-507(e)(2). Sears argues that the examples presented in subpart (e)(2) encompass all the ways in which a dealer could charge off an unpaid account, and therefore, use of the word "includes," which is not intended to introduce an exhaustive list, suggests that the bad debt statute is not restricted to charge offs by dealers.

While we agree with Sears that use of the term "include" does "not ordinarily introduce an exhaustive list," *Reading Law*, 132,[7] we also agree with the trial court that "includes, but is not limited to" refers to the methods that a dealer may use to charge off the debt. If, as argued by Sears, subpart (e)(2) presents a comprehensive list of current methods for a dealer to actually charge off an account for federal income tax purposes, the statutory language may anticipate future revisions to federal tax law, revisions that would allow for other methods to charge off accounts. Such a reading would also keep subpart (e)(2) in harmony with subpart (e)(1). *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) ("The courts' goal is to construe a statute in a way that avoids conflict and facilitates the harmonious operation of the law.").

[7] The word "comprise" ordinarily introduces an exhaustive list. *Reading Law*, 132.

We also conclude this interpretation of the prior version of the bad debt statute is consistent with the purpose the of Retailers' Sales Tax Act. Sales tax is a tax on the "privilege of engaging in the business of selling tangible personal property at retail in this state." Tenn. Code Ann. § 67-6-202 (2013). Dealers are legally responsible for payment of sales tax, not consumers. *Beare Co. v. Olsen*, 711 S.W.2d 603, 605 (Tenn. 1986). Although dealers are authorized to collect the tax from consumers insofar as possible, if a dealer fails to do so, the dealer remains liable for the tax. Tenn. Code Ann. § 67-6-502 (2013); *see Smoky Mountain Canteen Co. v. Kizer*, 247 S.W.2d 69, 71 (Tenn. 1952) (stating the tax shifting mechanism in the statute does not alter the fact that the sales tax is a tax on the dealer).

Moreover, our interpretation of the bad debt statute does not unjustly enrich the state of Tennessee. Sears sold tangible personal property to customers. Sears was paid the purchase price for those sales, including sales tax. The failure of some customers to pay Citibank does not change the fact that Sears was fully compensated. Sears was not required to reimburse Citibank for the amounts listed as bad debts on the monthly spreadsheets. On the contrary, Citibank was responsible for all losses on the accounts. The bad debt statute allows a credit for bad debts, not indirect economic loss. The risk that the private label credit card program will be less profitable than anticipated does not qualify as a bad debt. Awarding a refund to Sears under these circumstances would unjustly enrich Sears, not the State.

2. Sales Tax Deduction for 2008

Effective January 1, 2008, the bad debt statute provided, in relevant part:

> (e) A deduction from taxable sales shall be allowed for bad debts arising from a sale on which the tax imposed by this chapter was paid.
>
> (1) Any deduction taken that is attributed to bad debts shall not include interest.
>
> (2) For purpose of calculating the deduction, a "bad debt" is as defined in 26 U.S.C. § 166. However, the amount calculated pursuant to 26 U.S.C. § 166 shall be adjusted to exclude: financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

> (3) The deduction provided for by this subsection (e) shall be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection (e), a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.
>
> (4) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected shall be paid and reported on the return filed for the period in which the collection is made.

Tenn. Code Ann. § 67-6-507 (2011).

Under the amended statute, the bad debt must be written off in the "claimant's books and records." Although it is undisputed that the accounts at issue were written off on the books and records of Citibank rather than Sears, Sears claims that it and Citibank constitute a single tax payer unit for purposes of the current version of the bad debt statute. We disagree.

Although "claimant" is not specifically defined in the statute, as Sears asserts, in this context, "claimant" is analogous to "dealer." "Dealer" is defined for purposes of the Retailers' Sales Tax Act as a "person." *Id.* § 67-6-102(21) (Supp. 2015). "Person," in turn, is defined to include:

> any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

Id. § 67-6-102(54) (Supp. 2015).[8] In connection with the credit card program, Sears claims that it and Citibank are a "group or combination acting as a unit" and, therefore, a "person."

We conclude that Sears and Citibank are not a "group or combination acting as a unit" such that the parties' relationship qualifies them as a "person" as defined by the Retailers' Sales Tax Act. While Sears and Citibank do have an ongoing relationship with regard to the marketing and operation of the credit card program, the parties' governing document specifically states the two corporations are "independent contractors" and are not "partners or joint venturers, fiduciaries or any association for profit." We see no reason to look behind the statements in the parties' agreement. As our Supreme Court has noted, "[f]orm and structure are quite significant in business and commercial transactions, and frequently the form or structure used has controlling significance for taxes and other purposes." *Standard Advert. Agency, Inc. v. Jackson*, 735 S.W.2d 441, 443 (Tenn. 1987). Sears must be bound by its choice of form and structure for its transaction with Citibank. *See Shelby County v. Barden*, 527 S.W.2d 124, 130 (Tenn. 1975) ("Where parties have deliberately undertaken to do business in corporate form, for tax purposes, accounting and other reasons, they must be held to the corporate form and they cannot shunt aside at their convenience legal entities and the legal aspects thereof.")

Even without the language found in the Program Agreement disclaiming a partnership, joint venture, or association for profit, we conclude Sears's reading of the definition of "person" is too broad. When interpreting a general word or phrase that follows a list of more specific words, the canon of *ejusdem generis* directs us to interpret the general word or phrase to include "only items of the same class as those listed." *State v. Marshall*, 319 S.W.3d 558, 561-62 (Tenn. 2010) (quoting *Sallee v. Barrett*, 171 S.W.3d 822, 829 (Tenn. 2005)). Thus, "other group or combination acting as a unit" must refer to another type of business association and not to any two independent corporations that happen to contract with one another. To read the definition as advocated by Sears would turn parties to every business transaction into a "combination acting as unit" and read the word "other" out of the definition.

While cases from other jurisdictions interpreting tax statutes are often unpersuasive,[9] we note that a number of other states have identical definitions of "person" in their tax statutes and have reached the same conclusion. *See Linnehan Leasing v. State Tax Assessor*, 2006 ME 33, ¶22, 898 A.2d 408, 413-14 (rejecting a similar argument and holding the "reference in the law to 'other' groups or combinations is a catch-all phrase, applying to any other possible organizational entities that may be identified; it is not a device to allow

[8] Tennessee Code Annotated § 67-6-102 was amended, effective June 5, 2008, but the definitions of "dealer" and "person" were not affected by the amendment. *See* 2008 Tenn. Pub. Acts 832 (Ch. 1106).

[9] *S. Cent. Bell Tel. Co. v. Olsen*, 669 S.W.2d 649, 652 (Tenn. 1984).

separate corporations to be treated as a single entity under the tax code when such single entity treatment suits their purpose"); *Sears, Roebuck & Co. v. State Tax Assessor*, 2012 ME 110, ¶12, 52 A.3d 941, 945 (concluding a plain reading of the definition of "person" would not allow two separate corporations to qualify as an "other group or combination acting as a unit"); *Home Depot USA, Inc. v. Arizona Dep't of Revenue*, 287 P.3d 97, 102 (Ariz. Ct. App. 2012) ("Taxpayer's interpretation would read the word 'other' out of the statutory definition."); *Circuit City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 401 (Mo. 2014) (interpreting "group or combination acting as a unit" to mean additional types of joint entities operating as a single organization).

III. CONCLUSION

Because Sears has failed to demonstrate it is entitled to a credit under the version of the bad debt statute effective prior to January 1, 2007, or a deduction under the version of the bad debt statute effective as of January 1, 2008, the chancery court properly denied the motion of Sears for summary judgment. We affirm the grant of summary judgment to the Commissioner and remand this case to the chancery court for proceedings consistent with this opinion.

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W. NEAL MCBRAYER, JUDGE