This case is before the Office of Hearings and Appeals upon a written protest received May 20, 2016, signed by [Name] on behalf of [Name], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”).

At the request of the Taxpayers, this case was taken under consideration of written documents submitted by the parties. A briefing schedule was approved for the parties on July 28, 2016. The Department was represented by David Parker, Attorney at Law, Office of Revenue Legal Counsel. The Department’s Opening Brief was filed on July 28, 2016. The Taxpayers filed a Response Brief on September 29, 2016. The Department filed its Reply Brief on September 30, 2016. This matter was submitted for decision on October 17, 2016.

ISSUE

1 This total represents [amount] (tax), [amount] (interest), and [amount] (Late Payment Penalty) with a partial payment of [amount] as of March 21, 2016.
Whether the assessment issued against the Taxpayers should be sustained? Yes, in part.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Taxpayers’ Initial Protest discussed the relevant facts of this case stating, in part:

On or about October 29, 2015, we purchased a 2011 [redacted] for a sales price of [redacted]. The vehicle was purchased online from [redacted] located in [redacted]. Sales tax, although computed in [redacted] on tax price, was paid in the amount of [redacted]. See attached. Also, see attached a copy of Form [redacted], Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle for a Nonresident. Said form documents the amount of tax collected on the purchase of the vehicle as [redacted]. In addition, Application for Certificate of Title, State of [redacted], Bureau of Motor Vehicles certifies that sale or use tax on this vehicle was paid in the amount of [redacted].

We had the above mentioned vehicle assessed with [redacted] County on November 12, 2015 and Arkansas license plate number [redacted] was issued. We were sent a Title Suspense Notice on December 23, 2015 requiring a sales tax payment of [redacted]. After a lengthy conversation with Kelly with [redacted] DFA, we spoke with Tina in title examiners and this matter was resolved following payment of additional monies in the amount of [redacted] for GAP insurance.

In the Department’s Opening Brief, the Department’s Representative further explained the circumstances regarding this assessment, explaining:

Because the vehicle was not previously registered (by this owner) in another state, Arkansas assesses sales/use tax in the amount of [redacted]. A 10% penalty\(^2\) was assessed for [redacted]. Taxpayer paid [redacted] towards the balance at the time of registration. The remaining balance is

\(^2\) Later in this filing, the Department’s Representative describes this penalty as a negligence penalty. A review of the account, however, established that a late payment penalty was assessed under Ark. Code Ann. § 26-52-510(a)(4)(A) (Repl.2014) and not the negligence penalty provided in Ark. Code Ann. § 26-18-208(4) (Repl. 2012). Consequently, this decision shall address whether the assessment of the failure to pay penalty was appropriate and not address the potential application of the negligence penalty.
Taxpayer disagrees with the assessment due to having paid sales tax at the time of purchase.

In that document, the Department’s Representative argued that motor vehicles purchased for storage, use, or consumption in the State of Arkansas are generally subject to the Arkansas Compensating (use) Tax and no credit is allowed for sales tax paid to another state on a vehicle purchase when the vehicle is first registered in Arkansas, citing Arkansas Gross Receipts Tax Rule GR-12(B)(1)(d). See also Ark. Code Ann. § 26-53-131 (Repl. 2014) (stating: “A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motor vehicle, trailer, or semitrailer that was first registered by the purchaser in Arkansas.”).

The Taxpayers’ Response Brief contended that not allowing a credit for taxes paid to violated a provision of the Multistate Tax Compact (codified at Ark. Code Ann. § 26-5-101 (Repl. 2012)3 and was unconstitutional as well due to the creation of double taxation and the resultant burden on interstate commerce. The Department’s Reply Brief argued in response that taxes imposed on the registration of motor vehicles are excluded from and, thus, not governed by the Multistate Tax Compact (citing Article XI(b) of the Multistate Tax Compact as codified) and that the governing statutes and regulations expressly bar the allowance of a credit for the taxes paid to on the vehicle purchase. After a discussion of the burdens of proof in tax proceedings, a legal analysis with conclusions of fact and law shall follow.

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3 This statement appears to be a reference to Article V(1) of the Multistate Tax Compact, which states “Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. . . ."
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 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

**Legal Analysis**

As a threshold matter, administrative tribunals, such as the Office of Hearings and Appeals, do not have jurisdiction or authority to determine the constitutionality of a statute. See generally *Arkansas Tobacco Control Bd. v. Sitton*, 357 Ark. 357, 166 S.W.3d 550 (2004). Consequently, the Taxpayers’ arguments regarding the constitutionality of the language codified Ark. Code Ann. § 26-53-131 (Repl. 2014) (denying the credit for taxes paid to another state on a vehicle purchase) cannot and will not be addressed by this decision. Additionally, the Department’s contention that Article XI(b) of the Multistate Tax Compact (codified at Ark. Code Ann. § 26-5-101 (Repl. 2012)) expressly excludes taxes imposed on motor vehicle registrations and, thus, the Compact’s terms are not applicable to this proceeding is persuasive. The remainder of this decision is limited to the application of the governing statutes and regulations to the assessed tax, penalty, and interest in this proceeding.

The Arkansas Compensating (use) Tax levies an excise tax on the privilege of storing, using, distributing, or consuming tangible personal property or taxable services in Arkansas that were purchased for storage, use, or consumption within this State. Ark. Code Ann. § 26-53-106 (Repl. 2014). This tax is imposed upon a purchaser and must be remitted by the purchaser, unless a vendor collects and remits the tax on the purchaser’s behalf. Ark. Code Ann. § 26-53-123 (Repl. 2014). Here, the 2011 *** represents tangible personal property that was
purchased for storage, use, or consumption within the State of Arkansas. Consequently, the Department has borne its burden of showing that Arkansas Compensating (use) Tax generally applies to this transaction. Though the Taxpayers have argued that a credit for taxes paid to should apply, Ark. Code Ann. § 26-53-131 (Repl. 2014) expressly denies that credit. The assessment of tax is sustained because the Department has proven that the transaction is generally taxable and the Taxpayers have not proven that a credit for taxes paid to the State of should be applied by a preponderance of the evidence.

The late payment penalty (which was assessed in this matter) is authorized by Ark. Code Ann. § 26-52-510(a)(4)(A) (Repl. 2014) but is not applicable under the facts of this case. Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014) provides, as follows:

(4) If the consumer fails to pay the taxes when due:

(A) There is assessed a penalty equal to ten percent (10%) of the amount of taxes due; and

(B) The consumer shall pay to the director the penalty under subdivision (a)(4)(A) of this section and the taxes due before the director issues a license for the motor vehicle, trailer, or semitrailer.

In the instant case, the Taxpayers registered the 2011 and at the time of registration: (1) the Taxpayers erroneously claimed a sales tax credit for taxes paid to ; (2) the Taxpayers made a partial payment of sales tax before issuance of the title; and (3) the Department issued a license for the 2011 . Consequently, the late payment penalty was not properly assessed against the Taxpayers.
DECISION AND ORDER

After the removal of penalty, the assessment is sustained. 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 Taxpayers request 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, 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 Taxpayers have requested a revision. The Taxpayers may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on a final notice of a denial of a claim for refund by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

DATED: October 26, 2016

OFFICE OF HEARINGS & APPEALS

TODD EVANS
ADMINISTRATIVE LAW JUDGE