

**STATE OF ARKANSAS  
DEPARTMENT OF FINANCE & ADMINISTRATION  
OFFICE OF HEARINGS & APPEALS**

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

████████████████████

**DOCKET NO.: 17-054**

**AUDIT NO.:** ████████████████████

**GROSS RECEIPTS  
TAX ASSESSMENT**

**ACCT. NO.:** ████████████████████  
**(\$** ██████████ **)**

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received March 9, 2016, signed by ████████████████████, the Taxpayer. The Taxpayer protested an assessment of Gross Receipts Tax (“sales tax”) resulting from an audit conducted by the Department of Finance and Administration (“Department”).

A hearing was held on September 7, 2016 at 9:00 a.m., in Little Rock, Arkansas. The Department was represented by Nina Carter, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Denny Bell, Audit Supervisor. The Taxpayer did not appear at the hearing though the telephone number provided with her protest and included in the Notice of Hearing was called multiple times. The Department provided proof that the Notice of Hearing was received at the Taxpayer’s address of record.

**ISSUE**

Whether the assessment made by the Department should be sustained?  
Yes.

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department's Answers to Information Request summarized the relevant facts and provided, in pertinent part, as follows:

On or about January 12, 2013, the Taxpayer, [REDACTED], purchased a [REDACTED] utility tractor (UTV), [REDACTED], from [REDACTED] located at [REDACTED], Arkansas, [REDACTED]. See sales invoice attached as Exhibit A. At the time of the purchase of the UTV, Taxpayer signed a Commercial Farming Machinery & Equipment Sales Tax Exemption Certification form, Form No. ST-403. See copy of the Taxpayer's Certification attached as Exhibit B. Taxpayer indicated that she was engaged in or provided services for the production of tomatoes or produce as a commercial farming business on the Certification. The fact that the taxpayer signed an exemption certification is significant. In *Carmichael v. Nationwide Ins. Co.*, 305 Ark. 549, 552, 810 S.W.2d 39 (1991), the Arkansas Supreme Court stated that "[i]t is well established in Arkansas that one is bound under the law to know of the contents of a paper signed by her and she cannot excuse herself by saying she did not know what it contained."

On January 21, 2016, DFA Service Representative Josh Farrow sent the Taxpayer a letter requesting documentation to support and substantiate her entitlement to claim the farm exemption. See Letter (ID [REDACTED]) attached as Exhibit C. Taxpayer failed to respond to Mr. Farrow's first request so a second letter was sent on February 22, 2016. See Second Letter (ID [REDACTED]) attached as Exhibit D. Taxpayer contacted the Field Audit Office by phone on February 25, 2016, and was given an explanation of GR-51 in that only machinery used exclusively and directly in the agricultural production of food or fiber as a business was allowed the sales tax exemption. However, Taxpayer did not submit evidence showing that she was engaged in the business of farming and that the UTV was used exclusively and directly in the agricultural production of food or fiber as a business.

Based upon these facts, the farm machinery and equipment exemption was disallowed because Taxpayer did not provide any evidence supporting the exclusive and direct use of the UTV in the agricultural production of food or fiber as a business. Taxpayer was assessed gross receipts (sales) tax totaling \$[REDACTED], plus interest of \$[REDACTED] (10% per annum) assessed through January 31, 2013. No penalty was applied. See Summary of Findings attached as Exhibit E. On March 9, 2016, the Department received

a timely protest of the assessment and a request for administrative hearing by telephone by the Taxpayer via phone number [REDACTED]. See Protest attached as Exhibit F.

Assigned Legal Counsel Nina Carter attempted to contact Taxpayer via the provided phone number but received a recorded message that the phone number dialed was not accepting phone calls. Legal Counsel tried the phone number numerous times in May, June, and July, but again received the same recorded message. Legal Counsel searched through all available records and dialed every alternative phone number, but was not able to make contact with the Taxpayer. Legal Counsel mailed a letter to the Taxpayer on June 14, 2016, requesting a response. See Counsel's Letter attached as Exhibit G. To date, Taxpayer has not responded. The Notice of Hearing for this matter was sent by Certified Mail. The tracking information shows that the Notice Letter was delivered and left with an individual. See USPS Tracking attached as Exhibit H.

The Taxpayer did not file Answers to Information Request though a letter was sent from this office to her address of record, requesting that information. The Taxpayer's Protest, however, provided as follows: "We are elderly and can't afford this tax. We were miss led when signing papers. We are on fixed income and are just barely making ends meet now. Can't afford to buy all of necessary medicines we both have diabetes and need shots but can't afford the medicines."

At the hearing, the Audit Supervisor testified that: (1) he supervised the audit in this matter; (2) the Taxpayer purchased a [REDACTED] Tractor and claimed the farm machinery and equipment exemption; (3) the Department sent multiple requests for proof that the tractor qualified for the farm machinery exemption; (4) no proof of the entitlement to the exemption was provided by the Taxpayer; (5) at one point, the Taxpayer contacted the Department by telephone, discussed the farm machinery exemption with a service representative, and still failed to provide any proof of entitlement to the exemption; (6) a review of the Taxpayer's 2013, 2014, and 2015 income tax returns provided no evidence that the Taxpayer

was engaged in commercial farming; and (7) no penalty was assessed in this matter.

## **CONCLUSIONS OF LAW**

### **A. 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**. [Emphasis Added.]

A preponderance of the evidence means the greater weight of the evidence. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, at 12-13, 432 S.W.3d 25, 33, the Arkansas Supreme Court explained:

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 application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Supp. 2015).

### **B. Sales Tax Assessment**

Subject to the applicability of an exemption, deduction, or credit, Arkansas sales tax is imposed upon all sales of tangible personal property within the State of Arkansas. Ark. Code Ann. § 26-52-301 et seq. (Repl. 2014 & Supp. 2015). The [REDACTED] Tractor at issue in this matter is tangible personal property.

### **C. Farm Equipment and Machinery**

Ark Code Ann. §26-52-403(b) (Repl. 2014) exempts the sale of farm equipment and machinery from sales tax. *See also* Arkansas Gross Receipts Tax Rule GR-51 (“GR-51”). Arkansas Gross Receipts Tax Rule GR-51 (“GR-51”) addresses the farm machinery and equipment exemption and provides, in pertinent part, as follows:

#### **B. DEFINITIONS.**

1. “Farm equipment and machinery” means the agricultural implements used exclusively and directly for the agricultural production of food or fiber as a commercial business or the agricultural production of grass sod or nursery products as a commercial business or the agricultural production of grass sod or nursery products as a commercial business. Farm equipment and machinery does not include implements used in the production and severance of timber, motor vehicles that are subject to registration, airplanes, or hand tools. . . .

Here, the Taxpayer has provided no evidence that the [REDACTED] Tractor is used exclusively and directly in the commercial production of food or fiber.

Consequently, the Taxpayer has not established entitlement to the claimed exemption by a preponderance of the evidence.

Interest was assessed under Ark. Code Ann. § 26-18-508 (Repl. 2012). Interest is a statutory charge for use of the State's tax dollars. Interest was properly assessed.

Additionally, the Taxpayer alleged that paying this assessment will create a financial hardship due to her limited finances. If proven, the Taxpayer may qualify for the Department's Offer in Compromise program, allowing a portion of a tax debt to be forgiven based on a taxpayer's insolvency. The Offer in Compromise program is outlined in Regulation 2000-4 governing settlement or compromise of tax liabilities. To obtain the application for an Offer in Compromise and for assistance in filing the required information, please contact Problem Resolution and Tax Information Office at 501-682-7751 from 8:00 a.m. to 4:30 p.m., Monday through Friday. The required forms can also be accessed online by going to:

[www.dfa.arkansas.gov/offices/policyAndLegal/Pages/offersInCompromise.aspx](http://www.dfa.arkansas.gov/offices/policyAndLegal/Pages/offersInCompromise.aspx)

### **DECISION AND ORDER**

The proposed 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 Taxpayer requests 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 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 Taxpayer has requested a revision. The Taxpayer may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on a final assessment of a tax deficiency by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

OFFICE OF HEARINGS & APPEALS

A handwritten signature in blue ink, appearing to read 'T. Evans', is written over a horizontal line.

TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: September 8, 2016