

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 19-268

**GROSS RECEIPTS
TAX ASSESSMENT**

\$ **1**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated December 7, 2018, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment of Gross Receipts Tax (“sales tax”) issued by the Department of Finance and Administration (“Department”).

At the request of the Taxpayer, the matter was submitted for a decision based upon consideration of written documents. A Briefing Schedule was mailed to the parties on December 19, 2018. The Department’s Opening Brief was filed on December 20, 2018. The Taxpayer’s Response Brief was filed on February 20, 2019. The matter was submitted for a decision on March 11, 2019.

ISSUE

Whether the assessment issued by the Department against the Taxpayer should be sustained? Yes, in part.²

¹ The reflected amount includes tax (\$ [REDACTED]), penalty (\$ [REDACTED]), and interest ([REDACTED]), with credit for payments in the amount of \$ [REDACTED]. The Department’s Opening Brief stated that, “[Taxpayer] appears to have acted in good faith. The Office of Revenue Counsel therefore concedes that the penalty assessed in the amount of \$ [REDACTED] should be withdrawn.”

² See Footnote 1.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department's Opening Brief summarized the facts and legal issue involved in this case and stated, in pertinent part, as follows:

On 11-11-17, the taxpayer purchased a new [REDACTED] truck [hereinafter "2017 MV"] from the [REDACTED] for \$ [REDACTED]. Exhibit A.

On or about 12-8-17, the taxpayer conveyed a used [REDACTED] truck to [REDACTED] for \$ [REDACTED] under Claim Number [REDACTED]. Exhibit B.

On 12-8-17, the taxpayer registered the new [REDACTED] with the Department and claimed a sales tax trade-in credit in the amount of \$ [REDACTED] on the conveyance of the used [REDACTED] [hereinafter "2014 MV"] to [REDACTED]. The taxable balance at time of registration was therefore \$ [REDACTED]. Exhibit C.

The 2014 MV was conveyed by the taxpayer to [REDACTED] for a settlement of \$ [REDACTED] paid under an automobile insurance policy issued by [REDACTED]. The Bill of Sale (Exhibit B) notes that the payment was made to settle "a total loss insurance claim". Under a rule* promulgated by the Department, insurance proceeds do not qualify as sale proceeds for purposes of the motor vehicle sales tax trade-in credit. The sales tax trade-in credit was therefore properly disallowed.

Notice of "Insurance Settlement" and Explanation of Tax Adjustment issued by the Department. Exhibit D.

Notice of Proposed Assessment issued by the Department. Exhibit E.

Taxpayer's Protest. Exhibit F. [P. 1-2].

The Taxpayer's Response Brief stated that he did not feel the assessment of sales tax and interest on the purchase of a motor vehicle was proper and he contended that the process was done the same as if he would have traded at a dealership. A copy of the Taxpayer's Protest Form was attached to the Response

Brief and stated that the Taxpayer disagreed with the proposed assessment for the following reasons:

Provided revenue office with bill of sale as requested. As seller, I had to sign odometer statement and title with purchase to complete the sale. Documents have been emailed to revenue office. [P. 1].

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2017) 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 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. 2017). 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. 2017). 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. 2017).

Tax Assessment

Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) authorizes a sales tax credit for the private sale of a used motor vehicle in lieu of a trade-in. Ark. Code Ann. § 26-52-103(26)(C)(ii) (Supp. 2017) states that a sale does not include the “[t]ransfer of title to a vehicle by the vehicle owner to an insurance company as a result of the settlement of a claim for damages to the vehicle.” Arkansas Gross Receipts Tax Rule GR-12.1 (“GR-12.1”) was promulgated to implement and clarify the allowance of a sales tax credit for the sale of a used vehicle when the proceeds from the sale are applied toward the purchase price of another vehicle. GR-12.1 states, in part:

B. DEFINITIONS.

1. "Consumer" means any private individual, business, organization or association.
2. "Vehicle" means an automobile, truck, motorcycle (registered for highway use), trailer and semitrailer.
3. **"Sale" means the transfer of title to a used vehicle by a consumer (the seller) to another individual or business enterprise (the buyer) in exchange for cash or the equivalent of cash, such as a check or money order. A sale does not occur, and therefore no credit will be allowed, when the title to a damaged vehicle is transferred by a consumer to an insurance company in exchange for a cash settlement paid by the insurance company.**
4. "Trade-in" means a vehicle is taken by a seller as a credit or partial payment on the sale of another vehicle. [Emphasis added].

The facts in this case are not disputed. As reflected in Department Exhibits A, B, C, and D, the Taxpayer claimed a sales tax credit for the private sale of the 2014 MV (upon registration of the 2017 MV) when the Taxpayer had transferred the title to the 2014 MV to an insurance company as a result of a total loss claim.³ As reflected in GR-12.1(B)(3), the Taxpayer was not entitled to receive the sales tax credit for the private sale of a used motor vehicle in lieu of a trade-in. Consequently, the Department correctly assessed sales tax against the Taxpayer.

Interest was properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2012).

DECISION AND ORDER

The assessment is sustained, in part. The tax and interest portions of the proposed tax assessment are sustained. The penalty portion of the proposed assessment is set aside.⁴ 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. 2017), 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 Administrative Decision shall be effective and

³ There is no indication in the exhibits that the Taxpayer received sales tax from the insurance company as part of the settlement; however, Ark. Code Ann. § 23-89-211(a) (Repl. 2014) states: "(a) If an insurer settles a claim for damages to an automobile as a total loss to its own insured or a person having a claim against its insured, the insurer shall include with the payment for the loss:

(1) All applicable taxes, **including sales taxes** and fees as required under Rule and Regulation 43 of the State Insurance Department; and

(2) An itemized list stating the amount of the claim attributable to the value of the automobile and **attributable to the sales tax** on an automobile of that value. [Emphasis added]."

⁴ See Footnote 1.

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. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501) 683-1161 or emailed to revision@dfa.arkansas.gov. 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.

Ark. Code Ann. § 26-18-406 (Supp. 2017) provides for the judicial appeal of a final decision of an Administrative Law Judge or the Commissioner of Revenues on a final assessment or refund claim denial; however, the constitutionality of that code section is uncertain.⁵

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 12, 2019

⁵ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.