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

ADMINISTRATIVE DECISION

IN THE MATTER OF	GROSS RECEIPTS (SALES)
	TAX ASSESSMENT
LICENSE NO.:	LETTER ID:
DOCKET NO.: 19-319	1

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated December 10, 2018, signed by _______, the Taxpayers. The Taxpayer protested an assessment issued by the Department of Finance and Administration ("Department"). The Department was represented by Lauren Ballard, Attorney at Law, Revenue Legal Counsel ("Department's Representative").

At the request of the Taxpayers, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated January 22, 2019. The Department filed its opening brief on January 23, 2019. The Taxpayer did not file a response brief, but the Taxpayers' protest was received into evidence. The record was closed and this matter was submitted for a decision on April 10, 2019.

ISSUES

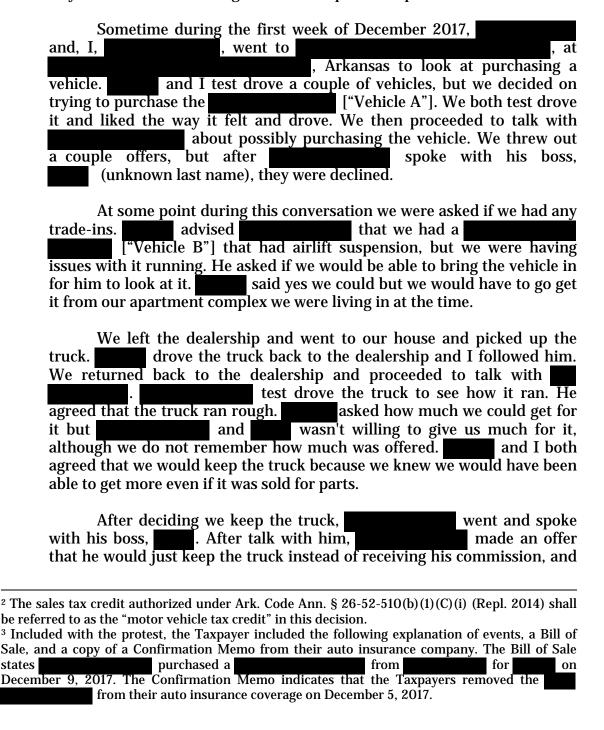
Whether the Taxpayers demonstrated that they qualified for the motor vehicle tax credit² by a preponderance of the evidence. No.

¹ This amount represents (tax), (late payment penalty), and (interest) after application of a payment in the amount

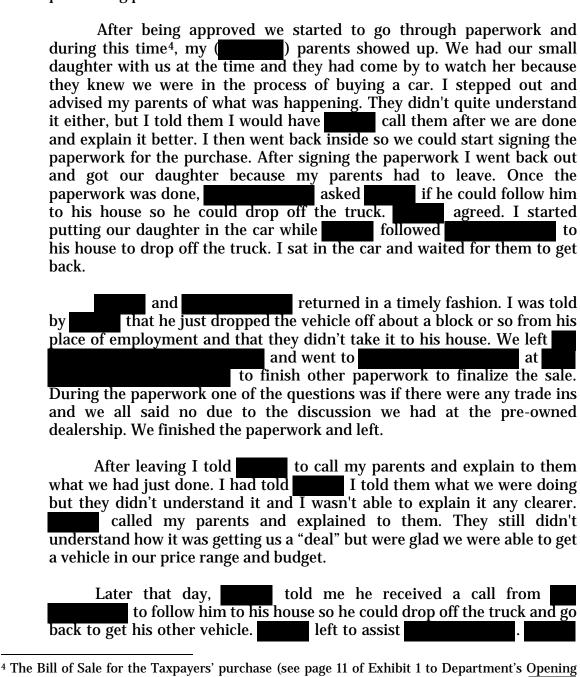
Whether the additional assessment of penalty and interest are correct under Arkansas law. Yes, in part.

PRESENTED FACTS AND ARGUMENTS

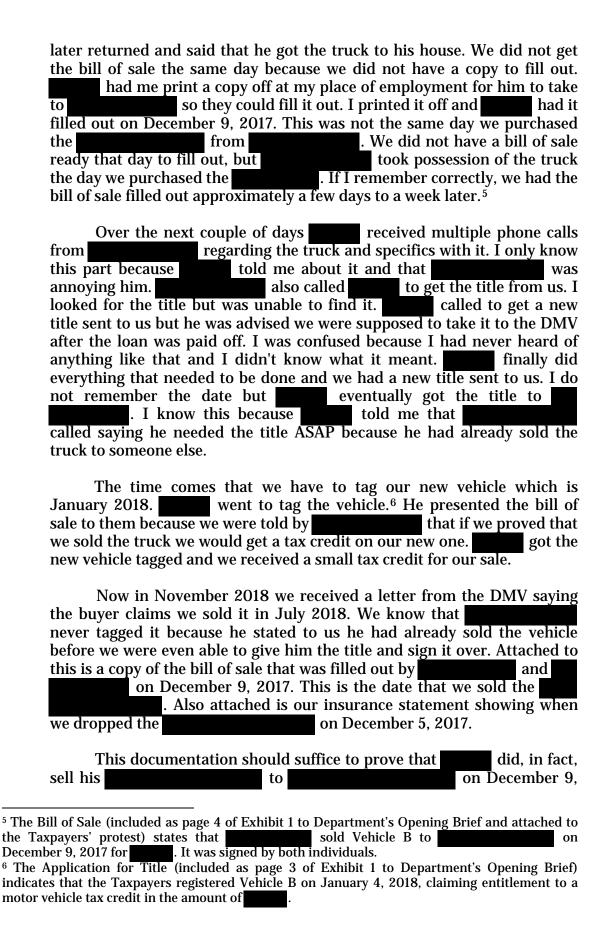
Within their protest³, the Taxpayers provided a timeline of events and their analysis for this case, stating as follows in pertinent part:



it would be like a "trade in." We would "sell" it to him for under \$4,000 so he doesn't have to pay taxes on it, we get the bill of sale for us to get a tax credit on the new vehicle, and we get the commission dropped off the price of the new vehicle we purchase. The only stipulation was we couldn't tell anyone of this deal because he could potentially get fired if his boss's boss were to find out. We didn't understand exactly what by everything, but we went ahead and started the credit approval of the purchasing process.



Brief) indicates that the Taxpayers purchased Vehicle A on December 9, 2017 for (consisting of a selling price of service and handling fee) from and a . No trade-in is reflected on that document.



also stated to he had sold it before it was even tagged by him. This is proof that the sale date was within 45 days required by Gross Receipts Tax Regulation GR-12.1.

The Department denied the Taxpayers' claim of entitlement to the motor vehicle tax credit and assessed the Taxpayers on November 28, 2018, based on a vehicle purchase price of ______. See Exhibits 2 and 3 to the Department's Opening Brief.

In her Opening Brief, the Department's Representative asserted that the Taxpayers had not demonstrated that they sold Vehicle B for cash or a cash equivalent. She further averred that the sales price presented on the Taxpayers' bill of sale is not accurate as it appears that the Taxpayers and buyer merely listed a price under \$4,000 without considering the actual value of the consideration for the transfer of Vehicle B. The Department's Representative stated that the late payment penalty was appropriate under Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014) because the Taxpayer failed to pay the full amount of tax that should have been due at registration. Additionally, she declared that interest was proper under Ark. Code Ann. § 26-18-508 (Repl. 2012).

After a general discussion of the burdens of proof in tax proceedings, a legal analysis shall follow.

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).

Legal Analysis

A. Tax Assessment

Arkansas sales tax generally applies to entire gross receipts of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2017). Motor vehicles qualify as tangible personal property and, thus, generally taxable. For purchases of motor vehicles, the consumer is required to directly pay the accompanying sales tax liability to the Department. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2014).

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 and states:

When a used motor vehicle, trailer, or semitrailer is sold by a consumer, rather than traded-in as a credit or part payment on the sale of a new or used motor vehicle, trailer, or semitrailer, and the consumer subsequently purchases a new or used vehicle, trailer, or semitrailer of greater value within forty-five (45) days of the sale, the tax levied by this chapter and all other gross receipts taxes levied by the state shall be paid on the net difference between the total consideration for the new or used vehicle, trailer, or semitrailer purchased subsequently and the amount received from the sale of the used vehicle, trailer, or semitrailer sold in lieu of a trade-in.

See also Arkansas Gross Receipts Tax Rule GR-12.1.

The Department is endowed with the authority to promulgate rules for the enforcement of Ark. Code Ann. § 26-52-510 (Repl. 2014). Ark. Code Ann. § 26-52-105 (Repl. 2012). Arkansas Gross Receipts Tax Rule GR-12.1 provides the requirements of a sale for purposes of the motor vehicle tax credit, stating as follows:

"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. [Emphasis supplied.]

Id. at (B)(3).

Under the governing regulation, the Taxpayers were required to sell Vehicle B for "cash or the equivalent of cash, such as a check or money order." Here, the Taxpayers sold Vehicle B for a discount towards their purchase of Vehicle A. It is uncertain that the discount amounted to a reduction in Vehicle A's purchase price. The discount would not qualify as a cash or cash equivalent. Additionally, even if it was a cash or cash equivalent, the value of that discount is unknown. Consequently, the Taxpayers have not proven entitlement to the motor vehicle tax credit, and the credit was properly denied. The tax assessment is sustained.

B. Late Payment Penalty

Regarding the late payment penalty⁷, the penalty was assessed pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014), which provides as follows:

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. [Emphasis supplied.]

Here, the record shows that the Taxpayers entered their local revenue office on January 4, 2018, which calculated their sales tax liability based on the Vehicle A's sales price (allowing a \$3,900 trade-in credit). The motor vehicle was then registered, and the Taxpayers were issued a license at that time. On

⁷ While the Department's Representative asserted within her Opening Brief that the Taxpayers have not objected to the assessment of penalty, the Taxpayers' protest asserts that the motor vehicle tax credit should be granted and thus indicates that the entire assessment (including penalty and interest) is in contention.

November 28, 2018, the Department determined that the Taxpayers' tax liability was incorrectly calculated at the local revenue office due to the improper allowance of a motor vehicle tax credit and a Notice of Proposed Assessment was issued. These facts do not fulfill the requirements for application of the late payment penalty under Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014). Consequently, the late payment penalty was not properly assessed against the Taxpayers and is not sustained.

C. Interest

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. *See* Ark. Code Ann. § 26-18-508 (Repl. 2012). Consequently, the assessment of interest on the tax balance is sustained.

DECISION AND ORDER

After adjustments required by the above conclusions, the remaining 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. 2017), 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, A revision request may also be faxed to the Assistant Arkansas 72203. Commissioner (501)683-1161 emailed of Revenues or at 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 Taxpayers have 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.⁸

OFFICE OF HEARINGS & APPEALS

TODD EVANS

ADMINISTRATIVE LAW JUDGE

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

DATED: April 15, 2019