

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
LICENSE NO.: [REDACTED]

**GROSS RECEIPTS (SALES)
TAX ASSESSMENT
LETTER ID:** [REDACTED]

DOCKET NO.: 19-319

[REDACTED]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 [REDACTED], 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 [REDACTED] (tax), [REDACTED] (late payment penalty), and [REDACTED] (interest) after application of a payment in the amount [REDACTED]

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:

Sometime during the first week of December 2017, [REDACTED] and, I, [REDACTED], went to [REDACTED], at [REDACTED], Arkansas to look at purchasing a vehicle. [REDACTED] and I test drove a couple of vehicles, but we decided on trying to purchase the [REDACTED] ["Vehicle A"]. We both test drove it and liked the way it felt and drove. We then proceeded to talk with [REDACTED] about possibly purchasing the vehicle. We threw out a couple offers, but after [REDACTED] spoke with his boss, [REDACTED] (unknown last name), they were declined.

At some point during this conversation we were asked if we had any trade-ins. [REDACTED] advised [REDACTED] that we had a [REDACTED] [REDACTED] ["Vehicle B"] that had airlift suspension, but we were having issues with it running. He asked if we would be able to bring the vehicle in for him to look at it. [REDACTED] said yes we could but we would have to go get it from our apartment complex we were living in at the time.

We left the dealership and went to our house and picked up the truck. [REDACTED] drove the truck back to the dealership and I followed him. We returned back to the dealership and proceeded to talk with [REDACTED]. [REDACTED] test drove the truck to see how it ran. He agreed that the truck ran rough. [REDACTED] asked how much we could get for it but [REDACTED] and [REDACTED] wasn't willing to give us much for it, although we do not remember how much was offered. [REDACTED] and I both agreed that we would keep the truck because we knew we would have been able to get more even if it was sold for parts.

After deciding we keep the truck, [REDACTED] went and spoke with his boss, [REDACTED]. After talk with him, [REDACTED] made an offer that he would just keep the truck instead of receiving his commission, and

² The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2014) shall be referred to as the "motor vehicle tax credit" in this decision.

³ Included with the protest, the Taxpayer included the following explanation of events, a Bill of Sale, and a copy of a Confirmation Memo from their auto insurance company. The Bill of Sale states [REDACTED] purchased a [REDACTED] from [REDACTED] for [REDACTED] on December 9, 2017. The Confirmation Memo indicates that the Taxpayers removed the [REDACTED] from their auto insurance coverage on December 5, 2017.

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 [REDACTED] meant by everything, but we went ahead and started the credit approval of the purchasing process.

After being approved we started to go through paperwork and during this time⁴, my ([REDACTED]) parents showed up. We had our small daughter with us at the time and they had come by to watch her because they knew we were in the process of buying a car. I stepped out and advised my parents of what was happening. They didn't quite understand it either, but I told them I would have [REDACTED] call them after we are done and explain it better. I then went back inside so we could start signing the paperwork for the purchase. After signing the paperwork I went back out and got our daughter because my parents had to leave. Once the paperwork was done, [REDACTED] asked [REDACTED] if he could follow him to his house so he could drop off the truck. [REDACTED] agreed. I started putting our daughter in the car while [REDACTED] followed [REDACTED] to his house to drop off the truck. I sat in the car and waited for them to get back.

[REDACTED] and [REDACTED] returned in a timely fashion. I was told by [REDACTED] that he just dropped the vehicle off about a block or so from his place of employment and that they didn't take it to his house. We left [REDACTED] and went to [REDACTED] at [REDACTED] to finish other paperwork to finalize the sale. During the paperwork one of the questions was if there were any trade ins and we all said no due to the discussion we had at the pre-owned dealership. We finished the paperwork and left.

After leaving I told [REDACTED] to call my parents and explain to them what we had just done. I had told [REDACTED] I told them what we were doing but they didn't understand it and I wasn't able to explain it any clearer. [REDACTED] called my parents and explained to them. They still didn't understand how it was getting us a “deal” but were glad we were able to get a vehicle in our price range and budget.

Later that day, [REDACTED] told me he received a call from [REDACTED] to follow him to his house so he could drop off the truck and go back to get his other vehicle. [REDACTED] left to assist [REDACTED]. [REDACTED]

⁴ The Bill of Sale for the Taxpayers' purchase (see page 11 of Exhibit 1 to Department's Opening Brief) indicates that the Taxpayers purchased Vehicle A on December 9, 2017 for [REDACTED] (consisting of a selling price of [REDACTED] and a [REDACTED] service and handling fee) from [REDACTED]. No trade-in is reflected on that document.

later returned and said that he got the truck to his house. We did not get the bill of sale the same day because we did not have a copy to fill out. [REDACTED] had me print a copy off at my place of employment for him to take to [REDACTED] so they could fill it out. I printed it off and [REDACTED] had it filled out on December 9, 2017. This was not the same day we purchased the [REDACTED] from [REDACTED]. We did not have a bill of sale ready that day to fill out, but [REDACTED] took possession of the truck the day we purchased the [REDACTED]. If I remember correctly, we had the bill of sale filled out approximately a few days to a week later.⁵

Over the next couple of days [REDACTED] received multiple phone calls from [REDACTED] regarding the truck and specifics with it. I only know this part because [REDACTED] told me about it and that [REDACTED] was annoying him. [REDACTED] also called [REDACTED] to get the title from us. I looked for the title but was unable to find it. [REDACTED] called to get a new title sent to us but he was advised we were supposed to take it to the DMV after the loan was paid off. I was confused because I had never heard of anything like that and I didn't know what it meant. [REDACTED] finally did everything that needed to be done and we had a new title sent to us. I do not remember the date but [REDACTED] eventually got the title to [REDACTED]. I know this because [REDACTED] told me that [REDACTED] called saying he needed the title ASAP because he had already sold the truck to someone else.

The time comes that we have to tag our new vehicle which is January 2018. [REDACTED] went to tag the vehicle.⁶ He presented the bill of sale to them because we were told by [REDACTED] that if we proved that we sold the truck we would get a tax credit on our new one. [REDACTED] got the new vehicle tagged and we received a small tax credit for our sale.

Now in November 2018 we received a letter from the DMV saying the buyer claims we sold it in July 2018. We know that [REDACTED] never tagged it because he stated to us he had already sold the vehicle before we were even able to give him the title and sign it over. Attached to this is a copy of the bill of sale that was filled out by [REDACTED] and [REDACTED] on December 9, 2017. This is the date that we sold the [REDACTED]. Also attached is our insurance statement showing when we dropped the [REDACTED] on December 5, 2017.

This documentation should suffice to prove that [REDACTED] did, in fact, sell his [REDACTED] to [REDACTED] on December 9,

⁵ The Bill of Sale (included as page 4 of Exhibit 1 to Department's Opening Brief and attached to the Taxpayers' protest) states that [REDACTED] sold Vehicle B to [REDACTED] on December 9, 2017 for [REDACTED]. It was signed by both individuals.

⁶ The Application for Title (included as page 3 of Exhibit 1 to Department's Opening Brief) indicates that the Taxpayers registered Vehicle B on January 4, 2018, claiming entitlement to a motor vehicle tax credit in the amount of [REDACTED].

2017. It has both of their signatures and the date it was filled out. [REDACTED] [REDACTED] also stated to [REDACTED] 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 [REDACTED]. 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 [REDACTED] 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, 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 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

A handwritten signature in blue ink, appearing to read 'T.E.', is written over a horizontal line. There is a small number '3' written above the signature.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: April 15, 2019

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