

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

IN THE MATTER OF [REDACTED]
[REDACTED]
DOCKET NO.: 19-329

**GROSS RECEIPTS TAX
ASSESSMENT
ACCT. NO.:** [REDACTED]
**AUDIT PERIOD: MARCH 1, 2017
THROUGH MARCH 31, 2017**

AUDIT NO.: [REDACTED]

\$ [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 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”). The Department was represented by Gina Gatzke, Attorney at Law, Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated January 28, 2019. That letter was sent to the Department’s Representative and [REDACTED] (“Taxpayer’s Representative”). The Department filed its Opening Brief² on February 22, 2019. Neither the Taxpayer nor the Taxpayer’s Representative filed a Response Brief. The Taxpayer’s protest was received into evidence. The record was closed and this matter was submitted for a decision on April 17, 2019.

¹ This amount represents [REDACTED] (tax) and [REDACTED] (interest).

² According the certificate of service, this document was sent to the Taxpayer and the Taxpayer’s Representative.

ISSUE

Whether the Taxpayer has proven entitlement to the farm machinery and equipment exemption by a preponderance of the evidence. No.

PARTIES' PROPOSED FACTS AND ANALYSIS

Prehearing Filings

The Department's Opening Brief provided some relevant facts, providing in pertinent part, as follows³:

On March 3, 2017, [REDACTED] ("Taxpayer") purchased a new [REDACTED] and miscellaneous accessories with Serial Number [REDACTED] from [REDACTED] for [REDACTED]. (Exhibit 1)⁴. Simultaneous with the purchase, Taxpayer submitted a Commercial Farming Sales Tax Exemption form claiming that Taxpayer is engaged in the production of livestock and that the machinery/equipment purchased would be used exclusively and directly in the commercial production of livestock. (Exhibit 2).

Because Taxpayer submitted a Commercial Farming Sales Tax Exemption form for the equipment, [REDACTED] did not collect sales tax on the invoice. On September 7, 2018, the Department sent Taxpayer a letter requesting documentation to determine if the exemption was correctly applied. (Exhibit 3). A second notice was mailed to the Taxpayer certified mail on September 25, 2018, and delivered on October 8, 2018, with no authorized recipient. (Exhibit 4).⁵

Taxpayer did not provide any documentation. Accordingly, the Department disallowed the Commercial Farming Sales Tax Exemption and issued its Summary of Findings on October 9, 2018. (Exhibit 5). Per the Summary of Findings, the Department assessed Taxpayer for the following:

Tax	Penalty	Interest	Payments	Balance
[REDACTED]	\$0.00	[REDACTED]	\$0.00	[REDACTED]

³ Except as noted, all exhibits support the statements for which they are cited.

⁴ Specifically, the invoice lists a [REDACTED]. The trailer and title fee were not included within the Department's assessment.

⁵ According to the tracking information on the USPS website, it appears that this letter was not delivered to the Taxpayer but returned to the Department on October 19, 2018.

On October 11, 2018, the Department issued a Notice of Proposed Assessment. (Exhibit 6). On December 10, 2018, the Taxpayer timely filed a Protest of the Notice Proposed Assessment. (Exhibit 7).

Within her Answers to Information Request, the Department's Representative asserted that the items purchased by the Taxpayer represent tangible personal property and, thus, are generally taxable. She further asserted that the Taxpayer has failed to prove entitlement to the farm machinery and equipment exemption. Specifically, she asserted that the Taxpayer has not demonstrated that he is engaged in farming as a commercial business or that the equipment is directly and exclusively used in farming. She also averred that the interest assessment is appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2012).

Within his protest, the Taxpayer provided his objection to the assessment, stating as follows, in relevant part:

I disagree with the proposed assessment for the following reasons.

I had every intention on starting my farm in early 2017 but due to unforeseen issues with my father, my wife and then Hurricane Harvey, I was not able finish it all within 2017. My father was diagnosed with cancer, and he ultimately passed away [REDACTED]. As well my wife having [REDACTED] and continued treatment with her disease, and multiple surgeries, etc. to treat her [REDACTED]. Followed by working disaster relief as security for Hurricane Harvey from September 2017 to November 2017. All this combined put me behind the planned timeline.

I also had several other jobs taking time my away from starting the farm. Following my father' passing, who was patriarch of our family business, I am a head of operations in [REDACTED] as my full time job which is 10-12 hours a day, five to six days a week. I teach [REDACTED] for the State one to two nights a week. I am also a [REDACTED] which I work one to two nights every weekend. Until August 27th of 2018 I was also in the [REDACTED]

██████████ in which I had to ██████████, and I retired ██████████.

Starting in March of 2018 I bought chickens and cleared land on my property for said chickens with the tractor. By August 2018 they were producing eggs and I started selling eggs. I will have farm income to show on my 2018 farm schedule as proof of all of this.

Thank you for your time, and hopeful understanding and consideration this matter.

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

CONCLUSIONS OF LAW

A. 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**. [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. 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).

A. Sales Tax Assessment

1. Sales Tax

Arkansas Gross Receipts (Sales) Tax generally applies to the entire gross proceeds for all sales of tangible personal property and certain specifically enumerated taxable services. Ark. Code Ann. § 26-52-301 (Supp. 2017). The machinery and equipment purchased by the Taxpayer represents tangible personal property and is subject to Arkansas sales tax unless the Taxpayer demonstrates that an exemption applies.

Generally, the liability for collection and remittance of sales tax is upon the seller. Ark. Code Ann. § 26-52-508 (Supp. 2017). A seller, however, may be relieved of this liability if the customer makes an exemption claim. Ark. Code Ann. § 26-52-517(a) (Supp. 2017). At that point, the purchaser will become liable for the sales tax liability if the Department ultimately determines that the

purchaser improperly claimed an exemption. Ark. Code Ann. § 26-52-517(e) (Supp. 2017). Here, the Department has demonstrated that the Taxpayer made an exemption claim at the time of the purchase of the relevant machinery and equipment. Consequently, the liability for payment of sales tax on the purchase of the machinery and equipment has shifted to the Taxpayer.

2. Farm Equipment and Machinery Exemption

Ark Code Ann. §26-52-403(b) (Repl. 2014) exempts the sale of certain farm equipment and machinery from sales tax. Pursuant to Ark. Code Ann. § 26-52-105(b) (Repl. 2014), the Director of the Department is directed to promulgate rules for the proper enforcement of the sales tax laws. 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. . . . [Emphasis supplied.]

The Department’s interpretation of a statute or rule is entitled to deference unless the interpretation is clearly erroneous. The Arkansas Supreme Court has recognized that administrative agencies are often required to interpret statutes and rules. In *Walnut Grove School Distr. No. 6 of Boone County v. County Board of Education*, 204 Ark. 354, 162 S.W.2d 64 (1942), the court’s opinion stated, in part:

[T]he administrative construction generally should be clearly wrong before it is overturned. Such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight. It is highly persuasive.

Id. at 359, 162 S.W.2d at 66.

The Department has consistently interpreted Ark. Code Ann. § 26-52-403 (Repl. 2014) and GR-51 in a manner so that the use of machinery or equipment to mow or clear land (though beneficial to a poultry operation) results in the machinery or equipment failing to satisfy the “directly” test. The Department’s interpretation of Ark. Code Ann. § 26-52-403 (Repl. 2014) and GR-51 regarding the indirect uses of machinery or equipment is not clearly wrong.

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. *Cook, Commissioner of Revenue v. Walters Dry Good Company*, 212 Ark. 485, 206 S.W.2d 742 (1947); and *Kansas City Southern Ry. Co. v. Pledger*, 301 Ark. 564, 785 S.W.2d 462 (1990). A taxpayer claiming a deduction or credit bears the burden of proving that he or she is entitled to the deduction or credit by bringing himself or herself clearly within the terms and conditions imposed by the statute that contains the deduction or credit. *Weiss v. American Honda Finance Corp.*, 360 Ark. 208, 200 S.W.3d 381 (2004).

Even if it was assumed but not decided that the Taxpayer is now engaged in the production eggs as a commercial business, it is uncertain how [REDACTED] [REDACTED] are directly used in the commercial production of eggs. While the Taxpayer asserted that the tractor was used to clear his land, that purpose would not be considered a direct use with respect to the egg production. The record does not provide any other explanation regarding the use of these items. The evidence must establish that the machinery

or equipment was used directly and exclusively in the production of food or fiber as a commercial business by a preponderance of the evidence. Since the Taxpayer has failed to show that the relevant machinery and equipment fulfills those requirements, his exemption claim must be denied.⁶

In the absence of an applicable exemption, the assessment of tax on the Taxpayer's purchases of tangible personal property is 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

The proposed assessment of sales tax and interest 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 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. 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

⁶ While not claimed by the Taxpayer during this proceeding, Arkansas Gross Receipts Tax Rule GR-64(A) exempts certain machinery and equipment directly utilized in the processing of eggs. The Taxpayer, however, has not demonstrated that the machinery and equipment at issue would qualify for that exemption either.

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.⁷

OFFICE OF HEARINGS & APPEALS

A handwritten signature in blue ink, appearing to read "T. Evans", is written over a horizontal line. There is a small handwritten mark above the signature.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: April 22, 2019

⁷ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.