

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

(ACCT. NO.: ██████████)

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

DOCKET NO.: 19-330

**LETTER ID: ██████████
(\$ ██████████)¹**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated January 11, 2019, signed by ██████████, the Taxpayer. The Taxpayer protested an assessment of Gross Receipts Tax (“sales tax”) by the Department of Finance and Administration (“Department”).

This case was submitted on written documents included with the protest at the request of the Taxpayer. A Briefing Schedule was mailed to the parties on January 25, 2019. The Department was represented by Michael Wehrle, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented herself. The Department filed an Opening Brief on January 28, 2019. The Taxpayer did not file a Response Brief. The documents contained in the case file were received into evidence. This case was submitted for decision on April 12, 2019.

ISSUE

Whether the assessment issued by the Department against the Taxpayer should be sustained? Yes.

¹ The reflected amount consists of tax (\$████████), penalty (\$████████), and interest (\$████████).

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on November 19, 2018. The Department's Opening Brief addressed the basis for the assessment and stated, in part:

The taxpayer purchased a used maroon [REDACTED] four door sedan for \$ [REDACTED] on or about 12/10/2016. Exhibit A. The taxpayer has not registered the motor vehicle with the Department as required under Arkansas law. Exhibit B. Since the motor vehicle was not registered, the sales tax due on the taxpayer's purchase of the vehicle has not been paid. A Proposed Assessment of sales tax due, including penalty and interest, was therefore issued to the taxpayer. Exhibit C. The taxpayer's protest is attached as Exhibit D. [P. 1].

The Taxpayer's Protest Form set forth the following reasons for the Taxpayer's disagreement with the proposed assessment:

I [REDACTED] does not have the car. My soon to be ex-husband had the car and it was repo within the . . . 2nd month of having the car. All of my vehicle thats in my name all taxes are paid in full. [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

As a general rule, all sales of tangible personal property in the State of Arkansas are taxable unless a specific statutory exemption is applicable. See Ark. Code Ann. § 26-52-101 et seq. (Repl. 2014, Supp. 2017). Ark. Code Ann. § 26-52-103(21)(A) (Repl. 2014) defines “tangible personal property” as “personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses[.]” A motor vehicle is tangible personal property. The liability for sales tax on sales of tangible personal property is upon the seller in most circumstances. See Ark. Code Ann. § 26-52-517 (Repl. 2014).

However, the liability for sales tax on sales of motor vehicles required to be licensed is upon the purchaser pursuant to Ark. Code Ann. § 26-52-510 (Repl. 2014).

Ark. Code Ann. § 27-14-903 (Repl. 2014) requires that a motor vehicle purchased in Arkansas be registered within thirty (30) days of the date of purchase. The transfer of title or possession of a motor vehicle in Arkansas triggers the liability for sales tax. See Ark. Code Ann. § 26-52-103(19) (Repl. 2014) and Ark. Code Ann. § 26-52-301 (Repl. 2014). The payment of sales tax on the purchase of a new or used motor vehicle is addressed in Ark. Code Ann. § 26-52-510 (Repl. 2014) which provides, in pertinent part, as follows:

(a)(1) On or before the time for registration as prescribed by § 27-14-903(a), a consumer shall pay to the Director of the Department of Finance and Administration the tax levied by this chapter and all other gross receipts taxes levied by the state with respect to the sale of a new or used motor vehicle, trailer, or semitrailer required to be licensed in this state, instead of the taxes being collected by the dealer or seller.

(2) The director shall require the payment of the taxes at the time of registration before issuing a license for the new or used motor vehicle, trailer, or semitrailer.

(3)(A) The taxes apply regardless of whether the motor vehicle, trailer, or semitrailer is sold by a vehicle dealer or an individual, corporation, or partnership not licensed as a vehicle dealer.

(B) The exemption in § 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.

(4) 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.

The Bill of Sale contained in the case file supports the Department's position that the Taxpayer and a Co-buyer purchased a motor vehicle on December 10, 2016,² and the Taxpayer and the Co-buyer obtained possession of the motor vehicle. The Taxpayer owed sales tax upon the purchase of the motor vehicle and failed to timely register the motor vehicle or pay the applicable sales tax liability. The point raised by the Taxpayer regarding discontinued possession (or the Co-buyers' possession) of the vehicle is not a defense to the enforcement of the tax law. The evidence does not support a finding that a rescinded sale³ relieved the Taxpayer from the sales tax liability on the purchase of the motor vehicle. The Department correctly assessed sales tax against the Taxpayer.

Interest and Penalty

Interest is owed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2012). The Taxpayer failed to timely register the motor vehicle and pay the applicable sales tax liability; therefore, the Department correctly assessed a ten percent (10%) penalty pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014).

DECISION AND ORDER

The assessment is sustained. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this

² The total purchase price was \$ [REDACTED].

³ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances that justify a refund:

- a. Seller certifies that it has refunded Purchaser all consideration paid for the purchase of the returned vehicle described in Part B2, that it has retaken possession of that vehicle, and that the sale of the vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.
- b. Seller certifies that it has retaken possession of the vehicle described in Part B2 in exchange for the replacement vehicle described in Part B5, that the sales price stated above is correct and that the sale of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

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 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.⁴

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: April 15, 2019

⁴ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.