

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

IN THE MATTER OF [REDACTED]
[REDACTED]
DOCKET NO.: 19-336

**GROSS RECEIPTS TAX
ASSESSMENT**
ACCT. NO.: [REDACTED]

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 October 11, 2018, received from [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”).

A hearing was held in this matter on March 7, 2019, at 2:00 p.m. in Little Rock, Arkansas. The Department was represented by Amanda Land, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Warren Townsend (“Auditor”). [REDACTED], Attorney at Law, (“Taxpayer’s Representative”) appeared at the hearing by telephone and represented the Taxpayer. The Taxpayer and [REDACTED] (“Taxpayer’s Wife”) also appeared at the hearing by telephone.

ISSUE

Whether the assessment issued by the Department should be sustained.
Yes.

PARTIES’ PROPOSED FACTS AND ANALYSIS

¹ This amount represents [REDACTED] (tax), [REDACTED] (Failure to File Penalty) and [REDACTED] (interest).

Prehearing Filings

The Department's Answers to Information Request provided some relevant facts and her analysis, providing in pertinent part, as follows²:

In February of 2017, [REDACTED] ("Taxpayer") purchased a new [REDACTED]³ with Serial Number [REDACTED] from [REDACTED] for [REDACTED]. See Bill of Sale, attached as **Exhibit 1**. Simultaneous with the purchase, Taxpayer submitted a Commercial Farming Sales Tax Exemption form claiming that Taxpayer is engaged in the production of hay and that the machinery/equipment purchased would be used exclusively and directly in the commercial production of food and fiber. See Commercial Farming Sales Tax Exemption, attached as **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 July 13, 2018, the Department sent Taxpayer a letter advising that the purchase was being reviewed by the Department to ensure that the farm exemption was properly claimed. See **Exhibit 3**. The letter also stated that the Department needed documentation that would assist in determining whether the exemption was correctly applied. The letter included examples of acceptable documentation, including individual income tax returns, depreciation schedules for machinery/equipment, or other documentation indicating direct or exclusive farm use of the machinery/equipment. The letter provided Taxpayer with fourteen days to provide the documentation. The Department did not receive any documentation by that date. Therefore, the Department disallowed the Commercial Farming Sales Tax Exemption and issued its Summary of Findings on September 18, 2018. See **Exhibit 4**. Per the Summary of Findings, the Department assessed [REDACTED] in tax, [REDACTED] in penalty, and [REDACTED] in interest for a total assessment of [REDACTED]. On September 20, 2018, the Department issued a Notice of Proposed Assessment. A copy of the Notice of Proposed Assessment is attached as **Exhibit 5**. On October 19, 2018, the Department received a Protest of the Notice of Proposed Assessment. A copy of the Protest is attached as **Exhibit 6**. In his Protest, Taxpayer states the following:

Please note that I am a 100% permanent and total disabled Veteran (Veteran Administration letter attached) and therefore am exempt from sales tax on homestead and personal property.

Taxpayer further cites Ark. Code Ann. § 26-3-306 for his argument that he is exempt from the sales tax assessed in this matter. He also includes an Attorney General's Opinion, Opinion Number [REDACTED], in support of his

² All exhibits supported the statements for which they were cited.

³ A Google search of the model number reveals that this item is an all-terrain vehicle (ATV).

argument. For the reasons discussed below, the assessment of sales tax on the purchase of farm equipment was proper.

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. Additionally, she asserted that the exemption under Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Supp. 2017) only applies to taxes on the Taxpayer's homestead and personal property and, thus, is not applicable to transactional taxes like Arkansas sales tax.

Within his Answers to Information Request, the Taxpayer's Representative provided the basis for the Taxpayer's objection to the assessment, stating as follows, in relevant part:

██████████ purchased an all terrain vehicle at a local dealer and was advised there was no sales tax due since he was a 100% Service Connected Disabled Veteran. He subsequently was informed by DFA that he owed sales tax and by someone in DFA's chain of command that his 100% status of Disabled Veteran did not apply to sales tax but rather to annual personal property tax. ██████████ relied upon the dealer's representation and upon the Arkansas Code cited hereinafter and the Attorney General's Opinion cited hereinafter that he is exempt from all real and personal taxes.⁴

Hearing Testimony and Assertions

⁴ Included with this filing was a letter dated ██████████, from the Department of Veteran Affairs confirming that the Taxpayer was 100% permanently disabled veteran due to service-connected disabilities effective ██████████. See Taxpayer's Exhibit 1.

A. Auditor's Testimony

The Auditor revisited and confirmed the authenticity of the exhibits attached to the Department's Answers to Information Request. He also provided a factual summary for this matter that agreed with the rendition of facts provided within the Department's Answers to Information. The Auditor additionally noted that the assessed tax amount includes both state and county sales tax amounts. He explained that a failure to file penalty⁵ had also been assessed due to the Taxpayer's failure to file and pay the applicable tax. He proceeded to explain that the disabled veteran exemption claimed by the Taxpayer within his protest was limited to only property taxes and not sales taxes. He acknowledged that a Taxpayer need not file a Schedule F to establish a commercial farming operation for the farm machinery and equipment exemption if the Taxpayer can otherwise prove that a commercial farming operation is being pursued. He asserted, however, that the Taxpayer has not provided any documentation within his income tax return filing or otherwise to demonstrate that a commercial farming operation is being pursued. He also agreed that a seller is generally liable for collection of sales tax on sales of an ATV but noted that, during this transaction, the Taxpayer had made an exemption claim on his purchase, shifting the tax liability to the Taxpayer for the assessment.

B. Taxpayer's Testimony

⁵ The Department's Representative confirmed that a failure to file penalty had been assessed in this matter.

The Taxpayer testified that he is a [REDACTED] year old [REDACTED] and [REDACTED] veteran. He asserted that he is a 100% disabled service connected veteran.⁶

The Taxpayer further testified that he owns [REDACTED] acres in [REDACTED], Arkansas. He grows hay for his livestock and for sale and also grows a small amount of vegetables. He commercially sells his hay to several customers, like a local feed store and [REDACTED]. He obtained letters from both customers confirming their purchases.⁷ He has performed commercial transactions with [REDACTED] and [REDACTED] for [REDACTED] years. For his farming activity, the Taxpayer breeds [REDACTED] with [REDACTED] to produce [REDACTED]. Over the years, he has sold several [REDACTED] to [REDACTED] that were not favored by his [REDACTED]. In transactions with [REDACTED], he trades his stockpiled hay for sweet feed for his horses. Additionally, [REDACTED] gathers and bails the hay on his property in exchange for fifty percent (50%) of that crop.

The Taxpayer purchased the ATV after the farm recovered from flooding in [REDACTED]. He purchased the ATV to patrol his fence line and carry fence repair supplies and hay due to his handicap. He does not use the ATV for any pleasure activities. He did not file a Schedule F for his farming activity because his accountant told him that, unless he earned \$10,000 in profit from the farm activity, the Taxpayer was not required to file an income tax return. He has not

⁶ During the administrative hearing, the Department's Representative stated that the Department was not challenging the Taxpayer's assertion that he is a 100% permanently disabled veteran due to service-connected disabilities.

⁷ At this point in the administrative hearing, the Taxpayer entered two exhibits. Taxpayer's Exhibit 2 is an invoice from [REDACTED] signed by [REDACTED] that states in relevant part: "I have bought and traded for hay with [REDACTED] in the past." Taxpayer's Exhibit 3 is a letter dated March 4, 2019, from [REDACTED] that states in relevant part: "I have purchased hay from [REDACTED] for the last [REDACTED]. I have also done business with him in purchasing livestock, mostly equine from him for the last [REDACTED]."

earned \$10,000 in a single year from the farming activity. The Taxpayer also stated that the seller of the ATV told him that he would need to complete the exemption claim form for his farming activity.

C. Taxpayer's Wife's Testimony

The Taxpayer's Wife testified that she has been married to the Taxpayer for [REDACTED]. She asserted that the Taxpayer has been in the business of farming through his horse operation and occasional cows during that time. She also testified that the ATV is exclusively used on the farm. Occasionally, the farm will also be used to help rehabilitate sick or injured animals.

D. Hearing Assertions of Taxpayer's Representative

The Taxpayer's Representative asserted that the disabled veteran exemption should apply to all taxes and not be limited to real or personal property taxes. If that exemption does not apply, however, he asserted that the Taxpayer should qualify for the farm machinery and equipment sales tax exemption. Even if both of those exemptions do not apply, he lastly asserted that the applicable tax should have been collected and remitted by the seller on the ATV sale and not assessed against the Taxpayer.

E. Hearing Assertions of Department's Representative

The Department's Representative asserted that, though the Taxpayer may qualify as a disabled veteran, the disabled veteran exemption is limited to property taxes and does not apply to sales taxes levied on sales transactions. She further asserted that utilization of the ATV to check and maintain the fence line is not a direct use of the ATV within a farming operation.

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 ATV 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). Specifically discussing a seller's documentation requirements for the farm machinery and equipment exemption, Arkansas Gross Receipts Tax Rule GR-51(D) provides as follows:

PROOF OF ENTITLEMENT. Sellers of farm equipment and machinery, which the purchaser claims as an exempt transaction, should refer to GR-79 concerning exemptions. As an alternative to an exemption certificate, a seller may accept a certification from the purchaser that the item (i) will be used exclusively in the agricultural production of food or fiber as a retail

business; and either (ii) used directly in the actual agricultural production of food or fiber to be sold in processed form or at retail; or (iii) used directly in the agricultural production of farm products to be fed to livestock or poultry, which is to be sold ultimately in processed form at retail. The suggested certification form appears at the end of this rule.

Here, the Department has demonstrated that the Taxpayer made an exemption claim at the time of the purchase of the ATV. Consequently, the liability for payment of sales tax on the purchase of the machinery and equipment has shifted to the Taxpayer.⁸

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.]

Additionally, Arkansas Gross Receipts Tax Rule GR-51(C)(2) provides as follows:

⁸ The Taxpayer’s Representative’s did assert that the seller should remain solely liable for the collection and remittance of tax on the transaction even though the Taxpayer completed and provided the Commercial Farming Machinery and Equipment Sales Tax Exemption Certification form provided within the GR-51. This argument, however, is contrary to the governing regulation and statute and, thus, is not persuasive.

An implement may not be treated as tax exempt unless it is used "directly" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. The term "directly" limits the exemption to the following:

- a. Only those implements used in the actual agricultural production of food, fiber, grass sod, or nursery products to be sold in processed form or otherwise at retail; or
- b. Machinery and equipment used in the agricultural production of farm products to be fed to **livestock or poultry which is to be sold ultimately in processed form at retail.** [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:

the 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 fence rows or to build or mend fences (or perform other maintenance functions required at a farm) results in 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).

Here, the Taxpayer has explained that the machinery or equipment at issue have been utilized to build and maintain a fence on the property. This activity is not directly related to the production of livestock under the above analysis.⁹ As an indirect use, this activity prevents the machinery and equipment from qualifying as exempt farming machinery or equipment utilized directly and exclusively in the production of food and fiber as a commercial business.

The evidence must establish that the ATV 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 ATV fulfills those requirements, his exemption claim must be denied.

3. Disabled Veteran Exemption

Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Supp. 2017) provides as follows:

A disabled veteran who has been awarded special monthly compensation by the Department of Veterans Affairs for the loss of, or the loss of use of, one (1) or more limbs, for total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent

⁹ The Taxpayer's livestock also do not appear to qualify as "livestock or poultry which is to be sold ultimately in processed form at retail." It is uncertain how all of the Taxpayer's customers utilize their hay but [REDACTED] also appears to raise horses.

disability shall be exempt from payment of all state taxes on the homestead and personal property owned by the disabled veteran.

That exemption applies only to “all state taxes on the homestead and personal property owned by the disabled veteran.” With respect to the issue of whether a sales tax is a tax on personal property, two opinions of the Arkansas Supreme Court are controlling. In *Russell v. State*, 367 Ark. 557, 242 S.W.3d 265 (2006), the court stated that:

On appeal, the Louisiana Court of Appeals affirmed, but the Supreme Court reversed, pointing out that “a sales tax is a distinct and separate charge [that] the retail seller is required to collect as a pass-through entity for the benefit of the state and locality.” *Id.* at 1234-35. Moreover, the court noted that Louisiana’s sales and use tax was “an excise tax, a tax upon the transaction itself, not the property involved in the transaction.” *Id.* at 1235. Therefore, the court concluded as follows:

[W]hile it may be said that sales tax may increase the cost to the buyer in the retail market, it is equally clear that *it does not increase the value of the property purchased*. Simply stated, ... a sales tax is a mandatory cost [that] state and local governments have added to the sale transaction, over and above the value of the purchased property.

Id. (emphasis added).

In Arkansas, as in Iowa and Louisiana, the sales tax is an excise tax “upon the gross proceeds or gross receipts derived from all sales to any person” of goods and services enumerated in the statute, including “[t]angible personal property[.]” Ark. Code Ann. § 26-52-301(1) (Repl. 1997 & Supp. 2005). A sales tax is a tax “imposed on the sale of goods and services” that is usually “measured as a percentage of their price.” Black’s Law Dictionary 1498 (8th ed. 2004). Clearly, the sales tax is a cost imposed on the transaction.
Id. at 564 – 565.

In *Borchert v. Scott*, 248 Ark. 1041, 460 S.W.2d 28 (1970), the court discussed an excise tax similar to a sales tax and stated as follows:

Appellant Borchert’s point V has already been disposed of by our holding under point III, that the tax levied under Act 239 is in the nature of an excise and not a property tax. An ad valorem tax is a tax on the value of

property. (Black's Law Dictionary). Act 239 levied a 3% tax on the sale of real property, not on the property or its value; the amount of the tax is based on the consideration or price received in the transaction and not on the value of the property.

Id. at 1050-U (Supplemental Opinion on Rehearing).

The sales tax imposed under the Arkansas Gross Receipts Act of 1941, Ark. Code Ann. § 26-52-101 et seq. (Repl. 2014, Supp. 2017), is not a property tax.¹⁰ Without question, Ark. Code Ann. § 26-3-306 (Supp. 2017) provides an exemption to the Taxpayer from real estate taxes and personal property taxes. However, the Taxpayer has failed to prove that Ark. Code Ann. § 26-3-306 (Supp. 2017) exempts him from sales tax. Consequently, the exemption located at Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Supp. 2017) is not applicable to the Taxpayer's ATV purchase, and the exemption was properly denied by the Department.

B. Estoppel

Though not expressly asserted by the Taxpayer's Representative, the Taxpayer's presentation may implicate an estoppel claim. In *Duchac v. City of Hot Springs*, 67 Ark. App. 98, 992 S.W.2d 174, the Arkansas Court of Appeals discussed the requirements for an estoppel claim against a governmental entity, stating as follows in pertinent part:

In *City of Russellville v. Hodges*, 330 Ark. 716, 957 S.W.2d 690 (1997), our supreme court set out the elements of estoppel:

Four elements are necessary to establish estoppel. They are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that the conduct be acted on or must act so that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting the estoppel must rely on the other's conduct and be injured by that reliance. [Citations omitted.]

¹⁰ See also *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91, 96 (1935).

Additionally, we have specifically held that a sovereign is not bound by the unauthorized acts of its employees. [Citations omitted.]

330 Ark. at 719, 957 S.W.2d at 691–92. The trial court also cited *Hope Educ. Ass'n v. Hope School Dist.*, 310 Ark. 768, 839 S.W.2d 526 (1992), which applied the same elements of estoppel, with a few wording changes, to a sovereign. In applying these elements of estoppel to the facts of this case, the chancellor found they were not all satisfied.

...

According to appellant, the second element of estoppel, that the party to be estopped must intend that the conduct be relied on, is satisfied by the City billing and collecting occupational taxes, thereby acquiescing in appellant's use of the house as an apartment building. The Arkansas Supreme Court has held that estoppel may only be applied against the State when there has been an “affirmative misrepresentation by an agent or agency of the State.” *Arkansas Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996). See also *Foote's Dixie Dandy, Inc. v. McHenry*, supra. Estoppel should not be applied where there was no clear proof of an affirmative misrepresentation. *Everett, Director v. Jones*, 277 Ark. 162, 639 S.W.2d 739 (1982). These requirements are equally applicable to municipal corporations. *Miller v. City of Lake City*, 302 Ark. 267, 789 S.W.2d 440 (1990). In the instant case there is no allegation of any affirmative misrepresentation by any agent of the City. The chancellor was correct in not applying estoppel to the City because of the City's acquiescence in appellant's use of the house as an apartment for many years.

As to the third element of estoppel, the party asserting the estoppel must be ignorant of the facts, appellant argues that he was justifiably ignorant of the zoning violation because the house was divided into apartments that were fully occupied when he purchased it, and, in the thirty years he has owned the house, the City never informed him that he was violating a zoning ordinance. Again, appellant is not claiming an affirmative misrepresentation by an agent of the City, only acquiescence. The chancellor found that since the zoning ordinance was law, and one is presumed to know the law, appellant could not rely on his ignorance. It has long been held that every person is presumed to know the law and that ignorance of its mandates is no excuse. *Henderson v. Gladish*, 198 Ark. 217, 128 S.W.2d 257 (1939). See also *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989); *Dunkin v. Citizens Bank of Jonesboro*, 291 Ark. 588, 727 S.W.2d 138 (1987).

Duchac, 67 Ark. App. at 105–107, 992 S.W.2d at 179–180.

As shown above, under court precedent, an estoppel claim against the Department requires proof that the Department's employee was aware of the

necessary facts and made an affirmative misrepresentation; the Taxpayer lacked knowledge of the relevant facts; and the Taxpayer relied to its detriment on the Department's assertion. The Arkansas Court of Appeals specifically noted that mere lack of knowledge of a publicly available law is insufficient to support an estoppel claim.

Here, the Taxpayer has asserted that he relied on an opinion by the Arkansas Attorney General ([REDACTED]). That opinion, however, discusses the necessary requirements to qualify for the disabled veteran exemption and does not discuss to which taxes the exemption applies. Further, the Arkansas Attorney General's Office regularly notes that the Department is the appropriate authority for the issuance of letter opinions regarding the taxes that it administers. *Cf* [REDACTED]. Additionally, Arkansas Gross Receipts Tax Rule GR-75(E) discusses tax opinions issued by other agencies, stating as follows: "Opinions issued by any other agency, whether formal or informal, are not binding on the Department." Further, as stated previously, Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Supp. 2017) does not support the Taxpayer's assertion that the exemption for 100% disabled veterans is applicable to Arkansas sales tax. Additionally, the Taxpayer has not asserted that an individual employed with the Department instructed him that the transaction was exempt under Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Supp. 2017). Based on the record, the Taxpayer has failed to establish an estoppel defense in this matter. Consequently, an estoppel claim cannot be upheld in this matter under court precedent.

C. Failure to File Penalty

With respect to the failure to file penalty, Ark. Code Ann. § 26-18-208(1) (Repl. 2012) provides as follows:

In the case of a taxpayer's failure to file any return required by any state tax law on or before the date prescribed determined with regard to any extension of time for filing the return, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate

Further, lack of knowledge of publicly available statutes and rules cannot be recognized as a defense to their enforcement. 29 Am. Jur. 2d Evidence 290; see also *Edward v. US*, 334 F.2d 360 (1964) and *Jellico Coal Min. Co. v. Commonwealth*, 96 Ky. 373, 29 S.W. 26 (Ky. App. 1895). The U.S. Supreme Court has explained the reason for this legal principle as follows:

The whole course of the jurisprudence, criminal as well as civil, of the common law, points to a different conclusion. It is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally; and it results from the extreme difficulty of ascertaining what is, bonâ fide, the interpretation of the party; and the extreme danger of allowing such excuses to be set up for illegal acts, to the detriment of the public.

Barlow v. US, 32 U.S. 404, 411 (1833). The Arkansas Supreme Court has also provided that the maxim that lack of knowledge of the law is no defense applies in equal force “to acts committed or omitted in violation of the criminal or civil laws of the land.” *State v. Simmons*, 1 Ark. 265, 266 (1839). Consequently, the lack of knowledge of the legal requirements cannot be considered in the analysis regarding the alleged errors.

Based on the above analysis, the Taxpayer improperly made an exemption claim and did not report and remit the applicable taxes to the Department. The Taxpayer was responsible for the reporting and remitting sales tax on this transaction due to his exemption claim. Ark. Code Ann. § 26-52-517(b) (Supp. 2017). Further, lack of knowledge of this requirement cannot be recognized as a defense to the assessment of the failure to file penalty. Based on the record, the assessment of the failure to file penalty is sustained.

D. 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 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 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.¹¹

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 mark above the signature.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 12, 2019

¹¹ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.