

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

**IN THE MATTER OF** [REDACTED]  
[REDACTED]  
**DOCKET NO.: 19-337**

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

**AUDIT NO.:** [REDACTED]

[REDACTED]<sup>1</sup>

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE  
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received November 14, 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”).

A hearing was held in this matter on March 1, 2019, at 10:00 a.m. in Bentonville, 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 Rayni McCool (“Auditor”) and Patti Gilliland (“Audit Supervisor”). The Taxpayer appeared at the hearing and represented himself.

**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**

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<sup>1</sup> This amount represents [REDACTED] (tax) and [REDACTED] (interest).

The Department's Answers to Information Request provided some relevant facts and her analysis, providing in pertinent part, as follows<sup>2</sup>:

On September 29, 2015, [REDACTED] ("Taxpayer") purchased a [REDACTED] Auger, [REDACTED] for [REDACTED] from [REDACTED]. See Purchase Invoice, 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 hogs and that the machinery/equipment purchased would be used exclusively and directly in the commercial production of [REDACTED]. See Farm Exemption Certificate, 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 August 15, 2018, the Department sent Taxpayer a letter requesting documentation to determine if the exemption was correctly applied. See Letter dated August 15, 2018, attached as **Exhibit 3**. A second notice was mailed to the Taxpayer on August 29, 2018. See Letter dated August 29, 2018, attached as **Exhibit 4**.

Taxpayer contacted the Department and stated that he has a farm with around [REDACTED], and that he also files a Schedule F for farming. See Audit Comments, attached as **Exhibit 5**. The Department determined that the Auger purchased by the Taxpayer did not qualify for the farm exemption. Accordingly, the Department disallowed the Commercial Farming Sales Tax Exemption and issued its Summary of Findings on September 10, 2018. A copy of the Summary of Findings is attached as **Exhibit 6**. Per the Summary or findings, the Department assessed [REDACTED] in tax, [REDACTED] in penalty, and [REDACTED] in interest for a total assessment of [REDACTED]. On September 11, 2018, the Department issued a Notice of Proposed Assessment. A copy of the Notice of Proposed Assessment is attached as **Exhibit 7**. On November 7, 2018, the Taxpayer timely filed a Protest of the Notice of Proposed Assessment. A copy of the Protest is attached as **Exhibit 8**.

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

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<sup>2</sup> All exhibits supported the statements for which they were cited.

demonstrated that he is engaged in farming as a commercial business or that the equipment is directly and exclusively used in farming.

Within his protest, the Taxpayer provided his objection to the assessment, stating as follows, in relevant part: “Items are a post auger. I have [REDACTED] [REDACTED] [REDACTED]. How would I get a post in without it? This item has no other use but for post holes.”

### **Hearing Testimony**

#### **A. Taxpayer’s Testimony**

The Taxpayer testified that his farm has very rocky soil, making manual digging of a post hole very difficult.<sup>3</sup> The Taxpayer stated that he is [REDACTED] [REDACTED] years old and has multiple sclerosis. The Taxpayer explained that he is under contract to produce [REDACTED] during April 2019 through March 2020.<sup>4</sup> He asserted that fencing and fence posts are essential to the [REDACTED]. Without an auger, he testified that it would be impossible to install the fence posts. If he dug a post by hand, he would spend the entire day on a single post hole.

#### **A. Auditor’s Testimony**

The Auditor testified she has reviewed the documents associated with the Taxpayer’s purchase of a [REDACTED] post auger, serial number [REDACTED]. The purchase invoice<sup>5</sup> states that the Taxpayer purchased an auger and two backhoe buckets from [REDACTED] on September 29, 2015. The auger cost [REDACTED]. The Taxpayer claimed the farm machinery and equipment

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<sup>3</sup> See Taxpayer’s Hearing Exhibit 1, showing the Taxpayer digging into rocky soil with his backhoe.

<sup>4</sup> See Taxpayer’s Hearing Exhibit 4 for a copy of the contract.

<sup>5</sup> See Department’s Exhibit 1.

exemption on that purchase based on his [REDACTED].<sup>6</sup> She sent letters requesting documentation to substantiate the Taxpayer's exemption claim.<sup>7</sup> Ultimately, the Taxpayer contacted the Department by telephone. The Taxpayer stated that he was a farmer with [REDACTED]. She confirmed that the Taxpayer filed a Schedule F for the relevant tax year. She allowed the Taxpayer's exemption claim for the two buckets but not the auger. She asserted that an auger is not directly used in the production of the pigs. The Department issued a sales tax assessment against the Taxpayer for the auger purchase.<sup>8</sup> The total assessed amount is [REDACTED], representing [REDACTED] (tax) and [REDACTED] (interest). The Taxpayer protested the assessment, but his explanation did not warrant an adjustment to the audit. While a person could manually dig post holes, the Auditor acknowledged that the Taxpayer likely would use the auger<sup>9</sup> due to his age and health issues. She reasserted, however, that post holes can be dug by hand or utilizing hired help. The Auditor stated that digging postholes is the only use for an auger that she knows. She is aware [REDACTED] can quickly destroy fences.<sup>10</sup>

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**

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<sup>6</sup> See Department's Exhibit 2

<sup>7</sup> See Department's Exhibits 3 and 4.

<sup>8</sup> See Department's Exhibits 6 and 7.

<sup>9</sup> See Taxpayer Hearing 2, showing a photo of the relevant auger.

<sup>10</sup> See Taxpayer's Hearing Exhibit 3, showing [REDACTED] within the Taxpayer's fence.

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).

## **B. 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 or 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:

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 a fence on the property. This activity is not directly related to the [REDACTED] under the above analysis. 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 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.

### **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](mailto: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.<sup>11</sup>

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: March 5, 2019

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<sup>11</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.