

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
DOCKET NO.: 19-354

**GROSS RECEIPTS TAX
ASSESSMENT
ACCT. NO.:** [REDACTED]
**AUDIT PERIOD: DEC. 1, 2015
THROUGH DEC. 31, 2015**

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 received January 25, 2019, 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, Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was taken under consideration of documents. A briefing schedule was established for the parties by letter dated February 5, 2019. The Department filed its Opening Brief on March 5, 2019. The Taxpayer did not file a Response Brief, but his original protest was accepted into evidence. On April 22, 2019, the Department’s Representative informed this Office that she would stand on the arguments provided within her Opening Brief

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

and she did not intend to file a reply brief. The record was closed and this matter was submitted for a decision on April 22, 2019.

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

The Department's Opening Brief provided some relevant facts and its analysis, providing in pertinent part, as follows²:

On December 23, 2015, [REDACTED] ("Taxpayer") purchased a new [REDACTED] ("Tractor") and miscellaneous accessories with [REDACTED] from [REDACTED] for [REDACTED]. (Exhibit 1). Simultaneous with the purchase, Taxpayer submitted a Commercial Farming Sales Tax Exemption form claiming that he is engaged in the production of livestock and hay, and that the machinery/equipment purchased would be used exclusively and directly in the commercial production or livestock and hay. (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 14, 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 on October 25, 2018 (Exhibit 4).

Taxpayer did not provide any additional documentation to support his use of the sales tax exemption on the purchase of the Tractor. Accordingly, the Department disallowed the Commercial Farming Sales Tax Exemption and issued its Summary or Findings on January 10, 2019. (Exhibit 5). Per the

² All exhibits support the statements for which they are cited.

Summary of Findings, the Department assessed Taxpayer for the following:

Tax	Penalty	Interest	Payments	Balance
██████████	\$0.00	██████████	\$0.00	██████████

On January 16, 2019, the Department issued a Notice of Proposed Assessment. (Exhibit 6). On December 10, 2018, the Taxpayer timely filed a Protest of the Notice of Proposed Assessment. (Exhibit 7).

Within her Opening Brief, 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 machinery/equipment is directly and exclusively used in farming. She also claimed that the assessment of interest was 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 was not informed by the ██████████ salesman that I needed to file a Schedule F form. I worked overseas in ██████████ ██████████ for ██████████ for ██████████ and have little knowledge of the state tax laws.”

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/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.]

Additionally, Arkansas Gross Receipts Tax Rule GR-51(E) provides additional guidance relevant to this proceeding, stating as follows:

ENGAGED IN THE BUSINESS OF FARMING. A purchaser of farm machinery and equipment shall be considered to be engaged in the business of farming for purposes of the exemption if the purchaser meets the requirements in GR-51(E)(1) or GR-51(E)(2).

1. The purchaser is engaged in the agricultural production of food, fiber, grass sod, or nursery products **as a business for profit** as defined in Internal Revenue Code § 183 as adopted by Ark. Code Ann. § 26-51-424; or
2. a. The purchaser provides services to farmers directly related to the production of food, fiber, grass sod, or nursery products;
b. The items of farm machinery and equipment are used exclusively and directly to provide those services; and
c. The items of farm machinery and equipment would have otherwise qualified for the farm machinery exemption if purchased and used exclusively and directly by the farmer for the same activity.

Example: A fertilizer spreader or seed spreader, or chemical applicator purchased by a farmer would qualify for the farm machinery exemption if used exclusively by a farmer in applying fertilizer, planting seed, or applying agricultural chemicals as part of the agricultural production of food, fiber, grass, sod, or nursery products as a business. The farm machinery exemption will also be available to a fertilizer dealer, seed company, or other similar business upon the purchase of these same items provided the items are used exclusively and directly by the business in applying fertilizer, planting seed, or applying agricultural chemicals for farmers. [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.

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 stated within his exemption form that he is engaged in the commercial production of "livestock and hay." At this point in the administrative process, the Taxpayer has not provided any evidence regarding his farming activity or to demonstrate that the farming activity is being pursued as a for-profit commercial business.³ Since the Taxpayer has failed to show that the relevant machinery and equipment fulfills the requirements of the relevant exemption, his exemption claim must be denied. Consequently, the Taxpayer has

³ Because this conclusion prevents application of the exemption, the Department's remaining arguments for denying the exemption claim shall not be addressed since they are rendered moot.

not proven entitlement to the farm machinery and equipment exemption by a preponderance of the evidence.

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 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

A handwritten signature in blue ink, appearing to read 'T.E.', is written over a horizontal line.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: April 22, 2019

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