

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

IN THE MATTER OF [REDACTED]
[REDACTED]
(ACCOUNT ID.: [REDACTED])

**GROSS RECEIPTS TAX
ASSESSMENT
LETTER ID: L [REDACTED]**

DOCKET NO.: 19-370

ASSESSED AMOUNT: [REDACTED]¹

**TODD EVANS, ADMINISTRATIVE LAW JUDGE
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received February 19, 2019, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Michael Wehrle, Attorney at Law, Office of 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 February 25, 2019. The Department filed its Opening Brief on February 26, 2019. The Taxpayer did not file a Response Brief, but the Taxpayer’s protest was received into evidence. The record was closed and this matter was submitted for a decision on May 15, 2019.

ISSUE

Whether the Department’s assessment should be sustained. Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

¹ This amount represents [REDACTED] (tax), [REDACTED] (late payment penalty), and [REDACTED] (interest).

The Department's Representative provided a statement of relevant facts in his Answers to Information Request, stating as follows, in pertinent part:

The taxpayer purchased a used white [REDACTED] ["Relevant Vehicle"] for [REDACTED] on or about 6-9-2016. Exhibit A.² The taxpayer has not registered the motor vehicle with the Department as required under Arkansas law. Exhibit B.³ 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.⁴ The taxpayer's protest is attached as Exhibit D.

In his Answers to Information Request, the Department's Representative provided that a sale of a motor vehicle is generally taxable. He stated that the assessment of penalty was appropriate under Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014) and interest was appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2012).

Within her protest, the Taxpayer provided the basis for her objection to the assessment, stating as follows: "Vehicle purchase price is not correct. This vehicle has been assessed, tagged in the state of Arkansas." Included with her protest, the Taxpayer provided a copy of her 2017 Personal Property

² This Exhibit includes a Motor Vehicle Retail Installment Contract, a copy of the Relevant Vehicle's title, a copy of the Bill of Sale from the back of that title, and an Affidavit of Repossession of Motor Vehicle. The Motor Vehicle Retail Installment Contract is signed by the Taxpayer and seller and states that the Taxpayer purchased the Relevant Vehicle on June 9, 2016, for [REDACTED] (consisting of an [REDACTED] cash price, a [REDACTED] service contract, and a [REDACTED] service and handling fee) from [REDACTED]. The Bill of Sale from the back of the Relevant Vehicle's title is not signed by the Taxpayer but is signed by the seller and states that the Taxpayer purchased the Relevant Vehicle on June 9, 2016 from [REDACTED] for [REDACTED]. The Affidavit of Repossession states that the Taxpayer had the Relevant Vehicle repossessed on November 16, 2016 by [REDACTED].

³ This Exhibit is dated December 19, 2018, and states that the purchase price of the Taxpayer's registration of the Relevant Vehicle has been adjusted to reflect a purchase price of [REDACTED] and a service contract price of [REDACTED].

⁴ This Exhibit is dated December 19, 2018, and assessed [REDACTED] against the Taxpayer, representing [REDACTED] (tax), [REDACTED] (late payment penalty), and [REDACTED] (interest).

Assessment⁵, a Bill of Sale⁶, a copy of her registration⁷, and a Conditional Sales Security Agreement and Truth in Lending Disclosure Statement.⁸ Though the vehicle description changes amongst the documents provided by the Taxpayer, all of the Taxpayer's exhibits contain the same Vehicle Identification Number, which is not the Vehicle Identification Number for the Relevant Vehicle.

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

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

⁵ This Exhibit states that the Taxpayer assessed a [REDACTED] on November 30, 2017.

⁶ This Exhibit states that the Taxpayer purchased a [REDACTED] on October 16, 2017 from [REDACTED] in [REDACTED], Arkansas for [REDACTED]. This Exhibit is signed by the Taxpayer and the Seller.

⁷ This Exhibit states that the Taxpayer registered a [REDACTED] on November 30, 2017 with a taxable price of [REDACTED] and received a license plate number of [REDACTED].

⁸ The Exhibit states that the Taxpayer purchased a [REDACTED] for [REDACTED] on October 16, 2017. It is signed by the Taxpayer and the seller.

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).

Legal Analysis

Arkansas sales tax generally applies to the entire gross receipts of all sales of tangible personal property and certain specifically enumerated services within the State of Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2017). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(26)(A) (Supp. 2017). For purchases of motor vehicles, the consumer is responsible for payment of the accompanying sales tax liability to the Department on or before the time of registration. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2014). A purchased motor vehicle is required to be registered within thirty (30) days of the release of a lien by a prior lienholder or within thirty (30) days after the date of the transfer if no lien is present. Ark. Code Ann. § 27-14-903 (Repl. 2014). Additionally, service

contracts are subject to Arkansas sales tax. Ark. Code Ann. § 26-52-301(7) (Supp. 2017).

Initially, the Taxpayer has not established that a rescinded sale occurred.⁹ Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on June 9, 2016, for a total cost of [REDACTED] (including the service contract). Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking of possession of the car triggers the tax liability. Consequently, the Department has borne its burden of showing that a sale of tangible personal property to this Taxpayer occurred. While the Taxpayer has shown that she purchased and registered a second vehicle after the Relevant Vehicle's repossession, the original purchase of the Relevant Vehicle remains taxable. The Taxpayer has failed to demonstrate a defense to the enforcement of the tax law.

Regarding the late payment penalty, the Department's Representative asserted that the penalty was assessed pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014), which provides as follows:

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

⁹ 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 sales of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

- (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.

Here, based on the above analysis, the Taxpayer failed to timely register the vehicle and timely pay the applicable taxes as provided in the relevant code sections. Consequently, the late payment penalty was properly assessed against the Taxpayer.

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 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 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.¹⁰

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: May 16, 2019

¹⁰ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.