

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

**ACCT. NO.:** [REDACTED]

**DOCKET NO.: 19-383**

**MOTOR VEHICLE SALES  
TAX ASSESSMENT**

**LETTER ID:** [REDACTED]

**(\$ [REDACTED])<sup>1</sup>**

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**RAY HOWARD, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest submitted on February 7, 2019, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from an audit conducted by the Department of Finance and Administration (“Department”).

A telephone hearing was held in Little Rock, Arkansas, on April 3, 2019, at 11:00 a.m. The Department was represented by Lisa Ables, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department, via telephone, was Barbara Montgomery – Tax Credits Supervisor. The Taxpayer appeared at the hearing, via telephone, and represented himself.

**ISSUE**

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

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<sup>1</sup> The reflected amount includes tax (\$ [REDACTED]); penalty (\$ [REDACTED]); and interest (\$ [REDACTED]).

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on January 17, 2019. The Taxpayer's Protest Form included a handwritten statement setting forth the basis for his disagreement with the assessment and provided, "[t]he vehicle was reposed is the reason it was not assessed or never tagged before I got a chance. I could not afford to keep the truck. [P. 1]."

The Department's Answers to Information Request summarized the facts and issues involved in this case and stated, as follows:

On or about February 27, 2016, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . (the "vehicle") from [REDACTED] in [REDACTED], Arkansas. The Motor Vehicle Retail Installment Contract reflects that the sales price of the vehicle was \$ [REDACTED] and that the Taxpayer financed \$ [REDACTED] of the purchase price through [REDACTED]. See the Motor Vehicle Retail Installment Contract attached as **Exhibit 1**.

On or about January 17, 2019, the Arkansas Department of Finance and Administration (the "Department") determined that Taxpayer did not register the vehicle and mailed a Billing Statement to Taxpayer due to the Taxpayer's failure to register the vehicle and pay the sales tax. See **Exhibit 2**. The Department then issued a Notice of Proposed Assessment to Taxpayer in the amount of \$ [REDACTED]. The assessment consists of tax in the amount of \$ [REDACTED], interest in the amount of \$ [REDACTED], and penalty in the amount of \$ [REDACTED]. See **Exhibit 3**. The assessment was based on the purchased vehicle price of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to the Taxpayer on January 17, 2019. See **Exhibit 4**.

In his protest, the Taxpayer states that the car was repossessed and that he no longer has the vehicle. See **Exhibit 5**. The Taxpayer has not presented a defense to the assessment of tax for the Taxpayer's vehicle purchase. Upon information and belief, the vehicle was repossessed by [REDACTED] due to non-payment. See **Exhibit 6**. Repossession is not a defense to the assessment of tax for the Taxpayer's vehicle purchase. [P. 1-2]

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and stated that the case file does not contain a completed Rescinded Sale Form. The Taxpayer presented testimony at the hearing consistent with the facts asserted in his Protest Form and also testified that: (1) the repossession was voluntary; and (2) he parked the vehicle and took it back to the dealership a few weeks after he purchased it.

## **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).

### **Sales 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(30)(A) (Supp. 2017) 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 (Supp. 2017). 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(26) (Supp.

2017) and Ark. Code Ann. § 26-52-301 (Supp. 2017). 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.

...

- (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 evidence presented in this case established that the Taxpayer purchased the vehicle on February 27, 2016, and he obtained possession of the vehicle. The Taxpayer owed sales tax upon the purchase of the vehicle and failed to timely register the vehicle or pay the applicable sales tax liability. The point raised by the Taxpayer regarding discontinued possession of the vehicle is not a defense to the enforcement of the tax law. Repossession of the vehicle, voluntary or involuntary, did not extinguish the liability for the sales tax due on the purchase of the vehicle.

The evidence does not support a finding that a rescinded sale<sup>2</sup> relieved the Taxpayer from sales tax liability on the purchase of the vehicle.<sup>3</sup> The Department correctly assessed sales tax against the Taxpayer.

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

### **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 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).

### **Hardship**

The Taxpayer contended that paying the assessment will create a financial hardship for him. If proven, the Taxpayer may qualify for the Department's Offer in Compromise program, allowing a portion of a tax debt to be forgiven based on a taxpayer's insolvency. The Offer in Compromise program is outlined in Regulation 2000-4 governing settlement or compromise of tax liabilities. To obtain the application for an Offer in Compromise and for assistance in filing the required information, the Taxpayer should contact Problem Resolution and Tax Information Office at 501-682-7751.

### **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.

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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.

<sup>3</sup> The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

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](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>4</sup>

**OFFICE OF HEARINGS & APPEALS**



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**RAY HOWARD**  
**ADMINISTRATIVE LAW JUDGE**

DATED: April 4, 2019

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<sup>4</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.