

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

[REDACTED]

**MOTOR VEHICLE SALES
TAX ASSESSMENT
ACCT. NO.:** [REDACTED]

DOCKET NO.: 19-390

LETTER ID: [REDACTED]
(\$ [REDACTED])¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on February 11, 2019, signed by [REDACTED], on behalf of himself and [REDACTED], the Taxpayers. The Taxpayers protested the assessment of Gross Receipts Tax resulting from an audit conducted by the Department of Finance and Administration (“Department”).

An administrative hearing was held in Little Rock, Arkansas, on April 25, 2019, at 2:00 p.m. The Department was represented by Mike Wehrle, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department was Barbara Montgomery – Tax Credits Supervisor. The Taxpayers appeared at the hearing and represented themselves.

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

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on February 6, 2019. The Department's Answers to Information Request summarized the facts and issues involved in this case² and stated, as follows:

On or about September 30, 2017, [REDACTED] and [REDACTED] ("Taxpayers") purchased a [REDACTED] [hereinafter "vehicle" or "motor vehicle"] from [REDACTED]. The Motor Vehicle Retail Installment Contract and Purchase Agreement reflect that the sales price of the vehicle including service charges was \$ [REDACTED] and that the Taxpayers financed \$ [REDACTED] of the purchase price through [REDACTED]. See the Motor Vehicle Retail Installment Contract attached as **Exhibit 1** and the Purchase Agreement attached as **Exhibit 1a**. On or about September 30, 2017, a 30-day temporary tag was issued to Taxpayers for the vehicle. The temporary tag had an expiration date of October 30, 2017. See **Exhibit 2**.

Effective October 25, 2017, [REDACTED] filed a direct lien against the vehicle with the Arkansas Department of Finance and Administration, Office of Motor Vehicles. See **Exhibit 3**. [REDACTED] repossessed the vehicle on February 6, 2018, one hundred twenty-nine (129) days after the Taxpayers took possession. See **Exhibit 4**.

The Arkansas Department of Finance and Administration (the "Department") determined that the Taxpayers had failed to register and pay the sales tax due on the purchase of the vehicle. An assessment was issued against the Taxpayers based on the purchase price of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to the Taxpayers on or about February 6, 2019. See **Exhibit 5**. A Notice of Proposed Assessment was sent to the Taxpayers advising of the tax due in the amount of \$ [REDACTED], including penalty and interest. See **Exhibit 6**. The assessment determined a sales tax liability as follows:

² Including a summary of the handwritten statement in the Taxpayers' Protest Form (Department Exhibit 7) which set forth the basis for their disagreement with the assessment.

| Tax | Penalty | Interest | Payments | Balance |
|---------------|----------------|-----------------|-----------------|----------------|
| \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] | \$ [REDACTED] |

The Taxpayers timely protested on February 11, 2019 and requested an administrative hearing in Little Rock. See **Exhibit 7**.

...

As their sole basis of protest, the Taxpayers state that they returned the vehicle to the seller and are no longer in possession of the vehicle. The Taxpayers state that they returned the vehicle because it required repairs within one week of its purchase.

The assessment by the Department is proper because the Taxpayers purchased a used motor vehicle and failed to register the vehicle and pay the applicable sales tax within the prescribed 30-day period. The Taxpayers basis for protest is not a valid defense to the assessment of tax the purchase of the vehicle. [P. 2-3].

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 Taxpayers presented testimony at the hearing consistent with the facts asserted in their Protest Form and also testified that: (1) they were not allowed to test drive the vehicle before it was purchased; (2) they paid a premium price for the vehicle and they experienced mechanical problems within a few days; (3) it was not fair for them to be required to pay for repairs to the vehicle; (4) the vehicle was never correctly repaired; (5) they did not receive a refund of their down payment; (6) they received a loaner car when the vehicle was being repaired but they did not want to exchange the vehicle for the loaner car; (7) they were informed the vehicle had serious mechanical problems and may have been underwater; (8) they believe people at the car dealership took advantage of them because of a language barrier; (9) they were told the vehicle had a 30-day

warranty but there was no warranty coverage; and (10) they do not have the financial ability to pay the assessment.

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 Taxpayers purchased the vehicle on September 30, 2017, and they obtained possession of the vehicle. The Taxpayers 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 Taxpayers regarding discontinued possession of the vehicle is not a defense to the enforcement of the tax law.³ 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 sale⁴ relieved the Taxpayer from sales tax liability on the purchase of the vehicle.⁵ The Taxpayers

³ Licenses for used car dealers are issued by the Arkansas State Police and contact numbers are (501) 618-8606 or (501) 618-8617.

⁴ 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 sale of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

⁵ The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

did not receive a refund of their down payment. The Department correctly assessed sales tax against the Taxpayer.

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 Taxpayers 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 Taxpayers contended that paying the assessment will create a financial hardship for them. If proven, the Taxpayers 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 Taxpayers should contact Problem Resolution and Tax Information Office at 501-682-7751.

DECISION AND ORDER

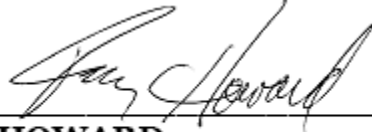
The proposed assessment is sustained. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law. Pursuant to Ark. Code Ann. § 26-18-405 (Supp. 2017), unless the Taxpayers request in writing within 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 Taxpayers have 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.⁶

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: April 30, 2019

⁶ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.