

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

██████████  
**ACCT. NO.:** ██████████

**DOCKET NO.: 19-434**

**MOTOR VEHICLE SALES  
TAX ASSESSMENT**

**LETTER ID:** ██████████  
**(\$ ██████████)**<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 March 8, 2019, and signed by ██████████, the Taxpayer. The Taxpayer 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 May 28, 2019, at 10:00 a.m. The Department was represented by John Theis, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department was Barbara Montgomery – Tax Credits Supervisor. Neither the Taxpayer nor any other person appeared at the hearing on behalf of the Taxpayer.

A Notice of Hearing dated April 25, 2019, was mailed to the Taxpayer by Certified Mail No. ██████████, and the USPS Tracking history indicates the Notice of Hearing was “Unclaimed.” On April 25, 2019, a letter was

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

mailed to the Taxpayer by the Office of Hearings and Appeals which indicated the time and date for the administrative hearing and notified the Taxpayer of the date and time for a prehearing teleconference. The Taxpayer participated in the prehearing teleconference on May 13, 2019, at 12:00 p.m., and his mailing address was verified. After the prehearing teleconference, a letter confirming the date and time of the in-person administrative hearing was mailed to the Taxpayer by the Office of Hearings and Appeals. The Taxpayer had adequate notice of the hearing. See Ark. Code Ann. § 26-18-307 (Repl. 2012). This case was submitted for decision on May 28, 2019.

### **ISSUE**

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

### **FINDINGS OF FACT/CONTENTIONS OF THE PARTIES**

The Department issued a proposed assessment against the Taxpayer on January 7, 2019. The Taxpayer's Protest Form included a handwritten statement setting forth the basis for his disagreement with the assessment and provided, "[t]ruck was returned due to mechanical issues after two weeks and the contract was broken [P. 1]."

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

This assessment arose from the purchase of a [REDACTED] [hereinafter referred to as "MV1" or "the vehicle"] . . . from [REDACTED]. Attached as DFA's **Exhibit #1** is a copy of a Motor Vehicle Retail Installment Sale Contract indicating that Taxpayer purchased the vehicle on March 5, 2016 for the sum of \$ [REDACTED].

On January 7, 2019, DFA mailed an Explanation of Tax Adjustment explaining that the vehicle had not been registered as required by law and that a Notice of Proposed Assessment would be issued. Copies of the Explanation of Tax Adjustment and the Notice of Proposed Assessment are attached as DFA **Exhibit #2 and #3**, respectively. Additionally, DFA received an Affidavit of Repossession of Motor Vehicle from [REDACTED] reflecting that the vehicle had been repossessed from Taxpayer on April 21, 2016. A copy of that Affidavit is attached as DFA's **Exhibit #4**.

Upon receiving the Notice of Proposed Assessment, Taxpayer timely completed a Protest Form and requested an administrative hearing to object to the tax assessment. The Taxpayer explained that the vehicle had been returned to [REDACTED] due to mechanical issues and the contract was broken. A copy of that Protest Form is attached as DFA's **Exhibit #5**.

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**Interest:** Interest at the rate of 10% per annum was assessed under the provisions of Ark. Code Ann. § 26-18-508(1) which provides that any tax not paid when due is delinquent and that interest shall be collected on the total tax deficiency from the date the tax became due until the date of payment. The Department contends that the assessment of interest is proper because the taxes were due, but not paid, at the time or registration. Interest is a statutory charge for the use of the State's tax dollars.

**Penalty:** Penalty was assessed under the mandatory provisions of Ark. Code Ann. §26-52-510(a)(4), which states that if the consumer fails to pay the taxes when due, a penalty equal to ten percent (10%) of the amount of tax due shall be assessed and paid before a license is issued. [P. 1-3]

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.

## **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 March 5, 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.

### **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).

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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:

- 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.

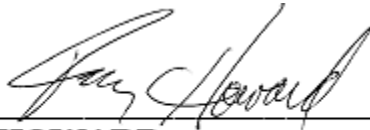
<sup>3</sup> The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

## **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 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: May 29, 2019

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