

**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.: 19-442**

**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 April 18, 2019, and signed by [REDACTED], on behalf of herself (“Taxpayer CO”) and [REDACTED],<sup>2</sup> the Taxpayers. The Taxpayers protested an 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 June 24, 2019, at 10:00 a.m. The Department was represented by Alicia Austin Smith, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Barbara Montgomery – Tax Credits Supervisor. The Department’s Representative and the Tax Credits Supervisor appeared at the

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

<sup>2</sup> Taxpayer CO’s cosigner.

hearing by telephone. Neither of the Taxpayers nor any other person appeared at the hearing on behalf of the Taxpayers (in person or via telephone)<sup>3</sup>.

A Notice of Hearing dated May 7, 2019, was mailed to the Taxpayers by Certified Mail No. [REDACTED], and the USPS Tracking history indicates the Notice of Hearing was “Unclaimed.” On May 8, 2019, a letter was mailed to the Taxpayers by the Office of Hearings and Appeals which indicated the time and date for the administrative hearing and notified the Taxpayers of the date and time for a prehearing teleconference. The Taxpayers did not participate in the prehearing teleconference on June 10, 2019, at 10:00 a.m., and another letter confirming the date and time of the telephone hearing was mailed to the Taxpayers by the Office of Hearings and Appeals. The Taxpayers had adequate notice of the hearing. See Ark. Code Ann. § 26-18-307 (Repl. 2012). This case was submitted for decision on June 25, 2019.

### **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 Taxpayers on April 2, 2019. The Department’s Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayers’ disagreement with the assessment as reflected by Taxpayer CO’s handwritten statement on the Protest Form) and stated as follows:

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<sup>3</sup> The telephone number reflected on the Notice of Hearing and the Taxpayer’s Protest Form was called a total of three (3) times from the Office of Hearings and Appeals and a representative of the Taxpayers did not answer the telephone.

On or about April 5, 2016, [REDACTED] ("Taxpayers") purchased a [REDACTED] [hereinafter "motor vehicle" or "vehicle"] from [REDACTED]. The Motor Vehicle Retail Installment Sale Contract reflects that the sales price of the vehicle was \$ [REDACTED] and that the Taxpayers also purchased an extended warranty or service contract at the time they purchased the vehicle for \$ [REDACTED]. The Taxpayers financed \$ [REDACTED] of the purchase price through [REDACTED]. See the Motor Vehicle Retail Installment Sale Contract attached as Exhibit 1.

On or about April 2, 2019, the Department determined that the Taxpayers never registered the vehicle and never paid sales tax on the purchase price of the vehicle or the extended warranty/service contract. The Department issued a Notice of Proposed Assessment to the Taxpayers in the amount of \$ [REDACTED]. . . . **Exhibit 2.** The assessment was based on the purchased vehicle price of \$ [REDACTED] and the extended warranty/service contract price of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to the Taxpayers on April 2, 2019. **Exhibit 3.**

...

Taxpayers executed a Retail Installment Sale Contract for the purchase of a [REDACTED] which reflected a sales price of \$ [REDACTED]. The Taxpayers also purchased an extended warranty/service contract in the amount of \$ [REDACTED]. The Taxpayers did not pay sales tax on their purchase of the vehicle or their purchase of the extended warranty and the Department's assessment of tax was proper.

In their protest, Taxpayer [REDACTED] states:

I did not even have that vehicle it was a lemon. I returned it kindly, and never even enjoyed it. It broke down and they would not fix it and said they did.

A copy of the Taxpayers' protest is attached as **Exhibit 4.** Also attached is a copy of an Affidavit of Repossession of Motor Vehicle which establishes that the vehicle was repossessed on July 19, 2016, more than three months after the Taxpayers' purchase of the vehicle. **Exhibit 5.** The Taxpayers have not presented a defense to the assessment of tax for the Taxpayers' vehicle purchase or the Taxpayers' purchase of the extended warranty/service contract. [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 (and certain enumerated services) 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.

At the time of registration of a motor vehicle prescribed by Ark. Code Ann. § 27-14-903(a) (Repl. 2014), sales tax is also due on the total amount of the gross proceeds paid for an extended warranty or service contract under Arkansas Gross Receipts Tax Rule GR-12(B)(1)(e), which states:

Warranties. Sales or use tax is due on the gross receipts or proceeds received for an extended warranty or service contract on a new or used vehicle offered either by the manufacturer or the dealer. When the extended warranty or service contract is purchased at the time the new or used vehicle is sold, the price of the warranty is to be included in the total gross receipts or proceeds on which tax is collected at the time of registration. If the new or used car dealer or manufacturer sells a warranty on a new or used car after the car has been registered, the dealer or manufacturer must collect sales tax on the warranty and local tax on these sales is calculated at the rate of the city and county in which the sale occurred. If a vehicle of greater value is traded in for a vehicle of lesser value, the trade-in credit for the vehicle does not apply to reduce the sales price of the warranty. Tax is due on the total amount of the gross receipts for the sale of the warranty or service contract.

The evidence presented in this case established that the Taxpayers purchased the motor vehicle and a taxable warranty on April 5, 2017,<sup>4</sup> and possession of the motor vehicle was obtained. The Taxpayers owed sales tax upon the purchase of the motor vehicle (and warranty) and failed to timely register the motor vehicle or pay the applicable sales tax liability. The point raised by the Taxpayers regarding discontinued possession of the motor vehicle is not a defense to the enforcement of the tax law. Repossession of the motor vehicle, voluntary or involuntary, did not extinguish the liability for the sales tax due on the purchase of the motor vehicle.

The evidence does not support a finding that a rescinded sale<sup>5</sup> relieved the Taxpayers from sales tax liability on the purchase of the vehicle.<sup>6</sup> The Department correctly assessed sales tax against the Taxpayers.

### **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).

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<sup>4</sup> The total purchase price was \$ [REDACTED].

<sup>5</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>6</sup> The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

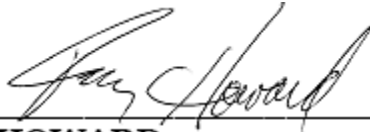
## **DECISION AND ORDER**

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 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](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 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.<sup>7</sup>

### **OFFICE OF HEARINGS & APPEALS**



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

DATED: June 27, 2019

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<sup>7</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.