

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

ADMINISTRATIVE DECISION

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

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

DOCKET NO.: 19-447

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 March 13, 2019, signed by [REDACTED], on behalf of [REDACTED], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on June 20, 2019, at 3:00 p.m. in Little Rock, Arkansas. The Department was represented by Michelle Bridges-Bell, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. The Department’s Representative appeared at the hearing by telephone. Though this Office twice attempted to contact [REDACTED] at the telephone number provided within her protest and listed within the Notice of Hearing, [REDACTED] was not contacted. The Department provided tracking information for the Notice of Hearing. That information states that the Notice of Hearing was delivered to the Taxpayers’ address of record on May 11, 2019.

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

Additionally, this Office mailed letters to the Taxpayers on May 8, 2019, and June 10, 2019. Both of those letters restated the hearing date and time and the telephone number that would be called. Notice was sufficient. Ark. Code Ann. § 26-18-307 (Repl. 2012).

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

Prehearing Filings

The Department's Representative provided a statement of relevant facts within her Answers to Information Request, stating as follows, in pertinent part²:

On November 4, 2016, [REDACTED] ("Taxpayers") entered into a Motor Vehicle Retail Installment Sale Contract ("Contract")³ with [REDACTED] for the purchase of a used [REDACTED]. The vehicle was purchased for [REDACTED] (including a service warranty).⁴ A copy of the Contract is attached as **Exhibit 1**. The vehicle was repossessed by the seller on December 2, 2016 (see Affidavit of Repossession attached as **Exhibit 2**).

Sales tax was never remitted on the vehicle. On February 14, 2019, the Department issued an Explanation of Tax Adjustment on the vehicle (attached as **Exhibit 3**). On the same day, the Department issued a Notice of Proposed Assessment, indicating that the Taxpayers had been assessed [REDACTED] in sales tax on the sale of the vehicle, [REDACTED] in penalty, and [REDACTED] in interest, for a total of [REDACTED]. A copy of the Notice of Proposed is attached as **Exhibit 4**.

On March 13, 2019, one of the Taxpayers, [REDACTED], timely protested the assessment. A copy of the protest is attached as **Exhibit 5**. In her protest she stated:

² All exhibits support the statements for which they are cited.

³ On the final page of this contract, this document was signed by both Taxpayers.

⁴ According to the second page of Exhibit 1, this amount represents a [REDACTED] (cash price), a [REDACTED] (service contract), and a [REDACTED] (service and handling fee).

I have no relationship to [REDACTED]. I had no idea about the vehicle nor the taxes, my name should be in any paperwork that includes [REDACTED], he also does not live at this address. I would like to speak to someone who can explain clearly how this happened and how to fix it. Thank you.

The only information I can give you on [REDACTED] is his phone number [REDACTED] which is his place of employment at [REDACTED] if he still works there. Our relationship ended over 3 years ago and I do not have any contact with him.

Thank you
[REDACTED]

In her Answers to Information Request, the Department's Representative argued that [REDACTED] was listed as a co-buyer within the documentation associated with the purchase of the Relevant Vehicle and signed the purchase contract. Consequently, she declared that [REDACTED] was properly assessed for the purchase of the Relevant Vehicle. She also asserted that the penalty was appropriate under Ark. Code Ann. § 26-52-510(a)(4)(A) (Repl. 2014) and interest was appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2012).

Hearing Testimony

The Revenue Supervisor's testimony confirmed the accuracy of the rendition of facts provided within the Department's Answers to Information Request.

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 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). Additionally, sales of service contracts and maintenance contracts covering future repairs to motor vehicles are also taxable. Ark. Code Ann. § 26-52-301(7) (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). Additionally, consumers are responsible for payment of sales tax on maintenance or service contracts when those contracts are sold simultaneously with the purchase a motor vehicle. Arkansas Gross Receipts Tax Rule GR-9(D)(1). 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).

Initially, the Taxpayers have not established that a rescinded sale occurred.⁵ Here, the Department has established that the Taxpayers took ownership and possession of the Relevant Vehicle on November 4, 2016, for a

⁵ 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.

total cost of [REDACTED]. 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 generally taxable sale of tangible personal property to these Taxpayers occurred. The Taxpayers have 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
- (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 Taxpayers 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 Taxpayers.

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 in full. 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



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: June 28, 2019

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