

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

ADMINISTRATIVE DECISION

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

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

DOCKET NO.: 19-454

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 April 29, 2019, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on June 19, 2019, at 9:00 a.m. in Little Rock, Arkansas. The Department was represented by Michael Wehrle, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. The Taxpayer appeared at the hearing by telephone and represented herself. Also present on behalf of the Taxpayer by telephone was [REDACTED], Fiancé.

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

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

Prehearing Filings

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

The taxpayer purchased a used [REDACTED] ["Relevant Vehicle"] for [REDACTED] on 12/9/2016. Exhibit A.² The motor vehicle was repossessed by the seller about three months later on 2/27/2017. Exhibit B.³ The taxpayer did not register the motor vehicle with the Department as required under Arkansas law. Exhibit C.⁴ Since the motor vehicle was not registered, the sales tax due on the taxpayer's purchase of the vehicle has not been paid. A Proposed Assessment of sales tax due, including penalty and interest, was therefore issued to the taxpayer. Exhibit D.⁵ The taxpayer's protest is attached as Exhibit E.⁶

In his Answers to Information Request, the Department's Representative stated that a sale of a motor vehicle is taxable regardless of whether the motor vehicle is registered by the purchaser. He asserted that the late payment 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).

Within her protest, the Taxpayer provided the basis for her objection to the assessment, stating as follows in relevant part: "I don't own any vehicles. I do not know what this is in regards to."

Hearing Testimony

A. Revenue Supervisor's Testimony

² This Exhibit provides that the Taxpayer purchased the Relevant Vehicle on December 9, 2016 from [REDACTED] for [REDACTED]. It also provides that the Taxpayer provided a trade-in of [REDACTED].

³ This Exhibit is an Affidavit of Repossession of Motor Vehicle, stating that the Relevant Vehicle was repossessed from the Taxpayer by [REDACTED] on February 27, 2017.

⁴ This Exhibit is an Explanation of Tax Adj letter dated March 21, 2019. It provides that the Taxpayer was assessed based on a vehicle cash price of [REDACTED].

⁵ This Exhibit is a copy of the Notice of Proposed Assessment dated March 21, 2019, that assesses [REDACTED].

⁶ This Exhibit is the Taxpayer's Protest received April 29, 2019.

The Revenue Supervisor's testimony confirmed the accuracy of the rendition of facts provided within the Department's Answers to Information Request. She also noted that a [REDACTED] trade-in offset was allowed against the total assessed amount of [REDACTED]. Though the Taxpayer claimed that her trade-in was retained for sales tax by the seller, she testified that no evidence has been provided that the seller remitted any tax amount towards the tax liability for the purchase of the Relevant Vehicle.

B. Taxpayer's Testimony

The Taxpayer testified that she became unemployed and the vehicle was voluntarily surrendered to the seller. She signed a document at that time and was told that no additional amounts would be owed on the purchase. The seller did not return her trade-in or refund any other amount that may have been remitted towards the purchase. She stated that the seller told her any previous payments or trade-ins would be retained by the seller for taxes.

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, 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).⁷ Additionally, consumers are responsible for payment of sales tax on maintenance or service contracts when those contracts are sold simultaneously with the purchase of 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 Taxpayer has not established that a rescinded sale occurred.⁸ Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on December 9, 2016, for a total cost of [REDACTED] (including the service contract) and a trade-in 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 even

⁷ Though the Taxpayer stated that the vendor told her that the trade-in and any other payment had been retained by the seller for sales tax, the Department explained that no evidence has been provided that any tax payment was remitted by the seller. The governing code provision states that the Taxpayer is ultimately liable for payment of sales tax on her vehicle purchase. Consequently, absent proof that a payment was remitted to the Department, the Taxpayer was not entitled to this offset of her tax liability for the relevant sale.

⁸ 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.

though it was later voluntarily surrendered to the seller. Consequently, the Department has borne its burden of showing that a generally taxable sale of tangible personal property to this Taxpayer occurred. The Taxpayer has 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 Taxpayer 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 Taxpayer.

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 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. 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.⁹

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: June 20, 2019

⁹ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.