

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 19-463

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID:

(\$)¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on or about July 3, 2018, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from an audit conducted by the Department of Finance and Administration (“Department”). The Department was represented by Nina Carter, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer, by and through her protest, represented herself.

At the request of the Taxpayer, the matter was submitted for a decision based upon consideration of written documents. A Briefing Schedule was mailed to the parties on May 15, 2019. The Department’s Opening Brief was filed on May 16, 2019. The Taxpayer’s Protest Form was received into evidence. No other briefs were filed and the matter was submitted for a decision on July 8, 2019.

ISSUE

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

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on March 29, 2018.² The Department's Opening Brief summarized the facts and issues involved in this case and stated as follows:

On November 21, 2016, [REDACTED] ("Taxpayer") purchased a used [REDACTED] . . . [hereinafter "vehicle" or "motor vehicle"] from [REDACTED] for \$ [REDACTED]. Taxpayer financed \$ [REDACTED] of the purchase price through [REDACTED]. Copies of the Bill of Sale and Retail Installment Contract are attached as **Exhibits 1 and 2** respectively. Effective October 24, 2016, [REDACTED] filed a direct lien against the vehicle with the Arkansas Department of Finance and Administration, Office of Motor Vehicles. See **Exhibit 3**. At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of December 21, 2016. See Temp Tag attached as **Exhibit 4**.

On or about March 29, 2018, the Arkansas Department of Finance and Administration (the "Department") determined that Taxpayer did not register the vehicle and mailed a Billing Statement to Taxpayer due to Taxpayer's failure to register the vehicle and pay the sales tax. See Billing Statement, attached as **Exhibit 5**. The Department then issued a Notice of Proposed Assessment to Taxpayer in the amount of \$ [REDACTED]. The assessment consists of tax in the amount of \$ [REDACTED], a penalty of \$ [REDACTED], and interest in the amount of \$ [REDACTED]. See Notice of Proposed Assessment, attached as **Exhibit 6**. The assessment was based on the purchased vehicle price of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on March 29, 2018. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 7**.

Taxpayer filed a protest to the proposed assessment claiming she did not get her mail as her address was not the same as what was on file with the Department. A copy of the Protest is attached as **Exhibit 8**. Assigned Legal Counsel Nina Carter attempted to contact Taxpayer via the phone number provided in the protest form, but Taxpayer has not returned the request to return the call. Upon information and belief, the vehicle was repossessed by [REDACTED] on December 2, 2016. A copy of the Affidavit of Repossession of Motor Vehicle is attached as **Exhibit 9**.

² See Department Exhibit 6.

...

A penalty equal to ten percent (10%) of the amount of taxes due is assessed when a taxpayer fails to timely register and pay the sales tax on the motor vehicle. See Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014). With regards to interest, interest is required to be assessed upon tax deficiencies for the use of the State's tax dollars. Ark. Code Ann. § 26-18-508 (Repl. 2012). A tax levied under any state tax law which is not paid when due is delinquent. Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment. *Id.* Thus, under the law, penalty and interest were required to be assessed in this case at the time the notice of proposed assessment.

However, under Ark. Code Ann. §26-18-405(d)(1)(C) (Supp. 2017), the director is required to waive interest that accrues between the date of a taxpayer's protest through the date of the final assessment when an administrative decision is not issued within 180 days of the date of the taxpayer's protest for reasons that are deemed to be beyond the taxpayer's control. As more than 180 days has passed since the date of Taxpayer's protest, interest from the date of the protest through the final assessment should be waived if the Department's assessment of sales tax is sustained. [P. 1-4].

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 motor vehicle on November 21, 2016, and she obtained possession of the motor vehicle. The Taxpayer owed sales tax upon the purchase of the motor vehicle³ and failed to timely register the motor vehicle or pay the applicable sales tax liability. Repossession of the vehicle, voluntary or

³ The total purchase price was \$ [REDACTED].

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 Department correctly assessed sales tax against the Taxpayer.

Interest and Penalty

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017), 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 motor 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).

DECISION AND ORDER

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017), 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

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.

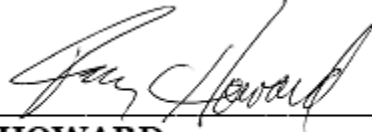
⁵ The case file does not contain a completed Rescinded Sale Form relating to the motor vehicle.

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.⁶

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: July 9, 2019

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