

**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.: 19-464

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 February 22, 2019, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Nina Carter, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated May 15, 2019. An opening brief was filed by the Department’s Representative on May 16, 2019. The Taxpayer did not file a Response Brief but the protest was received into evidence. On July 2, 2019, the Department’s Representative informed this Office that she did not intend to file a final brief in this matter. The record was closed and this matter was submitted for a decision on July 2, 2019.

ISSUE

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

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

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

On August 23, 2017, [REDACTED] ("Taxpayer") purchased a used [REDACTED] [REDACTED] (the "Vehicle") ["Relevant Vehicle"] from [REDACTED] for [REDACTED] ([REDACTED] purchase price plus [REDACTED] service and handling fee). 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 August 23, 2017, [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 September 22, 2017. See Temp Tag attached as **Exhibit 4**.

On or about October 4, 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 October 4, 2018. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 7**.

Taxpayer disagrees with the proposed assessment claiming she no longer has the vehicle in her possession. Taxpayer states that she "only had the vehicle for 3 weeks [and] returned the vehicle due to financial reasons." Taxpayer further states in an attachment to the protest that she returned the vehicle "before my first payment was due". A copy of the Protest is attached as **Exhibit 8**.³

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

³ Included with the Taxpayer's protest, the Taxpayer provided a copy of a payment ledger (providing the Taxpayer has an outstanding debt with [REDACTED] regarding the Relevant Vehicle's purchase), a printout from a collection management system (providing the Taxpayer returned the vehicle and has an outstanding debt of [REDACTED]), and a statement from the Taxpayer that the Relevant Vehicle was returned within thirty (30) days before the first payment was due.

Within her Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is taxable regardless of whether the vehicle is returned to the seller. She further asserted that the assessment of interest and the late payment penalty were appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2012) and 26-52-510(a)(4) (Supp. 2017), respectively.

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). 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). 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.⁴ Here, the Department has established that the Taxpayer took ownership and

⁴ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances that justify a refund:

possession of the Relevant Vehicle on August 23, 2017, for a total cost of [REDACTED], including the service and handling fee. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. Consequently, the Department has borne its burden of showing that a 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).

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- 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.

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.⁵

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: July 5, 2019

⁵ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.