

**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.: 19-472

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 5, 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 25, 2019, at 11:00 am in Little Rock, Arkansas. The Department was represented by Brad Young, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. This Office twice attempted to contact the Taxpayer at the telephone number provided within her protest and listed within the Notice of Hearing. Both attempts were unsuccessful.

According to the associated tracking history, the Notice of Hearing was delivered to the Taxpayer’s address of record on May 23, 2019. Additionally, this Office mailed letters to the Taxpayer’s address of record on May 21, 2019, and

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

June 11, 2019, that also confirmed the hearing date and time. 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 in his Answers to Information Request, stating as follows, in pertinent part²:

On or about May 30, 2016, Taxpayer purchased a [REDACTED] [REDACTED]) [REDACTED] from [REDACTED].³ On or about that same date, Taxpayer executed a Retail Installment Contract to finance the purchase of the [REDACTED].⁴ The total cash purchase price of the [REDACTED], as reflected on the Bill of Sale and Retail Installment Contract, was [REDACTED], which included a vehicle price of [REDACTED], and a service contract of [REDACTED].⁵ The Retail Installment Contract indicates a lien in favor of [REDACTED].⁶ On June 7, 2016, [REDACTED] filed a direct lien with the Office of Motor Vehicles for the [REDACTED].⁷

The Department's records indicate that Taxpayer did not pay sales tax and did not register the vehicle on or before June 29, 2016, which was thirty days from the date of purchase.

On December 19, 2018, DFA Service Representative Leslie Price sent Taxpayer an Explanation of Tax Adjustment and a Taxpayer's Rights

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

³ Here, the Department's Representative referenced and attached the Bill of Sale and Odometer Disclosure Statement as Department's Exhibit 1.

⁴ Here, the Department's Representative referenced and attached the Motor Vehicle Retail Installment Sale Contract as Department's Exhibit 2

⁵ Here, the Department's Representative referred back to its Exhibits 1 and 2.

⁶ Here, the Department's Representative referred back to its Exhibit 2.

⁷ Here, the Department's Representative referenced and attached the Direct Lien Receipt as Department's Exhibit 3.

document.⁸ The letter stated that the Department's Office of Motor Vehicle records showed that Taxpayer purchased the vehicle and that as of December 19, 2018, the vehicle had not been registered.

On December 19, 2018, DFA Revenue Supervisor Barbara Montgomery sent Taxpayer a Notice of Proposed Assessment along with another copy of the Taxpayer's Rights document and a Protest Form.⁹ The assessment determined liability in a total amount of [REDACTED], which included tax in the amount of [REDACTED], penalty in the amount of [REDACTED], and interest in the amount of [REDACTED].

Taxpayer timely protested the proposed assessment. On her protest form, Taxpayer stated: "I only had the car for 3 months max. Turned it back into the dealership because I had to move due to personal issues. I never had to pay the sales tax. I moved to [REDACTED] for 2 years."¹⁰

The Department's records do not include a completed Rescinded Sale Form from the dealer. According to the Department's records, on August 17, 2016, [REDACTED], repossessed the [REDACTED].¹¹

Within his Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is taxable regardless of whether the motor vehicle is registered by the purchaser or whether the vehicle is returned to the seller. He 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.

Hearing Testimony

⁸ Here, the Department's Representative referenced and attached the Explanation of Tax Adjustment as Department's Exhibit 4.

⁹ Here, the Department's Representative referenced and attached the Notice of Proposed Assessment as Department's Exhibit 5.

¹⁰ This is a correct restatement of the Taxpayer's basis for protest.

¹¹ Here, the Department's Representative referenced and attached the Affidavit of Repossession of Motor Vehicle as Department's Exhibit 6.

The Revenue Supervisor's testimony confirmed the accuracy of the rendition of facts provided within the Department's Answers to Information Request and further noted that the Taxpayer has not proven that a rescinded sale occurred.

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). 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 Taxpayer has not established that a rescinded sale occurred.¹² Here, the Department has established that the Taxpayer took ownership and possession of the motor vehicle on May 30, 2016, for a total cost of [REDACTED], including a taxable service contract. 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

¹² 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.

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.¹³

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: June 28, 2019

¹³ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.