

**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.: 19-482

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 30, 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 July 22, 2019, at 10:00 am in Little Rock, Arkansas. The Department was represented by Susan Fowler, 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 and the Revenue Supervisor appeared at the hearing by telephone. The Taxpayer appeared at the hearing by telephone and represented herself.

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

Prehearing Filings

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

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

Information available to the Arkansas Department of Finance and Administration (the "Department") indicates that [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] ["Seller"] in [REDACTED] Arkansas on May 5, 2016. On or about May 5, 2016, a 30-day temporary tag was issued to Taxpayer for the vehicle. The temporary tag had an expiration date of June 4, 2016. See **Exhibit 1**.

A copy of the Motor Vehicle Retail Installment Sales Contract³ was provided to the Department as an attachment to an Affidavit of Repossession of Motor Vehicle filed by [REDACTED]. See **Exhibit 2 and Exhibit 3**, respectively. The Affidavit of Repossession of Motor Vehicle indicates the vehicle was repossessed by [REDACTED] [REDACTED]⁴ on July 21, 2016.

Upon investigation, the Department determined that Taxpayer never registered the vehicle or paid the sales tax. On April 10, 2019, the Department mailed a Billing Statement to Taxpayer. See **Exhibit 4**. 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], interest in the amount of [REDACTED], and penalty in the amount of [REDACTED]. See **Exhibit 5**. The assessment was based on the purchased vehicle price of [REDACTED], including service and handling charges, as detailed in the Explanation of Tax Adjustment mailed to the Taxpayer on April 10, 2019. See **Exhibit 6**. The sales price of the vehicle is also reflected in the Motor Vehicle Retail Installment Sales Contract.

Taxpayer timely protested the proposed assessment. See **Exhibit 7**. No new documents were provided with the Taxpayer's Protest for the Department's consideration.

The Taxpayer disagrees with the proposed assessment claiming she only had the vehicle for about two weeks before she "did a voluntary repo and surrendered the vehicle back because of the vehicle having lots of things wrong and the company didn't want to fix."

² Except as noted, all exhibits support the statements for which they are cited.

³ This document reflects a cash price of [REDACTED], a down payment of [REDACTED], and a service and handling fee of [REDACTED].

⁴ This document reflects that the Relevant Vehicle was actually repossessed by [REDACTED]

The Taxpayer has not presented a defense to the assessment of tax for the Taxpayer's vehicle purchase. Repossession is not a defense to the assessment of tax for the Taxpayer's vehicle purchase. The Department's assessment of tax was proper.

Within her Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is taxable regardless of whether the motor vehicle breaks down and 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.

Hearing Testimony

A. Revenue Supervisor's Testimony

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

B. Taxpayer's Testimony

The Taxpayer testified that the Relevant Vehicle's transmission went out and she returned it within two (2) weeks of her purchase. She explained that the Seller offered to let her purchase a different vehicle with a new down payment but would not refund any amounts remitted towards her purchase of the Relevant Vehicle.

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).

Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on May 5, 2016, for a total cost of [REDACTED]. 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. While the Taxpayer asserted that the Relevant Vehicle was returned, she testified that none of the payments toward that purchase were refunded. The Taxpayer has not established that a rescinded sale occurred.⁵ The Taxpayer has failed to demonstrate a defense to the enforcement of the tax law.

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.

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

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- 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.

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



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: July 23, 2019

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