

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

DOCKET NO.: 19-483

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID: [REDACTED]

(\$ [REDACTED])¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on September 14, 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”).

A telephone hearing was held in Little Rock, Arkansas, on June 26, 2019, at 9:00 a.m. The Department was represented by Nina Carter, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department, via telephone, was Barbara Montgomery – Tax Credits Supervisor. The Taxpayer appeared at the hearing, via telephone, and represented himself.

ISSUE

Whether the assessment issued by the Department against the Taxpayer should be sustained? Yes.²

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

² See Footnote 6.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on July 20, 2018. The Department's Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayer's disagreement with the assessment as reflected by Taxpayer's handwritten statement on the Protest Form) and stated as follows:

On February 6, 2017, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . ["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 February 6, 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 March 8, 2017. See **Exhibit 4**.

On or about July 20, 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 July 20, 2018. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 7**.

Taxpayer disagrees with the proposed assessment claiming that he no longer has the vehicle in his possession. Taxpayer states that he "[p]urchased truck but let it go back." Taxpayer provided attachments to the protest, including a June 20, 2017 letter from [REDACTED], which provides information that the vehicle was repossessed due to non-payment. A copy of the Protest is attached as **Exhibit 8**.

...

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)(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]

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and stated that the case file does not contain a completed Rescinded Sale Form. The Taxpayer presented testimony at the hearing consistent with the facts asserted in his Protest Form and also testified that: (1) the dealership did not return his down payment; and (2) he only had the motor vehicle for a few weeks because it was a lemon.

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 February 6, 2017, and he obtained possession of the vehicle.³ The Taxpayer owed sales tax upon the purchase of the vehicle and failed to timely register the vehicle or pay the applicable sales tax liability. The point raised by the Taxpayer regarding discontinued possession of the vehicle is not a defense to the enforcement of the tax law. Repossession of the vehicle, voluntary or 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 was properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2012).

³ The total purchase price of the motor vehicle was \$ [REDACTED].

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 vehicle.

The Taxpayer failed to timely register the 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.⁶ 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

⁶ After a prehearing teleconference on June 12, 2019, the Department supplemented its Answers to Information Request to address an Order of Discharge which was attached to the Taxpayer's Protest Form and stated that, ". . . to the extent that you might be concerned that a decision to sustain the assessment of tax would be a violation of the Bankruptcy Code, please be advised that the provisions of 11 U.S.C. § 362 provide that the stay of actions against property of the estate continues until such property is no longer property of the estate. 11 U.S.C. § 36(c)(1). The stay of all other acts (i.e. the continuation of processes or actions against the debtor to recover a claim that arose before commencement of the case) continues until the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted. 11 U.S.C. § 362(c)(2). [REDACTED] bankruptcy case terminated in February 2018 and the automatic stay is no longer in effect. To the extent that you seek assurance that the debt has not been discharged, it is the position of the Department that the debt has not been discharged. The provisions of 11 U.S.C. § 727(b) provide that a discharge under 11 U.S.C. § 727(a) discharges the debtor from all debts that arose before the date of the order for relief (the filing or the petition). However, the provisions of 11 U.S.C. § 523(a)(1)(A) excepts from discharge taxes of the kind and for the periods specified in 11 U.S.C. § 507(a)(8) (priority tax debts). The provisions of 11 U.S.C. § 507(a)(8)(E) explain that excise taxes for transactions that occur within 3 years of the filing of the petition and for which a return is not required are priority tax debts. In this case, we have assessed an excise tax (sales tax) on [REDACTED] purchase of a vehicle that occurred in February 2017 and within the 3 years prior to the filing of the case. As such, it is the position of the Department that the tax that has been assessed is a non-dischargeable priority tax debt. [P. 1-2]"

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.⁷

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: June 27, 2019

⁷ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.