

**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.: 19-484

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 October 21, 2018, signed by [REDACTED], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on June 26, 2019, at 11:00 am in Little Rock, Arkansas. The Department was represented by Nina Carter, 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 Taxpayers at the telephone number provided within their 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 Taxpayers’ address of record on May 25, 2019. Additionally, this Office mailed letters to the Taxpayers’ address of record on May 28, 2019, and June 13, 2019, that also confirmed the hearing date and time. Notice was sufficient. Ark. Code Ann. § 26-18-307 (Repl. 2012).

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

ISSUE

Whether the Department's assessment should be sustained. Yes, in part.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

Prehearing Filings

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

On August 22, 2017, [REDACTED] ("Taxpayers") purchased a [REDACTED] the "vehicle") from [REDACTED]. Taxpayers financed [REDACTED]³ through [REDACTED], although [REDACTED] assigned the Retail Installment Contract to [REDACTED]. Copies of the Bill of Sale and Retail Installment Contract are attached as **Exhibits 1 and 2** respectively. Effective August 22, 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, Taxpayers were issued temporary tag [REDACTED] with an expiration date of September 21, 2017. See **Exhibit 4**. On October 6, 2017, the Office of Motor Vehicles sent out a notice of Temp Tag on Vehicle Not Titled to Taxpayers after they failed to register the vehicle within thirty (30) days of purchase. A copy of the letter is attached as **Exhibit 5**. A second 30-day temporary tag, [REDACTED], with an expiration date of January 4, 2018, was issue to Taxpayers on December 5, 2017. See **Exhibit 6**. On January 19, 2018, the Office of Motor Vehicles sent out a notice of Temp Tag on Vehicle Not Titled to Taxpayers after they failed to register the vehicle within thirty (30) days of issuance of the second temp tag on December 5, 2017. See **Exhibit 7**.

On or about October 5, 2018, the Arkansas Department of Finance and Administration (the "Department") determined that Taxpayers did not register the vehicle and mailed a Billing Statement to Taxpayer due to Taxpayers' failure to register the vehicle and pay the sales tax. See Billing Statement attached as **Exhibit 8**. The Department then issued a Notice of Proposed Assessment to Taxpayers 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 9**. The assessment was based on the purchased

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

³ According to the itemization of charges within Department's Exhibit 2, this amount included the following charges: [REDACTED] (cash price), [REDACTED] (sales tax), [REDACTED] (service and handling fee), and [REDACTED] (optional GAP Protection).

vehicle price of [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to Taxpayers on October 5, 2018. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 10**.

Taxpayers disagrees with the proposed assessment claiming that they no longer have the vehicle in their possession. Taxpayers state that the vehicle had mechanical issues and they took the vehicle back to the dealer to have it fixed. Taxpayers also state that when they got the vehicle back, after December 2017, the dealer provided a new bill of sale to get the second set of temp tags. However, when Taxpayers allege they had further mechanical issues, they state the dealer refused to take the car back or let them trade for another vehicle, so they did not make any more payments and “let the car get taken.” A copy of the Protest is attached as **Exhibit 11**.

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 is registered by the purchaser or 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.

Within their protest, the Taxpayers provided certain relevant information, stating in part:

To whom it may concern in regards to sales tax fees,

I, [REDACTED] protest the following proposed assessment for the following reasons:

The Vehicle in question was a [REDACTED] that we got from a used car lot in [REDACTED], Arkansas. We were told that the only problem with the car was a missing passenger mirror. We went ahead and got the vehicle in August of 2017 and got the mirror fixed only to find out within a week of having it that there were also mechanical issues which often kept the car from starting. We took it back to the dealer who said his mechanic would have it fixed within a week. The car sat with the dealer until December 2017. When we finally got it back, a new bill of sale was done which is when we got another temp. tag which then was good until the end of January 2018. Once again within a week we were have the same mechanical issues. At this time we contacted the dealer who refused to

take the car back, and refused to let us trade it for something else. So, for this reason we did not continue making payments and let the car get taken. Which happened in the beginning of February 2018. For most of the time we owned the vehicle we were unable to use it to no fault of our own. For that reason we do not feel responsible for the proposed assessment.

Hearing Testimony

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 Taxpayers have not proven that a rescinded sale occurred.

The Department's Representative asserted that she researched whether the [REDACTED] tax amount listed within Department's Exhibit 2 was ever remitted by the seller to the Department. She found no evidence that the payment was remitted.

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).⁴ 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 Taxpayers have not established that a rescinded sale occurred.⁵ Here, the Department has established that the Taxpayers took ownership and possession of the motor vehicle on August 22, 2017, 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 the Taxpayers occurred. The Taxpayers have failed to demonstrate a defense to the enforcement of the tax law.

⁴ Though the Retail Installment Contract indicates that [REDACTED] in sales tax was financed by the seller, the Department explained that no evidence has been provided that this partial payment was remitted by the seller. The governing code provision states that the Taxpayers are ultimately liable for payment of sales tax on their vehicle purchases. Consequently, absent proof that this partial payment was remitted to the Department, the Taxpayers are not entitled to this offset of their tax liability for the relevant sale.

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.
- 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.

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 Taxpayers 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 Taxpayers.

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 after the adjustment required under Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017).


DECISION AND ORDER

Subject to the limitation in Ark. Code Ann. § 26-18-405(d)(1)(C) (Supp. 2017), the 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 Taxpayers request 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 Taxpayers have 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: June 28, 2019

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