

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
(LICENSE ID.: [REDACTED])

**GROSS RECEIPTS TAX
ASSESSMENT
LETTER ID: [REDACTED]**

DOCKET NO.: 19-488

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 September 6, 2016, signed by [REDACTED] on behalf of herself and [REDACTED], the Taxpayers. The Taxpayers 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 Taxpayers, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated May 28, 2019. The Department filed its opening brief on May 29, 2019. The Taxpayers did not file a response, but their protest was received into evidence. The record was closed and this matter was submitted for a decision on July 22, 2019.

ISSUE

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

¹ This amount represents [REDACTED] (tax), [REDACTED] (fraud penalty), and [REDACTED] (interest) after application of a payment in the amount of [REDACTED].

Within her opening brief, the Department's Representative provided a statement of relevant facts, stating as follows, in pertinent part²:

On February 26, 2016, [REDACTED] ("Taxpayers") purchased a used [REDACTED] ["Relevant Trailer"] from [REDACTED] ["Sellers"]. Regarding this transaction, there were two Bills of Sale submitted to the Arkansas Department of Finance and Administration (the "Department") that appeared identical except for the sales price. The price written on the Bill of Sale submitted by the Taxpayers ["First Bill of Sale"] indicated that the price paid for the camper was [REDACTED]. See Taxpayers' Bill of Sale attached as **Exhibit 1**. The Sellers also submitted a Bill of Sale ["Second Bill of Sale"] on this same transaction to claim a private sale deduction when registering a subsequent camper purchase. The price written on the Bill of Sale submitted by the Sellers indicated that the price paid for the camper was [REDACTED]. See Sellers' Bill of Sale attached as **Exhibit 2**.

Taxpayers financed [REDACTED] through [REDACTED]. See the Loan and Security Agreements attached as **Exhibit 3**. Effective February 26, 2016, [REDACTED] filed a direct lien against the camper with the Arkansas Department of Finance and Administration, Office of Motor Vehicles. See **Exhibit 4**.

On or about March 14, 2016, Taxpayers registered the camper with the Department, claiming the purchase price of [REDACTED]. See Application for Title attached as **Exhibit 5**.

Due to the discovered discrepancy in reported prices, the documents associated with the purchase and sale were reviewed. The Loan Agreement document indicates that [REDACTED] directly made a payment of [REDACTED] to the Sellers. See second page of **Exhibit 3**. On July 11, 2016, Ebony Morgan, DFA Service Representative, mailed an Explanation of Tax Adjustment letter to Taxpayers regarding the discrepancy in the purchase price and the adjustment to the purchase price. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 6**. DFA Revenue Supervisor Barbara Montgomery then issued a Notice of Proposed Assessment to Taxpayers in the amount of [REDACTED]. The assessment consists of tax in the amount of [REDACTED] (after credit applied for tax previously paid on lower sales price), a fraud penalty of [REDACTED], and interest in the amount of [REDACTED]. See Notice of Proposed Assessment, attached as **Exhibit 7**. The assessment was based on the purchased

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

vehicle price of [REDACTED] plus the [REDACTED] service contract as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on November 16, 2018.

On September 6, 2016, Taxpayers signed the Protest Form indicating that they disagree with the proposed assessment. Taxpayer states, "Loan amount was for more than given to the buyer for repairs since loan amount was one lump check, buyer took check and gave us cash back." A copy of the Protest is attached as **Exhibit 8**. Taxpayers have not provided any documentation supporting these assertions.

Assigned Legal Counsel Nina Carter attempted to contact Taxpayers numerous times via the phone number listed in the file but was only able to leave recorded message requesting a return phone call. Legal Counsel mailed a letter to Taxpayers on January 20, 2017, requesting documentation of the claimed sales price. See Counsel's Letter attached as **Exhibit 9**. To date, Taxpayers have not responded [Footnotes omitted.]

Within her Opening Brief, the Department's Representative argued that, when a sales price is uncertain, the higher sales price reflected within the available documents must be utilized under Ark. Code Ann. § 26-52-510(g)(1)(A) (Repl. 2014) and Arkansas Gross Receipts Tax Rule GR-12(E). She further asserted that the assessment of interest is appropriate under Ark. Code Ann. § 26-18-208(5)(A) (Repl. 2012). She averred that the fraud penalty under Ark. Code Ann. § 26-18-508 (Repl. 2012) was appropriate as it appears the Taxpayers altered the sales price on the original bill of sale in an attempt to avoid paying the full tax on the Relevant Trailer.

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 consideration for 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). Addressing the calculation of the consideration for motor vehicle sales, Ark. Code Ann. § 26-52-510(g) (Repl. 2014) provides the following:

- (1)(A) For purposes of this section, the total consideration for a used motor vehicle **shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement**, or the average loan value price of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.
- (B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the secretary's satisfaction that the price reflected on the invoice or other document is true and correct.
- (C) If the secretary determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.
- (2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.
- (B) The secretary may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer. [Emphasis supplied.]

Here, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. The Department has established that a bill of sale associated with the purchase of the Relevant Trailer reflected a purchase price of [REDACTED]³ and that price is reflected on the associated Loan and Security Agreement⁴. The Loan and Security Agreement also provides that the full [REDACTED] was paid to [REDACTED]. While the Taxpayers have provided a Bill of Sale reflecting a lower purchase price for the Relevant Trailer, the higher sales price reflected in the other bill of sale and the Loan and Security Agreement must be utilized as the taxable sales price under Ark. Code Ann. § 26-52-510(g) (Repl. 2014).

Regarding the fraud penalty, the Department's Representative asserted that the penalty was assessed pursuant to Ark. Code Ann. § 26-18-208(5) (Repl. 2012), which provides as follows:

(5)(A) If any part of any deficiency of any state tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency in addition to any interest provided by law.

(B) If any penalty is assessed under subdivision (5)(A) of this section, then no penalty shall be assessed under subdivisions (1)-(4) of this section; . . .

In *Arkansas Valley Compress & Warehouse Co. v. Morgan*, 217 Ark. 161, 229 S.W.2d 133 (1950), the Arkansas Supreme Court stated that, “[f]raud consists of a deceitful practice or willful device resorted to by a person with the intent to deprive another of his right or in some manner to do him an injury.” *Id.* at 164,

³ See Department's Exhibit 2.

⁴ See Department's Exhibit 3.

229 S.W.2d at 136. In *Petzoldt v. Commissioner*, 92 T.C. 661 (1989), the U. S. Tax Court stated that fraud cannot be imputed or presumed, but rather, must be “established by independent evidence” of fraudulent intent. *Id.* at 699.

Here, based on the record, the Taxpayers provided a bill of sale reporting a sales price of [REDACTED] for the Relevant Trailer. The sellers, however, have provided a bill of sale reporting a sales price of [REDACTED] for the Relevant Trailer. The higher sales price is also supported by the Loan and Security Agreement associated with the Taxpayers’ purchase. While the Taxpayers assert that the amount in excess of their proposed purchase price was refunded to them by the sellers, no proof has been provided to support that assertion. Additionally, that explanation does not explain the provision of two contradictory bills of sale that both appear to have been signed by the Taxpayers. Based on the presented evidence and unrebutted arguments from the Department’s Representative, the assessment of the fraud penalty is appropriate.

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.⁵

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: July 24, 2019

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