

**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.: 19-498

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 15, 2019, 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 July 11, 2019, at 12:00 pm in Little Rock, Arkansas. The Department was represented by Greg Ivester, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. [REDACTED] appeared at the hearing by telephone and represented the Taxpayers.

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 his Answers to Information Request, stating as follows, in pertinent part²:

On July 22, 2016, [REDACTED] (Taxpayers) purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] ["Seller"] for [REDACTED] (vehicle purchase price [REDACTED] less trade-in allowance of [REDACTED]). See **Contract and Certificate of Title** attached collectively as **Exhibit 1**. No temporary tag was issued for the [REDACTED] at the time of sale. The Taxpayers did not register the Ford and failed to pay the sales tax on the vehicle within thirty (30) days of purchase as required by Arkansas Code Annotated § 26-52-510. On or about March 26, 2019, the Arkansas Department of Finance and Administration (the Department) received an Affidavit of Repossession of Motor Vehicle indicating that the Seller had repossessed the [REDACTED] from the Taxpayer on December 1, 2016. See **Affidavit** attached as **Exhibit 2**. On March 26, 2019, the Department sent the Taxpayer two letters titled Explanation of Tax Adj and Notice of Proposed Assessment (NOPA) along with a copy of the Taxpayer Bill of Rights. See **Letters** attached collectively as **Exhibit 3**. The assessment was for [REDACTED] including sales tax of [REDACTED] penalty of [REDACTED] and interest of [REDACTED]. *Id.*

On or about April 15, 2019, the Taxpayer filed a timely protest of the NOPA requesting a hearing by telephone. See **Protest Letter** attached as **Exhibit 4**. The Taxpayer states in his protest: "We didn't have truck long enough and they would not give proper paperwork for us to tag". *Id.* Based on the statement in the protest it appears the Taxpayer acknowledges that a sale of a motor vehicle occurred but does not cite any specific exemption to which they are entitled.

Within his Answers to Information Request, the Department's Representative argued that the purchase and taking of possession of a motor vehicle triggered the application of Arkansas sales tax. He asserted that a repossession of the vehicle or difficulty in obtaining proper paperwork are not defenses to the enforcement of the sale tax law. In the absence of evidence that the sale was rescinded, he declared that the sale remained taxable. He further asserted that the assessment of interest and the late payment penalty were

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

appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2012) and 26-52-510(a)(4) (Supp. 2017), respectively.

Prior to administrative hearing, [REDACTED] submitted a recording of a conversation that he had with employees of the Seller. During that telephone call, an employee named [REDACTED] (a new employee) confirmed that the Taxpayer purchased the Relevant Vehicle in July of 2016 and the associated installment contract was later transferred to [REDACTED]. The Relevant Vehicle was later repossessed from [REDACTED] in 2017. She stated that installment contract was transferred on December 3, 2016. [REDACTED] was a manager at the time of the Taxpayer's purchase of the Relevant Vehicle but later transferred to another associated car lot. [REDACTED] further explained that, so long as her company has an outstanding lien on a title, her company retains the title in their records. [REDACTED] was then patched into the call. [REDACTED] informed [REDACTED] that it is his responsibility to inform the county assessor when a vehicle is sold by him. [REDACTED] concluded her conversation stating: "You have nothing to do with the taxes. You have got to assess the vehicle . . . you know . . . That's your responsibility when you go to get tags."

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. She acknowledged that the signature on the Affidavit of Repossession for the Relevant Vehicle was not notarized. [REDACTED] recording of his conversation with the Seller did not alter her opinion of the assessment. She asserted that the sales tax

liability arises on the date of a motor vehicle purchase and not after a thirty (30) day period of ownership. To rescind the transaction and avoid the assessment, she stated that the Taxpayers would need to receive a full refund of their payments toward the purchase of the Relevant Vehicle, including a return of the trade-in. She further noted that the Seller was in error if it did not provide the Taxpayers with the necessary paperwork to register the Relevant Vehicle.

B. [REDACTED] Testimony

[REDACTED] acknowledged that he purchased the Relevant Vehicle in July or September of 2016. He further testified that the Relevant Vehicle had serious mechanical issues that the Seller was unable to repair. He stated that the vehicle was disposed of within thirty (30) days of his purchase. He told the Seller that he did not desire a return of his trade-in and simply wanted to return the Relevant Vehicle and avoid further payments. He did not have his trade-in or its value returned to him. The Taxpayers did not make any other payments towards the purchase of the Relevant Vehicle other than the trade-in. The Seller told him to find a different person to take over his installment contract. He found [REDACTED] [REDACTED] to complete that task. The Seller advised him that, after [REDACTED] assumed the loan, the original contract would be shredded and the new agreement would reflect that [REDACTED] completed the entire transaction himself. He delivered the Relevant Vehicle to [REDACTED]. [REDACTED] then transferred the installment contract to himself. [REDACTED] explained that it took a long time for [REDACTED] to receive the title for the Relevant Vehicle from the Seller. [REDACTED] eventually registered the Relevant Vehicle and paid applicable sales tax on his registration. [REDACTED] had the vehicle repossessed

from him by the Seller in December of 2017. [REDACTED] asserted that he never received a title from the Seller. He noted that the Seller's employee informed him during the recorded telephone call that he was not liable for the taxes on the Relevant Vehicle.

C. Hearing Assertions of the Department's Representative

The Department's Representative declared that the Department has proven that the Taxpayer purchased the Relevant Vehicle and no evidence has been submitted to prove the sale was rescinded. Consequently, he reasoned that the assessment should be sustained.

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).

Initially, the motor vehicle constituted tangible personal property, whose sale is generally taxable. The record provides that the Taxpayers' initial trade-in (which functioned as a down payment on the purchase of the Relevant Vehicle) was not returned to them; however, the Relevant Vehicle and associated installment agreement was later transferred to another individual. The Taxpayer has not established that a rescinded sale occurred.³

The Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on July 22, 2016, for a total cost of [REDACTED] after application of a [REDACTED] trade-in allowance. Specifically, the record contains a retail installment contract⁴ listing the Taxpayers as the purchasers and is signed by the Taxpayers and the Seller. The record also contains a dealer's reassignment⁵ signed by the Seller that lists the Relevant Vehicle as being sold to the Taxpayers. Both documents contain the purchase price utilized by the Department in its assessment. These documents prove that ownership to the Relevant Vehicle was transferred to the Taxpayers even if the Relevant Vehicle was not registered in the Taxpayers' names.

³ 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.

⁴ See pages 1 through 5 of Department's Exhibit 1.

⁵ See page 8 of Department's Exhibit 1.

The Taxpayers assert that they never received title to the Relevant Vehicle. With respect to the Arkansas Motor Vehicle Title and Registration Laws, the Arkansas Supreme Court has explained as follows:

The failure of appellee to obtain the certificate of title at the time [a person] received the bill of sale does not deprive him of title, for the certificate of title *is not title itself* but only *evidence of title*. Section 79 of the Motor Vehicle Act provides several grounds under which the department is authorized to suspend or revoke a certificate of title, registration certificate, or registration plate. Such a provision in the statute, of course, negatives any argument that the certificate of title is the only evidence of ownership.

House v. Hodges, 227 Ark. 458, 462, 299 S.W.2d 201, 204 (1957). *See also Beatty v. USAA Cas. Ins. Co.*, 330 Ark. 354, 359-360, 954 S.W.2d 250, 253 (1997) (stating, a vehicle “[t]itle indeed establishes a *prima facie* case of ownership; however, ultimate ownership is to be established by all evidence regarding property.”). Consequently, ownership to a motor vehicle may be transferred to another individual in the absence of transferring the registration. As state above, ownership of the Relevant Vehicle was transferred to the Taxpayers based on the referenced documents.

The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. The fact that the vehicle was subsequently transferred to another individual does not cause the Taxpayers’ initial purchase to become nontaxable. Consequently, the Department has borne its burden of showing that a taxable sale of tangible personal property to the Taxpayers occurred. The Taxpayers have 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 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.

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 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: July 12, 2019

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