

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 20-798

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID:

(\$)¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written submitted on May 19, 2020, 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 September 21, 2020, at 9:00 a.m. The Department was represented by Susan Fowler, 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.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on May 8, 2020. The Department’s Answers to Information Request summarized

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

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 or about December 6, 2017, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . (the "vehicle") from [REDACTED] . of [REDACTED], Arkansas. The Motor Vehicle Retail Installment Contract and Security Agreement reflects that the sales price of the vehicle, including service and handling charges, was \$ [REDACTED]. The Taxpayer was given \$ [REDACTED] trade-in allowance towards the purchase of the vehicle. The total taxable sale price of the vehicle was \$ [REDACTED]. The Motor Vehicle Retail Installment Contract and Security Agreement attached as **Exhibit 1**.

The Department determined that Taxpayer did not register the vehicle or pay sales tax as required. A Notice of Proposed Assessment, Explanation of Tax Adjustment and Billing Statement were mailed to Taxpayer on May 8, 2020. **Exhibit 2, 3 & 4 respectively**. The assessment consists of tax in the amount of \$ [REDACTED], interest in the amount of \$ [REDACTED], and penalty in the amount of \$ [REDACTED]. The assessment was based on the purchased vehicle price of \$ [REDACTED], and the service and handling charge of \$ [REDACTED] minus the trade-in allowance of [REDACTED], as detailed in the Explanation of Tax Adjustment mailed to the Taxpayer on or about May 8, 2020.

In his protest, the Taxpayer states that he does not agree with the tax as he returned the vehicle and it is not in his possession. **Exhibit 5**. The Taxpayer states:

I didn't have the money to pay the sale[s] taxes, the sale[s]man at the dealer told me he would help pay the sale[s] taxes and he didn't so I took it back to the (dealer) car lot. I told the sale[s]man I was on a fi[xed] income before I made the deal.

An Affidavit of Repossession of Motor Vehicle with the Department stating the vehicle was repossessed. **Exhibit 6**.

The Taxpayer has admitted that he purchased and took ownership and possession of the vehicle in question. The Taxpayer has not presented a defense to the assessment of tax for the Taxpayer's vehicle. The Department's assessment of tax was proper.

...

DISCUSSION

The Taxpayer executed a Retail Installment Sales Contract for the purchase of a [REDACTED] which reflected a sales price, with service charges, of \$ [REDACTED] for the vehicle. A trade-in allowance of \$ [REDACTED] was allowed making the total taxable sales price of the vehicle \$ [REDACTED]. The Department's assessment of tax was proper. The Taxpayer has not presented a valid defense to the assessment of tax for the Taxpayer's vehicle purchase. The Taxpayer purchased a motor vehicle and failed to register the vehicle and pay the applicable sales tax within the prescribed 30-day period. The Department's assessment of tax based on the total consideration for the sale of the vehicle and vehicle warranty was proper. The Taxpayer failed to timely register the vehicle and pay the applicable sales tax in a timely manner. The Department's assessment of the 10% penalty was proper. Interest is owed upon the tax deficiency for the use of the State's tax dollars. The Department's assessment of interest was proper.

CONCLUSION

The Department has established by a preponderance of the evidence that the assessment of Arkansas sales tax for the Taxpayer's purchase of a motor vehicle and vehicle warranty was proper under Ark. Code Ann. §§ 26-52-301(7) (Supp. 2017), 26-52-510(a)(1) (Repl. 2014) and 26-53-126(a)(2)(A) (Repl. 2014). Interest was properly assessed under Ark. Code Ann. § 26-18-508 (Repl. 2012), which provides that any tax not paid when due is delinquent and that interest shall be collected on the total tax deficiency from the date the tax became due until the date of payment. Penalty was properly assessed under Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2014). For the reasons set forth above, the Department respectfully requests that the assessment be sustained in full. [P. 1-5].

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and also testified that her 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) he told the salesman that

he needed help with the sales tax or he could not get the vehicle; (2) he gave the salesman \$ [REDACTED] cash and the salesman kept it; (3) when he went to register the vehicle, there was no money in the envelope the salesman had given him; and (4) he is on a fixed income and could not afford to pay the sales tax so he took the vehicle back to the dealership.

CONCLUSIONS OF LAW

Standard of Proof

Ark. Code Ann. § 26-18-313(c) (Supp. 2019) 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. 2019). 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. 2019). 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. 2019).

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. 2019). Ark. Code Ann. § 26-52-103(30)(A) (Supp. 2019) 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. 2019). 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 (Supp. 2019).

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. 2019) and Ark. Code Ann. § 26-52-301 (Supp. 2019). The payment of sales tax on

the purchase of a new or used motor vehicle is addressed in Ark. Code Ann. § 26-52-510 (Supp. 2019) 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 vehicle on December 6, 2017, and he obtained possession of the vehicle.² 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. Additionally, the Taxpayer may have reached some agreement regarding payment of the sales tax with the salesman in this matter, however; the Department was not a party to that agreement and is not bound by it.

² The total purchase price of the motor vehicle was \$ [REDACTED] (which included a handling fee of \$ [REDACTED]). The Taxpayer was given a trade-in allowance of \$ [REDACTED] for net taxable amount of \$ [REDACTED].

The evidence does not support a finding that a rescinded sale³ relieved the Taxpayer from sales tax liability on the purchase of the vehicle.⁴ The Department correctly assessed sales tax against the Taxpayer.

Interest and Penalty

Interest was properly assessed upon the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Supp. 2019).

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) (Supp. 2019).

DECISION AND ORDER

The proposed 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. 2019), 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.

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 sale of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

⁴ The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

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. 2019) 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



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: September 22, 2020

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