

**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.: 21-194**

**ASSESSED AMOUNT: [REDACTED]<sup>1</sup>**

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated October 10, 2020, signed by [REDACTED] on behalf of herself and [REDACTED], the Petitioners. The Petitioners protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Brad Young, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Petitioners, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by a letter dated December 23, 2020. The Department’s Representative filed his Opening Brief on January 25, 2021. The Petitioners filed a Response Brief dated February 25, 2021.<sup>2</sup> The Department’s Representative provided an

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

<sup>2</sup> This document was not sent to the Office of Hearings and Appeals but the Office of Revenue Legal Counsel. The Office of Hearings and Appeals was not provided with a copy of this document until March 4, 2021.

Amended<sup>3</sup> Reply Brief on March 4, 2021. The record was closed and this matter was submitted for a decision on March 4, 2021.

### **ISSUE**

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

### **FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES**

#### **Opening Brief**

Within his Opening Brief, the Department's Representative provided a statement of relevant facts and his analysis, stating as follows, in pertinent part<sup>4</sup>:

On or about May 18, 2020, the Taxpayer purchased a [REDACTED] [REDACTED] [REDACTED] ["Relevant Vehicle"] for [REDACTED].<sup>5</sup> The bill of sale identified the purchaser as:

[REDACTED]

The bill of sale listed the purchaser's phone number as [REDACTED]. The name [REDACTED] the address on the bill of sale, and the phone number on the bill of sale all appear on the Taxpayer's protest form. The Department's records indicate that the Taxpayer did not register the vehicle and did not remit sales tax as required by law.

On or about June 16, 2020, the Department sent the Taxpayer a Notice of Unregistered or Unpaid Tax.<sup>6</sup> The Department addressed the letter to the Taxpayer as follows:

[REDACTED]

The Department's records indicate that the Taxpayer contacted the Department and stated that the correct spelling of her last name was

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<sup>3</sup> See Footnote 2. The Department originally filed a Reply Brief asserting that no Response Brief had been filed and simply incorporating the arguments, authority, and evidence contained within its Opening Brief.

<sup>4</sup> All exhibits support the statements for which they are cited.

<sup>5</sup> The Department's Representative cited Exhibit 1.

<sup>6</sup> The Department's Representative cited Exhibit 2.

[REDACTED]<sup>7</sup> After the Department sent the notice, the Taxpayer initiated email correspondence with the Department.<sup>8</sup> In August 11, 2020, the Taxpayer wrote, "Can you please let me know if you were able to find out what form I am supposed to fill out or how I am supposed to register the [REDACTED]"<sup>9</sup> A DFA employee, Vickie Wainwright, responded, "There are no documents to fill out. The vehicle has to be registered."<sup>10</sup>

On or about August 13, 2020, the Department issued an Explanation of Tax Adjustment.<sup>11</sup> The Department addressed the explanation of tax adjustment to the Taxpayer as follows:

[REDACTED]

Also on or about August 13, 2020, the Department issued a Notice of Proposed Assessment.<sup>12</sup> The Department addressed the notice to the Taxpayer as follows:

[REDACTED]

The Taxpayer timely filed this protest on the form attached to the notice.<sup>13</sup>

Within his Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is generally taxable at the time of the vehicle transfer and the Petitioners failed to demonstrate that they registered the Relevant Vehicle and paid the applicable taxes. He further asserted that the assessment of interest and the late payment penalty were appropriate

<sup>7</sup> The Department's Representative cited Exhibit 2.

<sup>8</sup> The Department's Representative cited Exhibit 3.

<sup>9</sup> The Department's Representative cited Exhibit 3.

<sup>10</sup> The Department's Representative cited Exhibit 3. Included with this discussion, [REDACTED] also appeared to argue that only contractors or individuals possessing sales tax permits are required to register their motor vehicles and pay applicable sales tax.

<sup>11</sup> The Department's Representative cited Exhibit 4. This document was issued in the names of [REDACTED]

<sup>12</sup> The Department's Representative cited Exhibit 5. This document was issued in the names of [REDACTED]

<sup>13</sup> The Department's Representative cited Exhibit 6. Within their protest, the Petitioners stated that they are not registered with the Arkansas Secretary of State, do not operate as a business, and have not filed any sales tax returns or received a sales tax permit.

under Ark. Code Ann. §§ 26-18-508 (Repl. 2020) and 26-52-510(a)(4) (Repl. 2020), respectively.

### **Response Brief**

Within their Response Brief, the Petitioners reiterated that they are not registered with the Arkansas Secretary of State, do not operate as a business, are not seller, and have not filed any sales tax returns or received a sales tax permit. Consequently, they reasoned that they were not “taxpayers” under Ark. Code Ann. § 26-18-104(17) (Repl. 2020) or Arkansas Gross Receipts Tax Rule GR-3(R). Since they were not “taxpayers”, they argued that they are not required to pay sales tax upon motor vehicle purchases. They further noted that Arkansas Gross Receipts Tax Rule GR-71(D) discusses sellers.

### **Reply Brief**

Within his reply brief, the Department’s Representative asserted that liability for payment of Arkansas sales tax upon motor vehicle purchases is upon the purchasers, citing Ark. Code Ann. § 26-52-510 (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-12(A)(1).

After a general discussion of the burdens of proof in tax proceedings, a legal analysis shall follow.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Standard of Proof**

Ark. Code Ann. § 26-18-313(c) (Repl. 2020) 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) (Repl. 2020). 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) (Repl. 2020). 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) (Repl. 2020).

### **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 (Repl. 2020). The Relevant

Vehicle qualifies as tangible personal property and, thus, is generally taxable. The Petitioners have not disputed the fact that they purchased the Relevant Vehicle.

For purchases of motor vehicles, a “consumer” is required to directly pay the accompanying sales tax liability to the Department. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020). The subsection of the Arkansas Code states the following:

On or before the time for registration as prescribed by § 27–14–903(a), **a consumer shall pay to the Secretary 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. [Emphasis supplied.]

A “consumer” is defined as “the **person** to whom the taxable sale is made or to whom taxable services are furnished.” Ark. Code Ann. § 26-52-103(4)(A) (Repl. 2020) (emphasis supplied).<sup>14</sup> A “person” included “**any individual**, partnership, limited liability company, limited liability partnership, corporation, estate, trust, fiduciary, or any other legal entity.” Ark. Code Ann. § 26-52-103(24) (Repl. 2020) (emphasis supplied). The Petitioners qualify as individuals and, thus, qualify as consumers. As consumers, the Petitioners (not the seller) are required to pay applicable sales taxes upon their purchase of the Relevant Vehicle at or before the time of registration as stated within Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020) regardless of whether they have registered for Arkansas Sales Tax and possess a sales tax permit.

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<sup>14</sup> While Ark. Code Ann. § 26-52-103(4)(B) (Repl. 2020) does state that contractors are generally deemed to be the consumers of materials used in the performance of contracts, that language does not limit the general definition of a “consumer” under Ark. Code Ann. § 26-52-103(4)(A) (Repl. 2020) to only include contractors.

If any ambiguity was present on the application of the law, Ark. Code Ann. § 26-52-105 (Repl. 2020) grants the Secretary of the Department discretion to promulgate rules for enforcement of the applicable tax statutes. Ark. Gross Receipts Tax Rule GR-12(A)(1) specifically provides: “[t]ax due on vehicles and trailers which are required by Arkansas law to be registered and licensed for use on public streets and highways **shall be paid by the purchaser at the time of registration and application for certification of title.** Sellers of trailers are not required to collect tax.” Emphasis supplied. This Office has repeatedly noted that the promulgated rules are binding, primary authority for this Office and may not be overturned or ignored.

Since the Petitioners are individuals that are subject to and liable for payment of Arkansas Gross Receipts (sales) Tax under Ark. Code Ann. § 26-52-510 (Repl. 2020), these individuals would qualify as “taxpayers” under Ark. Code Ann. § 26-18-104(17) (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-3(R). Additionally, Arkansas Gross Receipts Tax Rule GR-71(D) does discuss the general collection of Arkansas sales tax by seller; however, as stated above, Ark. Code Ann. § 26-52-510 (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-12 explicitly places the burden of payment of sales tax for motor vehicles sales upon the purchasers. The Arkansas Supreme Court has explained, when interpreting Arkansas law, specific provisions control over general provisions. *Streight v. Ragland*, 280 Ark. 206, 218, 655 S.W.2d 459, 466 n.7 (1983). Consequently, the Petitioners’ argument with respect to GR-71(D) is not persuasive.

Here, the Department has established that the Petitioners took ownership and possession of the Relevant Vehicle on May 18, 2020, for a total price of [REDACTED]. The governing statutes demonstrate that ownership and taking possession of the motor vehicle triggers the tax liability. The Department has borne its burden of showing that a sale of tangible personal property to the Petitioners occurred. The Petitioners have not presented a successful defense to the enforcement of the tax. Consequently, the assessment of tax on the purchase of the Relevant Vehicle is sustained.

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) (Supp. 2019), 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 Petitioners failed to timely register the Relevant Vehicle and timely pay the applicable taxes as provided in the relevant code sections. Consequently, the late payment penalty was properly assessed against the Petitioners.

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained.

## **DECISION AND ORDER**



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 (Repl. 2020), unless the Petitioners 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](mailto: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 Petitioners have requested a revision.

Ark. Code Ann. § 26-18-406 (Repl. 2020) 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.<sup>15</sup>

OFFICE OF HEARINGS & APPEALS



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TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: March 5, 2021

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<sup>15</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.