

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF** [REDACTED]  
[REDACTED]  
**LICENSE PLATE:** [REDACTED]

**GROSS RECEIPTS TAX  
ASSESSMENT**

**DOCKET NO.: 21-225**

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

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon written protest received September 3, 2020, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on March 12, 2021, at 10:00 a.m. in Little Rock, Arkansas. The Department was represented by David Scott, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Barbara Montgomery, Revenue Supervisor. The Taxpayer appeared at the hearing and represented himself. All individuals appeared at the hearing by telephone.

**ISSUE**

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

**FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES**

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

## A. Prehearing Filings

The Department's Representative provided a statement of relevant facts and an analysis within his Answers to Information Request, stating as follows, in pertinent part<sup>2</sup>:

On October 5, 2019, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] for [REDACTED]. A copy of the Bill of Sale from reverse side of the Title is attached as **Exhibit 1**.<sup>3</sup>

On November 27, 2019, Taxpayer registered and made application for title for the [REDACTED] in the form of a passenger car license with license number [REDACTED] issued instead of registering the car for [REDACTED]

[REDACTED] Further, according to a conversation that Ebony Morgan (DFA Fiscal Support Analyst - Office of Excise Tax) had with the Taxpayer, the [REDACTED] was used as [REDACTED]. A copy of the security agreement for the loan with the [REDACTED] pledged as collateral attached as **Exhibit 3**. The security agreement lists [REDACTED] as borrowers. See **Exhibit 3**. [REDACTED] is the [REDACTED]

On August 17, 2020, the Department determined that Taxpayer had wrongfully claimed a Dealer Exemption from tax and mailed an Explanation of Tax Adjustment to Taxpayer. A copy of Explanation of Tax Adjustment attached as **Exhibit 4**.

On August 17, 2020, the Department issued a Notice of Proposed Assessment to Taxpayer in the amount of [REDACTED] consisting of tax in the amount of [REDACTED], a penalty of [REDACTED], and interest in the amount of [REDACTED]. A copy of the Notice of Proposed Assessment attached as **Exhibit 5**. The assessment was based on the purchase price of [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on July 17, 2020. See **Exhibit 4**. The Taxpayer has failed to pay the sales tax and the tax remains unpaid. The Taxpayer timely protested the assessment. A copy of the Protest is attached as **Exhibit 6**.

In his protest, Taxpayer stated:

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

<sup>3</sup> The date of sale upon the Bill of Sale from the back of the title is October 2, 2019.

*The car [REDACTED] [sic] planned when I sale [sic] it, I will pay it off at the Bank get title to customer. With everything going on Sales are down [REDACTED] I can not pay this anyway may have to [REDACTED] never thought this would happen but it is what it is.*

Within his Answers, the Department's Representative asserted that the Taxpayer wrongfully claimed a dealer exemption with respect to the purchase of the Relevant Vehicle and the purchase was generally taxable at the time of the transfer of ownership. He noted that the Relevant Vehicle was registered for personal vehicle tags ([REDACTED]) and is pledged as collateral [REDACTED]. He further asserted that the assessment of interest and the late payment penalty were appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2020) and 26-52-510(a)(4) (Repl. 2020), respectively.

### **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 additionally certified the exhibits attached thereto. She stated that no evidence has been provided that the motor vehicle [REDACTED]. She asserted that the remaining statements are not a defense, and no evidence of a rescission has been provided. Additionally, notes within the Department's system indicate that the Taxpayer told an employee of the Department during [REDACTED]

#### **B. Taxpayer's Testimony**

The Taxpayer testified that the [REDACTED]. He acknowledged, however, that [REDACTED]. He believed that he used at least [REDACTED] as [REDACTED].<sup>4</sup> He finally [REDACTED] and [REDACTED] in October 2020. The Department, however, never received his filing and he had to refile the [REDACTED] in December 2020. [REDACTED] are [REDACTED], [REDACTED]. He hopes to eventually [REDACTED] but may decide to keep the Relevant Vehicle. He concluded by stating that, if the state believes that he needs to pay the assessment, then the Department should send him a new bill for payment.

### **C. Assertions of Department's Representative**

The Department's Representative asserted that [REDACTED] [REDACTED] from an employee of the Department.

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

## **CONCLUSIONS OF FACT AND 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.

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<sup>4</sup> The Department's Representative stated that only the Relevant Vehicle and another vehicle were listed [REDACTED].

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. For

purchases of motor vehicles, the consumer is required to directly pay the accompanying sales tax liability to the Department. Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020).

An exemption does exist for sales for resale. Ark. Code Ann. § 26-52-401(12)(A) (Repl. 2020) grants a narrow exemption for sales for resale, stating as follows:

Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.

As stated above, the Taxpayer bears the burden of proving entitlement to a deduction or credit. *See* Ark. Code Ann. § 26-18-313(d) (Repl. 2020).

Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on October 2, 2019, for a total price of [REDACTED]. The governing statutes demonstrate that ownership and taking possession of the Relevant Vehicle generally triggers the tax liability. The Department has borne its burden of showing that a sale of tangible personal property to the Taxpayer occurred.

Though alleged, the Taxpayer has not established that the Relevant Vehicle was purchased for resale by a preponderance of the evidence. [REDACTED]

[REDACTED] Additionally, the Taxpayer registered the Relevant Vehicle as a personal vehicle, [REDACTED] Further, the

Taxpayer stated that he may simply keep the Relevant Vehicle as his personal vehicle [REDACTED]. These facts strongly contradict the assertion that the Relevant Vehicle was purchased for resale. Based on the presented evidence, the Taxpayer has not established entitlement to the sale for resale exemption. Consequently, the assessment of sales tax 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) (Repl. 2020), 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 Taxpayer 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 Taxpayer.

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 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. 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 Taxpayer has 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>5</sup>

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: March 15, 2021

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<sup>5</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.