

**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.: 21-226

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 8, 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 February 16, 2021, at 11:00 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 Revenue Supervisor and the Department’s Representative appeared at the hearing by telephone. At the time of the hearing, this Office twice attempted to contact the Taxpayer at the telephone number provided within his protest and listed within the Notice of Hearing. Both attempts were unsuccessful.

A Notice of Hearing was mailed to the Taxpayer’s address of record on January 14, 2021. This Office also mailed a letter to the Taxpayer’s address of

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

record on February 23, 2021, that confirmed the hearing date and time. Notice was sufficient. Ark. Code Ann. § 26-18-307 (Repl. 2020).

ISSUE

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filing

Within his Answers to Information Request, the Department's Representative provided a statement of relevant facts and her analysis, stating as follows, in pertinent part²:

On March 25, 2018, [REDACTED] ("Taxpayer") purchased a 2008 [REDACTED] [REDACTED] ["Relevant Vehicle"] from [REDACTED] Arkansas for [REDACTED]. A copy of the Retail Order for a Motor Vehicle form is attached as **Exhibit 1**.³

At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of April 24, 2018. A copy of temporary tag attached as **Exhibit 2**.

On or about July 17, 2020, the Department determined that Taxpayer did not register the vehicle and mailed an Explanation of Tax Adjustment to Taxpayer for failure to register the vehicle and pay the sales tax. A copy of Explanation of Tax Adjustment attached as **Exhibit 3**.

On July 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 4**.

The assessment was based on the purchased vehicle price of [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on July 17, 2020. See **Exhibit 3**. The Taxpayer 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 5**.

In his protest. Taxpayer stated:

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

³ This document also stated that the Taxpayer was required to pay [REDACTED] at the time at the time of delivery.

I did not end up buying the vehicle. I only had it a few days then we unwound the deal. So I do not owe for this car.⁴

On October 2, 2020, the Department sent a letter and rescission of sale form to the Taxpayer. A copy of letter and form attached as **Exhibit 6**. The Taxpayer has failed to return a completed and executed rescission form. A taxable “sale” of [REDACTED] occurred and Taxpayer has provided no proof that the “sale” was rescinded.

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 regardless of whether the motor vehicle is still owned by the Taxpayer. 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 contained within the Department’s Answers to Information Request. She noted that the Taxpayer was required to pay [REDACTED] at the time of delivery of the Relevant Vehicle. Since the Taxpayer obtained the Relevant Vehicle, she reasoned that the down payment must have been provided. She further noted that a rescission form has not been provided by the Taxpayer though that form was provided to the Taxpayer by the Department.

B. Assertions of Department’s Representative

⁴ The Taxpayer further attached a handwritten letter (dated August 27, 2020) purporting to be from the seller that stated the following: “[REDACTED] changed his mind on purchase of vehicle and gave it back to us. He had the vehicle for a very few days.”

The Department's Representative asserted that the Taxpayer has failed to prove that his purchase was rescinded.

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 Taxpayer has not disputed the fact that he initially purchased the Relevant Vehicle. 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).

Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on March 25, 2018, 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 Taxpayer occurred.

Though alleged, the Taxpayer has not established that a rescinded sale occurred.⁵ The record supports a finding that the Taxpayer likely remitted a down

⁵ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances to demonstrate a rescinded sale:

payment towards his purchase; however, it is not clear whether that payment was returned to the Taxpayer. The handwritten document provided by the Taxpayer only states that the vehicle was returned to the seller after a few days. The Arkansas Supreme Court has explained that a sales contract may be abandoned or relinquished by agreement of the parties and that a party asserting a rescission needs to prove actual intent to abandon the contract. *Hicks v. Woodruff*, 238 Ark. 481, 482, 382 S.W.2d 586, 587 (1964), *see also Aycock vs. Aycock*, 1997 WL 556337, at 3 (Ark. Ct. App. 1997). Rescission or abandonment of a contract terminates the agreement. *See* 17 C.J.S. Contracts § 587 (2019); *see also Merickel v. Erickson Stores Corp.*, 255 Minn. 12, 16, 95. N.W.2d 303, 306 (1959) (stating “Rescission as a general rule must be exercised in toto and is applied to the contract in its entirety with the result that what has been done is wholly undone and no contract provisions remain in force to bind either of the parties.”). Without proof that the Taxpayer’s purchase was “wholly undone” and the parties were placed in the same position that existed preceding the transaction, a rescission of the purchase has not been established by a preponderance of the evidence.

Consequently, the assessment of sales tax is sustained.

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- 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.

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 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. 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.⁶

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 15, 2021

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