

**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.: 21-232

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 December 23, 2020, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Dan Parker, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”).

A hearing was held in this matter on February 26, 2021, at 2:15 p.m. in Little Rock, Arkansas. The Department was represented by Dan Parker, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”). Present on behalf of the Department was Ebony Morgan, Fiscal Support Analyst. The Department’s Representative and the Fiscal Support Analyst appeared at the hearing by telephone. The Taxpayer appeared at the hearing by telephone and represented herself.

ISSUE

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

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filings

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

On or about October 11, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] (the "Dealer"). The Bill of Sale (the "Sales Contract") reflects a total sales price [REDACTED]. See Sales Contract, **Exhibit 1**.³

The Department determined that Taxpayer had not registered the vehicle and on or about December 17, 2020, mailed to Taxpayer a Billing Statement (**Exhibit 2**), Explanation of Tax Adjustment (**Exhibit 3**)⁴, and Notice of Proposed Assessment (**Exhibit 4**) for [REDACTED], consisting of sales tax of [REDACTED], interest in the amount of [REDACTED], and a penalty in the amount of [REDACTED].

The Taxpayer filed a timely protest and has requested a hearing by telephone. See Protest post-marked December 20, 2020 (**Exhibit 5**).⁵ The Taxpayer's Protest contains the following reasons for disagreeing with the proposed assessment:

"I returned this car 2 days later after I realize they lied about the amount of car."

Within his Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle and a service contract is taxable at the time of the vehicle transfer regardless of whether the motor vehicle is later returned to the seller after a brief period of time. He further asserted that the assessment of interest and the late payment penalty were appropriate under

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

³ This document is a copy of the completed Bill of Sale.

⁴ This exhibit states that the Taxpayer was assessed based on a vehicle purchase price of [REDACTED].

⁵ This exhibit was postmarked on December 21, 2020.

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

Hearing Testimony

A. Fiscal Support Analyst's Testimony

The Fiscal Support Analyst testified that she is familiar with the associated purchase. She additionally certified the exhibits attached to the Department's Answers to Information Request. She further provided testimony consistent with the rendition of facts within the Department's Answers to Information Request. No sales tax was remitted towards the purchase. Penalty and interest were assessed because they are required by Arkansas law. The Taxpayer did not provide any evidence of a rescinded sale to the Fiscal Support Analyst. She additionally asserted that tax attached at the time of the Taxpayer's purchase even if the vehicle was returned to the seller or the car is resold by the seller. If the car was resold, she stated that both sales of the Relevant Vehicle were taxable.

B. Taxpayer's Testimony

The Taxpayer testified that this was her first time buying a motor vehicle. She only drove the car for a few days. The seller did not return her [REDACTED] when the Relevant vehicle was returned, claiming the retained amount represented a document fee. She was tired on the date of purchase and the seller attempted to raise the price on her purchase without her knowledge. Consequently, she returned the vehicle. The seller argued with her when she tried to return the

vehicle and kept her [REDACTED].⁶ She believes that the Relevant Vehicle was resold to some older ladies.

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

⁶ The Department’s Representative asserted that the retention of the [REDACTED] prevents a finding of a rescinded sale.

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). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(26)(A) (Repl. 2020). Arkansas sales tax is a tax that is assessed upon a sales transaction, not the property. *Pledger v. Brunner and Lay, Inc.*, 308 Ark. 512, 521, 825 S.W.2d 599, 604 (1992). Thus, the Fiscal Support Analyst correctly stated that each sale of a motor vehicle within Arkansas would be taxable in absence of an applicable credit, deduction, or exemption, no matter how many times it is resold.

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. 2020). 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).

Here, the Department has established that the Taxpayer took ownership and possession of the Relevant Vehicle on October 11, 2018, for a total price of

██████████. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car 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.⁷ The Taxpayer has acknowledged that the seller did not return ██████████ of the proceeds that she remitted towards her purchase. 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.”). The retention of the ██████████ supports a finding that the original purchase was not “wholly undone” and requires a finding that a rescission of the purchase did not occur.

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

- 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.

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. 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.⁸

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 2, 2021

⁸ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.