

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

DOCKET NO.: 21-244

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID: [REDACTED]
(\$ [REDACTED])¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on October 21, 2020, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”).

This case was submitted on written documents at the request of the Taxpayer. The Department was represented by Nina Samuel Carter, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented herself. A Briefing Schedule was mailed to the parties on January 28, 2021. The Department’s Opening Brief was filed on February 1, 2021. The Taxpayer’s Response Brief was filed on March 9, 2021. The Department did not file a Reply Brief but submitted a letter stating that, “[t]he Taxpayer’s Response Brief did not bring up any new evidence or facts that would necessitate a Reply. Instead, the Department elects to stand on its Opening Brief and considers this matter to be

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

fully submitted for decision. [P. 1].” This matter was submitted for a decision on March 29, 2021.

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 October 8, 2020. The Department’s Opening Brief summarized the facts and issues involved in this case (including the basis for the Taxpayer’s disagreement with the assessment as reflected by the handwritten statement on the Taxpayer’s Protest Form) and stated, in part:

On February 24, 2018, [REDACTED] (“Taxpayer”) purchased a [REDACTED] . . . (the “vehicle”) from [REDACTED] for [REDACTED] (\$ [REDACTED] plus \$ [REDACTED] service contract and \$ [REDACTED] service and handling fee) with a trade-in valued at [REDACTED]. Taxpayer financed \$ [REDACTED] of the purchase price through [REDACTED]. A copy of the Retail Installment Contract is attached as **Exhibit 1**.

On or about October 8, 2020, the Arkansas Department of Finance and Administration (the “Department”) determined that Taxpayer did not register the vehicle and mailed a Billing Statement to Taxpayer due to Taxpayer’s failure to register the vehicle and pay the sales tax. See Billing Statement, attached as **Exhibit 2**. The Department then issued a Notice of Proposed Assessment to Taxpayer in the amount of \$ [REDACTED]. The assessment consists of tax in the amount of \$ [REDACTED], a penalty of \$ [REDACTED], and interest in the amount of \$ [REDACTED]. See Notice of Proposed Assessment, attached as **Exhibit 3**. The assessment was based on the purchased vehicle price of \$ [REDACTED] plus the trade-in allowance of \$ [REDACTED] as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on October 8, 2020. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 4**.

Taxpayer disagrees with the proposed assessment claiming that she no longer has the vehicle in her possession. Taxpayer states in part:

I bought this vehicle from [REDACTED] in Feb '18. I drove it 1 weeks and I called and told them to come pick it up cause it wasn't reliable. They let it sit [REDACTED] until July '18. I don't feel I'm reliable to pay this.

A copy of the Protest is attached as **Exhibit 5**. As evidenced by the attached Affidavit of Repossession, the vehicle was repossessed by [REDACTED] on July 10, 2018. See Affidavit of Repossession of Motor Vehicle attached as **Exhibit 6**.

...

A penalty equal to ten percent (10%) of the amount of taxes due is assessed when a taxpayer fails to timely register and pay the sales tax on the motor vehicle. See Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020). Interest is required to be assessed upon tax deficiencies for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). A tax levied under any state tax law which is not paid when due is delinquent. Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment. *Id.* Thus, under the law, penalty and interest were properly assessed in this case.

DISCUSSION

Applying the law to the facts of this case, Taxpayer's liability for the sales tax on the vehicle fully accrued on February 24, 2018, the purchase date of the vehicle. Taxpayer failed to timely register the vehicle or pay the applicable sales tax liability. Whether Taxpayer did not make any or just a few payments on the vehicle or whether the vehicle is no longer owned due to repossession, either voluntary or involuntary, is not relevant to the obligation to pay sales tax on the purchase of the vehicle. Taxpayer has not presented a valid defense to the assessment of tax for Taxpayer's vehicle purchase. The Department's assessment of sales tax on the vehicle was proper and should be sustained. [P. 1 – 3].

The Taxpayer's Response Brief addressed the purchase of the vehicle and the facts and circumstances surrounding her possession of the vehicle and stated, as follows:

I purchased the Vehicle in Feb. 2018. I drove it & had issues 2 weeks after getting it. I changed jobs & I requested they just pick it up [REDACTED]. They let it sit in his yard for almost 3 months. At one point, he told me to call & offer a cheaper price & he would fix it. But 2 weeks later they finally picked it July 2018. I have been [REDACTED] so I have [REDACTED]. [P. 1].

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.

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).

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. 2020). Ark. Code Ann. § 26-52-103(35)(A) (Repl. 2020) 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 (Repl. 2020). 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 (Repl. 2020).

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(31) (Repl. 2020) and Ark. Code Ann. § 26-52-301 (Repl. 2020). The payment of sales tax on the purchase of a new or used motor vehicle is addressed in Ark. Code Ann. § 26-52-510 (Repl. 2020) 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.

At the time of registration of a motor vehicle prescribed by Ark. Code Ann. § 27-14-903(a) (Repl. 2014), sales tax is also due on the total amount of the gross proceeds paid for an extended warranty or service contract under Arkansas Gross Receipts Tax Rule GR-12(B)(1)(e), which states:

Warranties. Sales or use tax is due on the gross receipts or proceeds received for an extended warranty or service contract on a new or used vehicle offered either by the manufacturer or the dealer. . . . Tax is due on the total amount of the gross receipts for the sale of the warranty or service contract.

The evidence presented in this case established that the Taxpayer purchased the vehicle on February 24, 2018, and she 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

² The total purchase price of the vehicle was \$ [REDACTED] (which included \$ [REDACTED] for a taxable warranty and a \$ [REDACTED] handling fee).

evidence does not support a finding that a rescinded sale³ relieved the Taxpayer from sales tax liability on the purchase of the vehicle.⁴ Consequently, 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 (Repl. 2020).

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) (Rep. 2020).

Equity

The Taxpayer's contentions regarding [REDACTED] could be viewed as a request for equitable relief. The Office of Hearings and Appeals has no equitable power to grant the Taxpayer equitable relief based upon fairness. An administrative tribunal can only operate within the powers granted to it by the legislature. There is considerable doubt whether the Arkansas General Assembly may even constitutionally grant equitable powers to an administrative agency, since the granting of equity is purely a judicial power. Provenzano v. Long, 64 Nev. 412, 183 P.2d 639 (1947); Mich. Mut. Liability Co. v. Baker, 295

³ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances that establish 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 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.

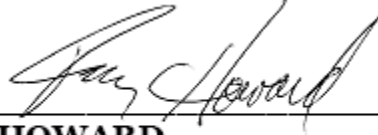
Mich. 237, 294 N.W. 168 (1940), Ford v. Barcus, 261 Iowa 616, 155 N.W.2d 507 (1968) (citing Doyle v. Dugan, 229 Iowa 724, 295 N.W. 128 (1940)). Ark. Code Ann. § 26-18-405 (Supp. 2017) clearly indicates the decision of a hearing officer is limited to the application of the law to a proposed assessment or refund denial and does not grant authority for decisions based in equity, even assuming that such a power could be constitutionally granted and exercised by this tribunal. Furthermore, the Office of Hearings and Appeals does not possess the settlement authority authorized under Ark. Code Ann. § 26-18-705 (Repl. 2020).

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 (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.⁵

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 30, 2021

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