

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

██████████
ACCT. NO.: ██████████

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID: ██████████
(\$ ██████████)¹

DOCKET NO.: 21-247

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on December 2, 2020, and signed by ██████████ (individually, “Taxpayer JO”), on behalf of himself and ██████████ (individually, “Taxpayer JA”), the Taxpayers. The Taxpayers protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”).

A telephone hearing² was held in Little Rock, Arkansas, on March 12, 2021, at 2:00 p.m. The Department was represented by Daniel L. Parker, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Barbara Montgomery – Tax Credits Supervisor. The Taxpayers appeared at the hearing and represented themselves.

¹ The reflected amount includes tax (\$ ██████████); penalty (\$ ██████████); and interest (\$ ██████████ as of October 7, 2020).

² All participants appeared via telephone.

ISSUE

Whether the assessment issued by the Department against the Taxpayers should be sustained? Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayers on October 7, 2020. The Department's Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayers' disagreement with the assessment as reflected by a handwritten statement on the Protest Form) and stated, as follows:

On or about December 27, 2017, [REDACTED] ("Taxpayers") purchased a [REDACTED] . . . (the "Vehicle") from [REDACTED] (the "Dealer"). The Motor Vehicle Retail Installment Sales Contract (the "Sales Contract") was assigned to [REDACTED] on December 27, 2017, and reflects a total sale price of [REDACTED], which includes a vehicle price of [REDACTED] and a Service and Handling Fee of [REDACTED]. See Sales Contract, **Exhibit J**.

The Department determined that Taxpayers had not registered the vehicle and on or about October 7, 2020, mailed to Taxpayers a Billing Statement (**Exhibit 2**), Explanation of Tax Adjustment (**Exhibit 3**), 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]. On August 13, 2018, [REDACTED] repossessed the vehicle. See **Exhibit 5**.

The Taxpayers filed a timely protest and have requested a hearing by telephone. See Protest, **Exhibit 6**. The Taxpayers' Protest contains the following reasons for disagreeing with the proposed assessment:

"I was in the [REDACTED] and [REDACTED] I had to let the [Vehicle] go back. Also I never received the title all to get the tags. So I [told] [REDACTED] it was best to just let it go back"

DISCUSSION AND ANALYSIS

The Taxpayers' obligation to pay sales tax on the purchase of the vehicle arose on December 27, 2017, at the time of purchase. Ark. Code Ann. § 26-52-301(1) (Repl. 2020). *See also* Arkansas Gross Receipts Tax Rule GR-12(C). The fact that Arkansas law permits the sales tax to be paid "on or before the time for registration" and not immediately does not affect the Taxpayers' obligation to pay the tax. The Taxpayers may not avoid the legal obligation to pay sales tax on the purchase of a vehicle by failing to register or to timely register the vehicle.

The subsequent repossession of the vehicle is not a valid defense to the Taxpayers' obligation to pay sales tax on the purchase of the vehicle. The Taxpayers protest payment of the tax based upon unfortunate circumstances and their decision that "it was best to just let [the Vehicle] go back." Assuming for the sake of argument that all facts and circumstances alleged by the Taxpayers are true, the Taxpayers' allegations do not constitute a defense to the legal obligation to pay sales tax on their purchase of the vehicle.

The circumstances described by Taxpayers and the Vehicle's subsequent repossession are not relevant to the Taxpayers' legal obligation to pay sales tax on the purchase of the vehicle. In this case, the Taxpayer failed to pay sales tax on the vehicle within thirty days after the purchase of the vehicle, and the law required the Department to assess all accrued interest and the 10% penalty at the time it issued the Notice of Proposed Assessment.

CONCLUSION

No valid defense for the failure to pay the tax has been presented. The Department has established by a preponderance of the evidence that the assessment of Arkansas sales tax for the Taxpayer's purchase of the motor vehicle was proper under Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020) and § 26-53-126(a)(2)(A) (Repl. 2020); interest was properly assessed pursuant to Ark. Code Ann. § 26-18-508(1) (Repl. 2020); and a 10% penalty was properly assessed pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020). The tax, penalty, and interest was properly assessed, was not paid when due, and remains unpaid. For the reasons set forth above, the Department respectfully requests that the assessment of sales tax, including interest and penalty, be sustained in full. [P. 1-4].

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request. The Tax Credits Supervisor also testified that: (1) the Taxpayers did not register the vehicle or pay sales tax on the purchase of the Vehicle; (2) the Installment Sales Contract for the Vehicle (Department Exhibit 1) does not indicate that sales tax was included in the price of the Vehicle; and (3) her file does not contain a completed Rescinded Sale Form relating to the Vehicle.

The Taxpayers' Answers to Information Request detailed [REDACTED] [REDACTED] by Taxpayer JO and the Taxpayers testified that: (1) they could not afford the Vehicle because [REDACTED] by Taxpayer JO; (2) Taxpayer JA was [REDACTED] with Taxpayer JO; (3) they let the truck go back; (4) the [REDACTED] of Taxpayer JO was more important than any truck or sales tax; (5) the Dealer was supposed to include sales tax in the price of the Vehicle; (6) they never received a check for sales tax or a title to the Vehicle; and (7) only Taxpayer JA was working because Taxpayer JO was [REDACTED].

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.

The evidence presented in this case established that the Taxpayers purchased the vehicle on December 27, 2017, and they obtained possession of the

Vehicle.³ The Taxpayers 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 Taxpayers regarding discontinued possession of the Vehicle is not a defense to the enforcement of the tax law. Additionally, repossession of the Vehicle (voluntary or involuntary) does not extinguish the liability for the sales tax due on the purchase of the Vehicle.⁴

The evidence does not support a finding that a rescinded sale⁵ relieved the Taxpayers from sales tax liability on the purchase of the Vehicle.⁶ Consequently, the Department correctly assessed sales tax against the Taxpayers.

Interest

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).

Penalty

The Taxpayers 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) (Repl. 2020).

³ The total purchase price of the Vehicle was [REDACTED] (which included a [REDACTED] handling fee).

⁴ Department Exhibit 5 is an Affidavit of Repossession relating to the vehicle dated August 13, 2018.

⁵ 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.

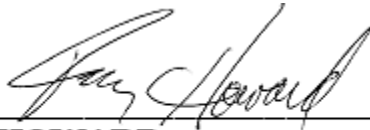
⁶ The case file does not contain a completed Rescinded Sale Form relating to the Vehicle.

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 Taxpayers 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. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayers 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.⁷

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 16, 2021

⁷ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.