

**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.: 21-259

ASSESSED AMOUNT: [REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated January 12, 2021, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Daniel Parker, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by a letter dated February 3, 2021. The Department’s Representative filed his Opening Brief on February 3, 2021. The Taxpayer filed a response on February 26, 2021. On March 3, 2021, the Department’s Representative filed a reply brief. The record was closed and this matter was submitted for a decision on March 26, 2021.

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

Opening Brief

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

On June 13, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] [REDACTED] ["Relevant Vehicle"] from [REDACTED] (the "Dealer"). The Motor Vehicle Retail Installment Sales Contract (the "Sales Contract") reflects that the total purchase price of the vehicle was [REDACTED] which includes a vehicle price of [REDACTED], a service and handling fee of [REDACTED] and a service contract of [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**) in the amount of [REDACTED] consisting of sales tax in the amount of [REDACTED] a penalty of [REDACTED] and interest in the amount of [REDACTED]

The Taxpayer filed a timely protest (**Exhibit 5**) and has requested a hearing on written documents. As grounds for the Protest, Taxpayer states:

"I returned the vehicle to the car lot before the 30 days were up due to mechanical issues. When I open my car door the fan would turn on and the check engine came on. I had a bad feeling about the car so I returned it. I needed a reliable vehicle for nursing school and work. I didn't want to chance it."

Within his Opening Brief, the Department's Representative argued that a sale of a motor vehicle is generally taxable at the time of the vehicle transfer and the Taxpayer failed to present a defense to the enforcement of the tax. He further asserted that the assessment of interest and the late payment penalty were

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

³ This document also states that the Taxpayer remitted [REDACTED] towards this purchase.

⁴ This exhibit states the Taxpayer was assessed based on a total purchase price of [REDACTED], including the cost of the service contract.

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

Response Brief

Within her Response Brief, the Taxpayer provided a copy of her protest and this Office's scheduling letter. She additionally provided a copy of a signed letter purporting to be from the seller stating the following:

To whom it may concern. [REDACTED] purchased a [REDACTED] [REDACTED] on June 13th, [REDACTED]. She later returned said vehicle on June 28th, 2018. Upon her returning the vehicle on that day, all documentation and or contractual agreements and or connections with said vehicle were cancelled and rescinded.

No additional explanation was provided with this filing.

Reply Brief

Within his Reply Brief, the Department's Representative asserted that the Taxpayer has failed to establish that her purchase was fully rescinded. Specifically, he stated that the Taxpayer originally remitted [REDACTED] towards the purchase; however, no proof has been provided to establish that those proceeds were returned to the Taxpayer and the parties were placed in a position as if the transaction never occurred. He reasserted that the penalty and interest were proper on Ark. Code Ann. §§ 26-52-510(a)(4) (Repl. 2020) and 26-18-508 (Repl. 2020), respectively.

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). Additionally, service contracts and maintenance contracts covering future repairs to motor vehicles are also taxable. Ark. Code Ann. § 26-52-301(7) (Repl. 2020). A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(31)(A) (Repl. 2020). 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). Additionally, consumers are responsible for payment of sales tax on maintenance or service contracts when those contracts are sold simultaneously with the purchase a motor vehicle. Arkansas Gross Receipts Tax Rule GR-9(D)(1). 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 June 13, 2018, for a total price of [REDACTED], including the cost of the service contract. The governing statutes demonstrate that ownership and taking possession of the motor vehicle triggers the tax liability.

At this stage in the administrative process, the Taxpayer has not established that the sale was rescinded.⁵ The record supports a finding that the

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

Taxpayer remitted a down payment towards her purchase; however, it is not clear whether that payment was returned to the Taxpayer based on the submitted letter. The handwritten document provided by the Taxpayer only states that the vehicle was returned to the seller with a cancellation of the obligations under the contract. 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.

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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 29, 2021

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