

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

DOCKET NO.: 21-270

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

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

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

This case is before the Office of Hearings and Appeals upon a written protest submitted on October 15, 2020, and signed by [REDACTED], the Taxpayer.² The Taxpayer protested the assessment of Gross Receipts Tax

¹ The reflected amount includes tax (\$ [REDACTED]), penalty (\$ [REDACTED]), and interest (\$ [REDACTED]), however; the Department's Opening Brief stated that, "[i]n January of 2021, Taxpayer registered the [REDACTED] and paid amounts due to the Department related to her purchase of the [REDACTED]. The total amount paid by Taxpayer in January (\$ [REDACTED]) was slightly less than the total amount of \$ [REDACTED] stated in the December 11, 2020 Notice of Proposed Assessment. The reduced amount reflected certain adjustments and offsets made by the Department to the penalty and interest amounts; however, the amounts paid by Taxpayer in January are sufficient to satisfy the Taxpayer's initial registration and sales tax obligations arising out of the subject purchase of the [REDACTED] if the assessment is sustained. Put simply, Taxpayer now has a zero balance on the subject account, and if the assessment is sustained the Department will not contend that additional amounts are owed by Taxpayer related to the subject purchase of the [REDACTED]. [P. 2]"

² The Department's Opening Brief addressed the Protest Form submitted by the Taxpayer and stated, as follows:

Taxpayer was originally sent a Notice of Proposed Assessment dated August 21, 2020, Letter I.D. [REDACTED], listing an account number of [REDACTED]. See **Exhibit 2**, Notice of Proposed Assessment dated August 21, 2020. The Protest submitted by Taxpayer was submitted under this account number and Letter I.D. See **Exhibit 3**, Taxpayer's Protest form. However, due to a system issue, the Department of Finance and Administration had to reissue the assessment, and a subsequent Notice of Proposed Assessment dated December 11, 2020, Letter I.D. [REDACTED], was issued listing an account number of [REDACTED]. See **Exhibit 4**, Notice of Proposed Assessment dated December 11, 2020.

Even though the Department issued a subsequent Notice of Proposed Assessment, the Department did not require Taxpayer to resubmit her Protest form, because both Notices were related to the same purchase of a [REDACTED] by Taxpayer on or about July 15, 2020. For the sake of clarity, even though the Taxpayer's Protest form lists the account number and Letter I.D. from

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 Kevin Christian, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented herself. A Briefing Schedule was mailed to the parties on February 9, 2021. The Department’s Opening Brief was filed on February 10, 2021. The Taxpayer did not file a Response Brief.³ This matter was submitted for decision on March 29, 2021.

ISSUE

Whether the assessment issued by the Department against the Taxpayer should be sustained? Yes.⁴

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on December 11, 2020.⁵ The Department’s Opening Brief addressed the facts and legal issues involved in this case (including the basis for the Taxpayer’s disagreement with the proposed assessment as reflected by Taxpayer’s handwritten statement on her Protest Form) and stated, in pertinent part, as follows:

On or about July 15, 2020, [REDACTED] (“Taxpayer”) purchased a [REDACTED] . . . (“the [REDACTED]”). See **Exhibit 1**, Purchase Documents provided to the Department (including a Certificate of Title issued by the [REDACTED]; a Dealer’s Reassignment of Title to a Motor Vehicle; a Vehicle Invoice; a Vehicle Buyer’s Order;

the August 21, 2020 Notice of Proposed Assessment, the December 11, 2020 Notice is the operative Assessment in this Protest.

³ The Taxpayer’s Protest Form was received into evidence.

⁴ See Footnote 1.

⁵ See Footnote 2.

an Odometer Disclosure Statement; a contract to purchase the vehicle; a GAP Waiver Addendum; and a service contract).

The Vehicle Buyer's Order identifies the Taxpayer as the "Buyer." **Id.** According to the purchase documents, the price of the vehicle was \$ [REDACTED]. Additionally, Taxpayer was charged a \$ [REDACTED] service and handling fee and Taxpayer bought a service contract in the amount of \$ [REDACTED]. The purchase documents further reflect that Taxpayer traded in a vehicle and received a trade-in allowance of \$ [REDACTED]. Taxpayer did not timely register or pay sales tax on the [REDACTED].

...

The Explanation of Tax Adjustment, issued on the same day as the December 11, 2020 Notice of Proposed Assessment, is consistent with the purchase documents, showing a vehicle purchase price of [REDACTED] (which includes the price of the vehicle itself along with the service and handling fee), a warranty purchase price of [REDACTED], and a trade-in allowance of [REDACTED]. See **Exhibit 5**, Explanation of Tax Adjustment. The Taxpayer's taxable purchase of the [REDACTED] resulted in an assessment of [REDACTED] in tax, \$ [REDACTED] in penalty, and \$ [REDACTED] in interest, for a total assessment of \$ [REDACTED]. **Exhibit 4.**

Taxpayer bases her Protest on the following statement:

I'm currently trying to get the full amount to pay at one time. I'm not allow[ed] to pay what I have. I'm [REDACTED]
[REDACTED] My vehicle isn't been driven at this time.

See **Exhibit 3**, Taxpayer's Protest.

...

The Department attempted to contact [REDACTED] to determine if she still wanted to pursue the administrative protest but was unsuccessful in reaching her. Accordingly, this matter is submitted for consideration to the office of Hearings and Appeals.

...

Applying the law to the facts of this case, Taxpayer's liability for sales tax on the transaction fully accrued on July 15, 2020, the

purchase date of the [REDACTED]. Taxpayer failed to timely register the [REDACTED] and pay the applicable sales tax liability. Taxpayer has not presented a valid defense to the assessment of sales tax for Taxpayer's purchase of the [REDACTED]. The Department's assessment of sales tax on the [REDACTED] [hereinafter "the vehicle"] was proper and should be sustained.

Penalty and Interest

The assessment of penalty and interest was also proper. A penalty equal to ten percent (10%) of the amount of tax 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) (Supp. 2019). Interest at the rate of ten percent (10%) per annum 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. In this case, Taxpayer failed to pay sales tax on her purchase of the vehicle within the time required for registration, and the Department assessed penalty and interest as required by law. [P. 1 – 4].

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(30)(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 July 15, 2020, and she obtained possession of the vehicle.⁶ 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. Consequently, the Department correctly assessed sales tax against the Taxpayer.⁷

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).⁸

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).⁹

DECISION AND ORDER

The proposed assessment is sustained.¹⁰ 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.

⁶ The total purchase price of the vehicle was \$ [REDACTED] (which included \$ [REDACTED] for a taxable warranty, a \$ [REDACTED] handling fee, and a trade-in allowance of \$ [REDACTED]).

⁷ See Footnote 1.

⁸ See Footnote 1.

⁹ See Footnote 1.

¹⁰ See Footnote 1.

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.¹¹

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: March 30, 2021

¹¹ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.