

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

DOCKET NO.: 21-289

**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 February 2, 2021, and signed by [REDACTED], the Taxpayer. The Taxpayer protested an 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 Daniel L. Parker, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented herself. A Briefing Schedule was mailed to the parties on February 25, 2021. The Department’s Opening Brief was filed on March 2, 2021. The Taxpayer’s Response Brief was filed on March 3, 2021. This matter was submitted for a decision on May 25, 2021.

ISSUE

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

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on December 14, 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 September 22, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . (the "Vehicle") from [REDACTED]. The Motor Vehicle Retail Installment Sales Contract reflects that the total purchase price of the vehicle was \$ [REDACTED], which includes a vehicle price of [REDACTED], a Service Contract of [REDACTED], and a Service and Handling Fee of \$ [REDACTED]. See Sales Contract, **Exhibit 1**.

The Department determined that Taxpayer had not registered the vehicle and on or about December 14, 2020, mailed to Taxpayer a Billing Statement (**Exhibit 2**), Explanation of Tax Adjustment (**Exhibit 3**), 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 never had possession of the vehicle any amount of time to have it registered. It was sold as a lemon and was returned to the [REDACTED] after being at [REDACTED] in [REDACTED] for 90 days awaiting repair. Afterward, it was immediately [REDACTED] to the [REDACTED] who owns it apparently.

. . .

Arkansas Gross Receipts Tax Rule GR-12(C) provides that the "sale" of a motor vehicle and corresponding obligation to pay the tax occurs at the time that either possession of or title to the motor vehicle is transferred. The transfer of title or possession of a motor vehicle in Arkansas triggers the application of the Arkansas Gross

Receipts Tax. Although payment of the sales tax levied on the sale of a new or used vehicle must be made by the purchaser no later than the time of registration, the *obligation* to pay sales tax on the purchase of a vehicle arises at the time of the sale, not at the time of registration.

INTEREST AND PENALTIES

The law requires the Department to assess interest on tax delinquencies. Arkansas Code Annotated § 26-18-508(1) and (2) (Repl. 2020) provide:

Interest shall be collected on tax deficiencies and paid on overpayments as follows:

(1) 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;

(2) Interest on a tax deficiency *shall be* assessed at the same time as the tax deficiency. The tax deficiency together with the interest shall be paid upon notice and demand by the secretary; [Emphasis added].

The Arkansas Supreme Court has determined that interest is a proper charge for the use of tax money that the government was deprived of using due to late payment. *Sanford v. Walther*, 2015 Ark. 285, 7, 467 S.W.3d 139, 145 (2015).

Arkansas Code Annotated § 26-52-510(a)(4) (Repl. 2020) requires assessment of a penalty equal to ten percent (10%) of the tax due if a consumer fails to pay the tax on a motor vehicle purchase when due.

LEGAL ANALYSIS

The Taxpayer's obligation to pay sales tax on the purchase of the vehicle arose on September 22, 2018, at the time of purchase. 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 Taxpayer's obligation to pay the tax. The Taxpayer 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 return of the vehicle is not a valid defense to the

Taxpayer's obligation to pay sales tax on the purchase of the vehicle. The Taxpayer protests payment of the tax because she "never had possession of the vehicle any amount of time to have it registered" and the Vehicle "was returned to the [REDACTED]." Assuming for the sake of argument that all facts and circumstances alleged by the Taxpayer are true, they do not constitute a defense to the legal obligation to pay sales tax on her purchase of the vehicle.

Neither the circumstances surrounding the length of the Taxpayer's use or possession of the Vehicle nor the return of the Vehicle are relevant to the Taxpayer's legal obligation to pay sales tax on the purchase of the Vehicle. The Taxpayer failed to pay the sales tax 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 a motor vehicle was proper under Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020) and Arkansas Gross Tax Receipts Rule GR-12(A); 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). 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 Taxpayer's Response Brief included a letter attached to her Protest Form which addressed the purchase of the vehicle and the facts and circumstances surrounding her possession of the vehicle and stated, as follows:

I was notified by your company on December 14, 2020 regarding an alleged debt in the amount of [REDACTED]. I have reason to believe that I do not owe this debt because I did not have possession of the vehicle for any amount of time to ever consider claiming ownership, at all. This vehicle was sold as an ABSOLUTE LEMON, by [REDACTED] late evening on September 22, 2018, which was a Saturday at closing time. The Car was inoperable and almost impossible to drive. It barely made it off of their lot. They had just taken the car to put gas in it, before I signed the contract. Therefore, they had to be aware of the car's hazardous condition.

However, I attempted to contact them regarding the car's performance and condition multiple times, within the first 15-20 minutes of having the vehicle to inform them that I was bringing the car back because it wasn't drivable and very dangerous, but they had already left for the day. They did not return my telephone calls for days, although I left several messages. I was going to just have the car towed back to their lot and just leave it there because the contract states, under section G entitled Cancellations that I may cancel the contract at any time by notifying the lienholder, which I did. As soon as I was able to get in contact with them, I returned the car to their possession by leaving it with one of their partners at a shop in [REDACTED], so that they can pick it up because I live in [REDACTED] and they were in [REDACTED] and they figured that was the best option for me to return the car to them, without causing any damages. Therefore, I did exactly as instructed, by [REDACTED]. They then put the car in the shop of their choice, which was [REDACTED] in [REDACTED] where the car remained for months. [REDACTED] the owner of [REDACTED] insisted that he would not cancel the contract based on the fact that he said the car has [REDACTED], which includes a [REDACTED] [REDACTED] where if anything went wrong on the car that it would be fixed to operable conditions. That's why he put the car in the shop that he chose. However, he informed [REDACTED] to just change the spark plugs and to send me on about my way. The contract also mentions that unless the seller provides a written warranty, which [REDACTED] that the vehicle is being sold as is. Included in my response from the complaint that I filed with the Arkansas Attorney Generals office, the owner [REDACTED] stated in his response, which is also included, that he restated to me that they sell all cars as is with no promises, once the cars are purchased. This is not true and I have witnesses to support my claim. He told me that with [REDACTED] [REDACTED] that if anything was to happen to the car to contact them and the [REDACTED] would cover it. He also mentioned that he would do anything that he can to help, which was also not true. He did suggest that I buy a new gas cap and I would be reimbursed, which was true. However, he also stated that I had to go get the temporary tags from the revenue office because they were included in the cost of the down payment and would expire in 30 days, regardless of whether or not the car was in the shop. He stated that I will need them for when the car got fixed, but the car never did get fixed. This was just his way of pressuring me to accept ownership of the vehicle that I made him more than aware that I was not interested in keeping and wanted to return immediately. Long story short, the car had a bad engine when they sold it. It was never operable for even 24 hours. The car stayed in the car for months because the mechanic stated that it would cost me nearly [REDACTED]

total to get it fixed and I had not even had the chance to actually take possession and drive the car at all because of its condition. I contacted the [REDACTED] within the first 24 hours, as well and their response was just to keep paying for it. They also did not adhere to their part of the contract leaving me to take an even bigger loss. [REDACTED] mentioned to me that the car could stay, until [REDACTED] contacted them to see if they would authorize the repair and they wouldn't charge storage fees. The warranty companies stated that they would not cover the repair of the engine, as well. Eventually [REDACTED] stopped communicating with the repair company, which cause me to have to be the one to have it returned to the [REDACTED], which I did as soon as it was released from the repair shop exactly how it was when they took it there. This is why the car was never registered in my name because in all actuality, I never had possession of the vehicle and I followed all the detail of the contract in an attempt to resolve the situation at hand. Enclosed, you will find where I attempted to contact a lawyer. You will also find where I contacted the Attorney General's office on more than one occasion about this particular situation. [REDACTED] constantly lied and took advantage of me. Furthermore, it seems as though to this day they are adamant about furthering that agenda. The vehicle in question is their vehicle. Therefore, it's only right that they should be held responsible! If they can get away with this, then there is obviously no protection by law for the consumer. [P. 1 - 2].

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. . . . If the new or used car dealer or manufacturer sells a warranty on a new or used car after the car has been registered, the dealer or manufacturer must collect sales tax on the warranty and local tax on these sales is calculated at the rate of the city and county in which the sale occurred. If a vehicle of greater value is traded in for a vehicle of lesser value, the trade-in credit for the vehicle does not apply to reduce the sales price of the warranty. 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 September 22, 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 points raised by the Taxpayer regarding mechanical problems with the Vehicle³ and discontinued possession of the Vehicle do not operate as 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 evidence does not support a finding that a rescinded sale⁴ relieved the Taxpayer

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

³ The Taxpayer filed a Complaint with the Consumer Protection Division in the Office of the Attorney General.

⁴ 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.

from sales tax liability on the purchase of the Vehicle.⁵ 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).

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)

⁵ The case file does not contain a completed Rescinded Sale Form relating to the Vehicle. The Taxpayer made a cash down payment of [REDACTED] and the provisions in the Taxpayer's contract regarding "cancellation" would not equate to a rescinded sale since the contract provided that, "any and all refunds will be paid to the Lienholder."

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

A handwritten signature in cursive script, appearing to read "Ray Howard", is written over a horizontal line.

RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 28, 2021

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