

**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.: 21-311

ASSESSED AMOUNT: [REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received January 21, 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 Nina Carter, Attorney at Law – Office of Revenue Legal Counsel ("Department's Representative"). The Taxpayer was represented by [REDACTED], Attorney at Law ("Taxpayer'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 March 9, 2021. The Department's Representative filed her Opening Brief on March 15, 2021. The Taxpayer filed a Response Brief on April 27, 2021. The Department's Representative provided a Reply Brief on May 11, 2021. The record was closed and this matter was submitted for a decision on May 11, 2021.

¹ This amount represents [REDACTED] (tax), [REDACTED] (late payment penalty), and [REDACTED] (interest).

ISSUE

Whether the Department's assessment should be sustained. Yes.

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

A. Opening Brief

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

On September 27, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] [REDACTED] ["Relevant Vehicle"] from [REDACTED] for [REDACTED] (purchase price plus [REDACTED] service contract and [REDACTED] service and handling fee). Taxpayer financed [REDACTED] of the purchase price through the dealership, with an assignment to [REDACTED]. A copy of the Retail Installment Contract is attached as **Exhibit 1**. At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of October 27, 2018. See **Exhibit 2**.

On or about January 13, 2021, 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 3**. 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 4**. The assessment was based on the purchased vehicle price of [REDACTED], as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on January 13, 2021. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 5**.

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

Before I sign[ed] a paper, I ask[ed] for the car fax. I was told I would have it the next morning. I went back (5) five days in a row for the car fax, but never got it. Then they was gone, so I call an call. I never got it, so I told them to come get it. They told me to lock the key in the car. 3 weeks was long as I had the car. I still

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

payed insurance on it until they came an[d] get it. I never got a car fax. The car was water damaged that['s] why I didn't get it. So I didn't want the car.

A copy of the Protest is attached as **Exhibit 6**. As evidenced by the attached Affidavit of Repossession, the vehicle was repossessed by Santander Consumer USA on November 29, 2018. See *Affidavit of Repossession of Motor Vehicle attached as Exhibit 7*.

Within her Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is taxable at the time of the vehicle transfer regardless of whether the motor vehicle was later voluntarily or involuntarily repossessed by the seller. She further asserted that the assessment of interest and the late payment penalty were appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2020) and 26-52-510(a)(4) (Repl. 2020), respectively.

B. Taxpayer's Response

With his response, the Taxpayer's Representative provided the following statement from the Taxpayer:

On or about late summer or early fall, I am not sure of the exact date, I had information that damaged vehicles were for sale across from the [REDACTED] parking lot on [REDACTED] Arkansas. I am a [REDACTED] resident of [REDACTED]. I observed many cars scattered across the lot and was invited to talk to a salesman. Having heard many vehicles were damaged by water and other reasons, I told the salesman I could not buy any vehicle without getting a Carfax on the specific vehicle first. The salesman said that he would go by the dealership that night and bring a Carfax the next day. I went back to the salesman the next day and he said to come back the following day. I went back the next day and he said he would have the home dealership fax it to the [REDACTED]. I went back a total of five (5) times and was told on the fifth day that if I signed the papers, the bank would send the Carfax to me within fifteen (15) days. I received some papers from a bank but the Carfax was not included. I called the salesman again and was told to call the bank because he had nothing to do with the Carfax. I called the bank and was told it had nothing to do with the Carfax. I did not sign any papers. The signature on the papers, which the bank sent, is not mine. It is a forgery. Enclosed are samples of my signature and the samples do not look anything like my

signature. (**EXHIBIT 1**³) You may also review my Arkansas driver's license and the signature looks nothing like those on the retail installment sales contract (**EXHIBIT 2**⁴) which the Revenue Legal Counsel marked and attached as its' Exhibit 1 and I also adopt for purpose of this brief.

C. Reply Brief

Within her Reply Brief, the Department's Representative noted that the Taxpayer admitted to taking possession of and insuring the Relevant Vehicle for three (3) weeks within her protest, which she interpreted to be a contradiction of the Taxpayer's response brief statements. She emphasized that taking possession and ownership of the Relevant Vehicle created the tax liability. She concluded her analysis stating that repossession is not a valid defense to application of the sales tax law.

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*

³ This document contains twelve (12) signatures from the Taxpayer. The signatures are very different from each other.

⁴ This document is a copy of Department's Exhibit 1. That document contains very small signatures from the Taxpayer that are difficult to discern in enough detail for a comparison to the Taxpayer's signatures contained within Taxpayer Exhibit 1.

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 provided a signed contract for the purchase of the Relevant Vehicle that purports to be signed by the Taxpayer. *See* Department's Exhibit No. 1. While the Taxpayer has alleged that the signature is not hers, the provided signature samples are very different from each other. Additionally, I cannot say with any degree of confidence that the signature upon the contract is dissimilar from all of the provided signature samples. Further, even if the signature upon the contract was atypical, some differences would be expected due the awkwardness of signing upon an electronic signature pad, which appears to be the method used in the relevant document.

The Department has provided additional evidence that supports a finding that the sale was completed. Particularly, the lien holder asserted that it repossessed the Relevant Vehicle from the Taxpayer. *See* Department's Exhibit No. 7. The Taxpayer also provided a letter from the lien holder that explained the calculation of a deficiency or surplus from a later auction or sale of the Relevant Vehicle after repossession, which also supports a determination that the

repossession occurred. Finally, the Taxpayer admitted within her protest that she took possession and insured the Relevant Vehicle.

While the Taxpayer may have intended to condition the sale upon the provision of a Carfax Report, a preponderance of the evidence supports a finding that the parties completed the sale in the absence of that document. Here, the Department has established that the Taxpayer took ownership or possession of the Relevant Vehicle on September 27, 2018, for a total price of [REDACTED], including the service contract. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. The Department has borne its burden of showing that a sale of tangible personal property to the Taxpayer occurred. The Taxpayer has not established that her purchase of the Relevant Vehicle was later rescinded.⁵ Consequently, the Taxpayer failed to demonstrate a defense to the application of the tax.

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) (Repl. 2020), 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

⁵ Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances to demonstrate 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 sales of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

- (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 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: May 13, 2021

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