

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

**ACCT. NO.:** [REDACTED]

**DOCKET NO.: 21-322**

**MOTOR VEHICLE SALES  
TAX ASSESSMENT**

**LETTER ID:** [REDACTED]  
[REDACTED]<sup>1</sup>

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**RAY HOWARD, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest submitted on January 13, 2021, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from an audit conducted by the Department of Finance and Administration (“Department”). A telephone hearing was held in Little Rock, Arkansas, on April 28, 2021, at 10:00 a.m. The Department was represented by Nina Samuel Carter, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Barbara Montgomery – Tax Credits Supervisor.<sup>2</sup> Neither the Taxpayer nor any other person appeared at the hearing (in person or via telephone)<sup>3</sup> on behalf of the Taxpayer.

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

<sup>2</sup> The Department’s Representative and the Tax Credits Supervisor appeared at the hearing via telephone.

<sup>3</sup> The telephone number reflected on the Notice of Hearing and the Taxpayer’s Protest Form was called a total of three (3) times from the Office of Hearings and Appeals and the Taxpayer did not answer the telephone.

A Notice of Hearing dated March 9, 2021, was mailed to the Taxpayer by Certified Mail No. [REDACTED], and the USPS Tracking history indicates the Notice of Hearing was “Delivered to Agent for Final Delivery” on March 12, 2021, at 8:48 a.m. On March 10, 2021, a letter was mailed to the Taxpayer by the Office of Hearings and Appeals which also indicated the time and date for the telephone hearing. On April 14, 2021, the Taxpayer participated in a prehearing teleconference with the Department’s Representative and the Office of Hearings and Appeals (the date and time of the hearing were confirmed). The Taxpayer had adequate notice of the hearing. See Ark. Code Ann. § 26-18-307 (Repl. 2020).

### **ISSUE**

Whether the Department’s assessment should be sustained? Yes.

### **FINDINGS OF FACT/CONTENTIONS OF THE PARTIES**

The Department issued a proposed assessment against the Taxpayer on November 20, 2020. The Department’s Answers to Information Request 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 pertinent part, as follows:

On April 26, 2018, [REDACTED] (“Taxpayer”) purchased a [REDACTED] [REDACTED] . . . (the “vehicle”) from [REDACTED] of [REDACTED] for \$ [REDACTED]. A copy of the Bill of Sale is attached as **Exhibit 1**. At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of May 26, 2018. *See* **Exhibit 2**. On June 11, 2018, the Office of Motor Vehicles sent out a notice of Temp Tag on Vehicle Not Titled to Taxpayer after she failed to register the vehicle within thirty (30) days of purchase. A

copy of the letter is attached as **Exhibit 3**.

On or about November 20, 2020, the Arkansas Department of Finance and Administration (the “Department”) determined that Taxpayer did not register the vehicle and mailed a Billing Statement to Taxpayer for failure to register the vehicle and pay the sales tax. See Billing Statement, attached as **Exhibit 4**. 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 5**. The assessment was based on the purchased vehicle price of \$ [REDACTED], as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on November 20, 2020. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 6**.

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

*I did not purchase the vehicle because the motor was bad and went out on the Interstate.*

A copy of the Protest is attached as **Exhibit 7**.

...

A penalty equal to ten percent (10%) of the amount of taxes 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) (Repl. 2020). Interest 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. 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. *Id.* Thus, under the law, penalty and interest were properly assessed in this case.

...

Applying the law to the facts of this case, the Taxpayer’s liability for the sales tax on the vehicle fully accrued on April 16, 2018, the purchase date of the vehicle. Taxpayer failed to timely register the vehicle or pay the applicable sales tax due. Taxpayer has not presented a valid defense to the assessment of tax for the vehicle purchase. The Taxpayer’s argument that she returned the vehicle is not relevant to the question of taxability. Whether the vehicle is no

longer owned is not relevant to the obligation to pay sales tax on the purchase of the vehicle. A sale of a motor vehicle is taxable regardless of whether the motor vehicle is later returned to the seller. The Department's assessment of sales tax on the vehicle was proper and should be sustained. [P. 1-3].

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and she also testified that her file does not contain a completed Rescinded Sale Form relating to the vehicle.

## **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).

### **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[.]

The evidence presented in this case established that the Taxpayer purchased the vehicle on April 26, 2018, and she obtained possession of the vehicle.<sup>4</sup> 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 point raised by the Taxpayer regarding discontinued possession of the vehicle is not 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.

The evidence does not support a finding that a rescinded sale<sup>5</sup> relieved the Taxpayer from sales tax liability on the purchase of the vehicle.<sup>6</sup> Consequently, the Department correctly assessed sales tax against the Taxpayer.

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<sup>4</sup> The total purchase price of the vehicle was \$ [REDACTED].

<sup>5</sup> Part B(7) of the form for a Rescinded Motor Vehicle Sale provides the following two (2) circumstances that establish a rescinded sale:

## **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) (Repl. 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](mailto:revision@dfa.arkansas.gov). The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision,


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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 sale of the returned vehicle has been rescinded. Any lien, which Seller may have against the returned vehicle, is hereby released.

<sup>6</sup> The case file does not contain a completed Rescinded Sale Form relating to the vehicle.

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.<sup>7</sup>

**OFFICE OF HEARINGS & APPEALS**



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**RAY HOWARD**  
**ADMINISTRATIVE LAW JUDGE**

DATED: April 29, 2021

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<sup>7</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.