

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 21-327

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID:

(\$)¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on February 12, 2021, and signed by , on behalf of herself and , the Taxpayers. The Taxpayers protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”). The Department was represented by Daniel Parker, Attorney at Law, Office of Revenue Legal Counsel.² The Taxpayers represented themselves.

At the request of the Taxpayers, the matter was submitted for a decision based upon consideration of written documents. A Briefing Schedule was mailed to the parties on March 19, 2021. The Department’s Opening Brief was filed on March 24, 2021. The Taxpayers did not file a Response Brief but the Taxpayers’ Protest Form was received into evidence. The matter was submitted for a decision on May 12, 2020.

¹ The reflected amount was for tax (\$) with credit for “Payments” in the amount of \$. No penalty or interest was assessed against the Taxpayers. See Department Exhibit 8.

² He is no longer an employee of the Department.

ISSUE

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

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayers on February 1, 2021, in the amount of \$[REDACTED].³ The Department's Opening Brief summarized the facts and issues involved in this case (including the basis for Taxpayers' disagreement with the assessment as reflected by the handwritten statement on the Taxpayers' Protest Form) and stated as follows:

On or about May 19, 2020 [REDACTED] (the "Taxpayers") purchased a [REDACTED], . . . (the "[REDACTED]"), from [REDACTED] for a vehicle price of \$[REDACTED] plus an Extended Warranty Service Contract of \$[REDACTED], for a total taxable motor vehicle sales price of \$[REDACTED]. Copies of the Vehicle Invoice and Certificate of Title are attached collectively as **Exhibit 1**.

On July 3, 2020, Taxpayers applied online for the issuance of a motor vehicle title and registered the [REDACTED]. The Registration Summary (**Exhibit 2**) and Purchase Information supplied by Taxpayers (**Exhibit 3**) reflect that sales tax was paid on the \$[REDACTED] vehicle price, but "\$[REDACTED]" was included for the Extended Warranty. **Exhibit 4** contains a breakdown of the registration fees (totaling \$[REDACTED]) and sales tax (totaling \$[REDACTED]) for a total of \$[REDACTED] paid at the time of registration. **Exhibit 5** reflects the Taxpayers' \$[REDACTED] payment.

The Department sent Billing Statements on December 2, 2020, January 4, 2021, January 19, 2021, and February 1, 2021 (collectively, **Exhibit 6**) reflecting revised sales tax of \$[REDACTED] to include Taxpayers' Extended Warranty Service Contract, and the application of Taxpayers' \$[REDACTED] payment to the sales tax, leaving a balance of \$[REDACTED] for taxes and \$[REDACTED] for registration and titling fees.⁴ On January 19, 2021, the Department issued a

³ See Department Exhibit 8.

⁴ This Administrative Decision will not address the balance of \$[REDACTED] for registration and title fees since the proposed assessment did not include that amount. In a Revision Decision issued in May of 2019, the Commissioner of Revenues delineated the authority of the Office of Hearings

Notice of Registration Suspension (**Exhibit 7**) for the \$ [REDACTED] outstanding balance for sales tax and registration fees. On February 1, 2021, the Department issued a Notice of Proposed Assessment (**Exhibit 8**) for the \$ [REDACTED] outstanding sales tax balance. No interest or penalty was assessed.

Taxpayers filed a timely protest (**Exhibit 9**) and have requested a hearing on written documents. As grounds for the protest, Taxpayers state:

“I am unsure why or what this change is for. I purchased a car, paid the taxes in full, and then received a bill later, much later, stating I still owed an amount. Due to covid job losses for my husband and I both we cannot make this payment at the moment. I protest the unknown charge and request it be removed.”

...

Arkansas Code Annotated § 26-18-301 and § 26-18-401 require the Department to assess and collect state taxes in accordance with state law and the Rules prescribed by the Secretary of the Department. Taxpayers failed to include the extended warranty coverage in the calculation of the sales tax at the time of online registration and the Department therefore correctly recalculated the amount owed and notified Taxpayers on several occasions prior to issuing the Notice of Registration Suspension and Notice of Proposed Assessment.

Taxpayers paid registration and titling fees in the amount of \$ [REDACTED] at the time of registration. However, because the sales tax was not properly paid on the taxable warranty at the time of registration, the Department applied the fees to the outstanding sales tax due on the cost of the warranty. As a result, the fees have not been paid. Taxpayers have not been assessed any interest or penalty. However, Taxpayers remain liable for the outstanding sales tax and registration and titling fees in the total amount of \$ [REDACTED] (\$ [REDACTED] tax and \$ [REDACTED] fees⁵).

No valid defense for the failure to pay the outstanding tax and fees has been presented. The Department has established by a preponderance of the evidence that the assessment of Arkansas sales tax and fees for the Taxpayer's purchase of a motor vehicle

and Appeals and held that, “[t]he duties of a hearing officer appointed by the Department are limited to reviewing written protests and making written findings as to the applicability of a proposed assessment or denial of a claim for refund.” See also Ark. Code Ann. § 26-18-102(1) and (2) (Repl. 2020).

⁵ See Footnote 4.

was proper under Ark. Code Ann. § 26-52-510(a)(1) (Repl. 2020), § 26-53-126(a)(2)(A) (Repl. 2020), and Arkansas Gross Receipts Tax Rule GR-12(B)(1)(e). For the reasons set forth above, the Department respectfully requests that the assessment of sales tax and fees⁶ be sustained in full. [Footnotes added, 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.

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

⁶ See Footnote 4.

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 (and certain enumerated services) 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), 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. When the extended warranty or service contract is purchased at the time the new or used vehicle is sold, the price of the warranty is to be included in the total gross receipts or proceeds on which tax is collected at the time of registration. 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.

In the instant case, the Taxpayers registered the [REDACTED] and paid the applicable sales tax on the purchase price of the vehicle; however, sales tax was not paid on the purchase price of the service contract (\$[REDACTED]). See

Department Exhibits 1 and 3. As reflected on a copy of an online registration page, the amount entered for the purchase price of the extended warranty was \$[REDACTED]. See Department Exhibit 3. At the time of registration of the [REDACTED], the Taxpayers failed to pay the sales tax liability owed for the service contract under Arkansas Gross Receipts Tax Rule GR-12(B)(1)(e).

With respect to the relief requested by the Taxpayers “[d]ue to [REDACTED] [REDACTED] we cannot make this payment at this moment”,⁷ the Office of Hearings and Appeals does not possess the settlement authority authorized under Ark. Code Ann. § 26-18-705 (Repl. 2020).

DECISION AND ORDER

The proposed assessment of sales tax is sustained.⁸ 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 Taxpayers request 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,

⁷ See Department Exhibit 9.

⁸ See Footnote 4.

may revise the decision regardless of whether the Taxpayers have 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.⁹

OFFICE OF HEARINGS & APPEALS

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

RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 13, 2021

⁹ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.