

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
(LICENSE NO.: [REDACTED] **)**

**GROSS RECEIPTS TAX
ASSESSMENT
LETTER ID:** [REDACTED]

DOCKET NO.: 21-329

ASSESSED AMOUNT: [REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated December 15, 2020, signed by [REDACTED] (“Taxpayer S”) on behalf of herself and [REDACTED], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on April 30, 2020, at 9:00 a.m. in Little Rock, Arkansas.² The Department was represented by Lisa Ables, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”)³. Also present for the Department was Jim Payne, DFA Manager. Taxpayer S appeared at the hearing and represented the Taxpayers.

ISSUE

Whether the assessment is correct under Arkansas law. Yes.

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

¹ This amount represents [REDACTED]

² All parties appeared at the hearing by telephone.

³ The Answers to Information Request were filed by Lauren Ballard, Attorney at Law, Office of Revenue Legal Counsel.

Prehearing Filings

Within her Answers to Information Request, Ms. Ballard provided a statement of relevant facts, stating as follows, in pertinent part⁴:

On May 11, 2020, [REDACTED] ("Taxpayers") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] for [REDACTED] purchase price plus a [REDACTED] service and handling fee and a [REDACTED] extended warranty fee) less a trade in of [REDACTED]. Copies of the Bill of Sale and Installment Contract are attached collectively as **Exhibit 1**.

Taxpayers applied for the issuance of a motor vehicle title and registered the [REDACTED] on June 22, 2020 in the [REDACTED] Revenue Office. A copy of the Application for Title is attached as **Exhibit 2**. The Revenue Office employee who processed the transaction inadvertently entered the selling price of the vehicle as [REDACTED] instead of [REDACTED]. The trade-in credit of [REDACTED] was correctly entered, and sales tax was collected only on [REDACTED] instead of [REDACTED]. As a result, Taxpayers paid less sales tax to the Revenue Office than was due.

On or about November 3, 2020, the Department of Finance and Administration (the "Department") discovered the discrepancy in the purchase price of the [REDACTED] and mailed a Billing Statement to Taxpayers for the remaining sales tax. See Billing Statement, attached as **Exhibit 3**. The Department then issued a Notice of Proposed Assessment to Taxpayers in the amount of [REDACTED]. See Notice of Proposed Assessment, attached as **Exhibit 4**. Taxpayers timely protested the proposed assessment claiming:

I didn't get this paper in the mail. We had no idea we owed anything more.

A copy of the Protest is attached as **Exhibit 5**.

Within her filing, the Department's Representative asserted that the failure of the revenue office to collect the full amount of tax did not remove the tax liability that is generally applicable to the proceeds of a motor vehicle sale.

⁴ All exhibits support the statements for which they are cited.

She additionally stated that no interest or penalty has been assessed against the Taxpayer.

Hearing Testimony

A. DFA Manger's Testimony

The DFA Manager provided testimony consistent with the rendition of facts provided within the Department's Answers to Information and certified the exhibits attached thereto. He is not aware of any provision in Arkansas law that allows a taxpayer to avoid a sales tax assessment resulting from a clerical error by an employee of the Department. A late payment penalty was assessed on the Taxpayers' registration since it was not timely, resulting in a late payment of the associated tax. The additional [REDACTED] in late payment penalty in the current assessment would have been due at the time of registration even if the revenue office employee did not make a mistake.

B. Taxpayer S's Testimony

Taxpayer S testified that it is not the Taxpayers fault that the revenue office erred while inputting their documents. She objected to the entire assessment, including the penalty. She did not know whether she timely registered the Relevant Vehicle.

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 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 established that the Taxpayer took ownership and possession of the Relevant Vehicle on May 11, 2020, for a total price of [REDACTED]. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability even though a taxpayer may wait until the time of registration to remit payment. The Department has borne its burden of showing that a sale of tangible personal property to the Taxpayer occurred. While the Taxpayers have established entitlement to a trade-in deduction of [REDACTED], the Taxpayers have not established entitlement to a deduction or credit based on the clerical error. The assessment of tax is sustained.

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
- (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 Relevant Vehicle and timely pay the applicable taxes as provided in the relevant code sections. The Relevant Vehicle was purchased on May 11, 2020 but not registered until June 22, 2020, more than thirty (30) days after the purchase. Consequently, the late payment penalty applied to the entire taxable proceeds from the purchase of the Relevant Vehicle. The additional assessment of [REDACTED] on the outstanding tax liability is appropriate.

To the extent that the Taxpayer's description of a conversation with someone within the Department might implicate an estoppel claim, the Arkansas Court of Appeals has provided the following guidance, in part:

Four elements are necessary to establish estoppel. They are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that the conduct be acted on or must act so that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting the estoppel must rely on the other's conduct and be injured by that reliance. *State v. Wallace*, 328 Ark. 183, 941 S.W.2d 430 (1997); *Footte's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323 (1980).

Duchac v. City of Hot Springs, 67 Ark. App. 98, 105, 992 S.W.2d 174, 179 (1999).

Additional discussion from the Arkansas Supreme Court states that an agency

should not be estopped in the absence of “clear proof of an affirmative misrepresentation by the agency.” *Ark. Dept. of Human Services v. Estate of Lewis*, 325 Ark. 20, 922 S.w.2d 712 (1996).

Here, the assessment places the Taxpayers in the same position that they would have been if the tax liability and the applicable late payment penalty were properly calculated at the time of registration. Consequently, the presented record also fails to establish detrimental reliance upon the clerical error even if that error qualified as an affirmative misrepresentation.⁵ An estoppel defense has not been established by a preponderance of the evidence.

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 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, may revise the decision regardless of whether the Taxpayers have requested a revision.

⁵ Since this conclusion bars application of an estoppel defense, the remaining elements of an estoppel claim shall not be considered as they are rendered moot.

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 3, 2021

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