

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

IN THE MATTER OF [REDACTED]

(LICENSE ID.: [REDACTED])

DOCKET NO.: 21-335

**GROSS RECEIPTS TAX
ASSESSMENT**

LETTER ID: [REDACTED]

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 8, 2021, signed by [REDACTED] on behalf of himself and [REDACTED], the Taxpayers. The Taxpayers 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”).

At the request of the Taxpayers, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated March 26, 2021. The Department’s Representative filed her Opening Brief on March 30, 2021. The Taxpayers did not file a response, but their protest was received into evidence. The record was closed and this matter was submitted for a decision on May 19, 2021.

ISSUE

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

A. Opening Brief

¹ This amount represents [REDACTED] (tax) and [REDACTED] (late payment penalty) after application of a payment in the amount of [REDACTED].

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

On July 24, 2020, [REDACTED] ("Taxpayers") purchased a used [REDACTED] ["Relevant Vehicle"] from [REDACTED] for [REDACTED] ([REDACTED] purchase price plus [REDACTED] service contract and [REDACTED] tire protection and [REDACTED] service and handling fee). Taxpayers financed [REDACTED] of the purchase price through Toyota Financial Services. A copy of the Retail Installment Contract is attached as **Exhibit 1**.³

On August 25, 2020, Taxpayers registered the vehicle online. In the Purchase Information section of the online registration, the Taxpayers claimed an exemption from payment of sales tax for their purchase of the vehicle available to disabled veterans who have received financial assistance from the Veterans Administration (VA). Copies of screen shots verifying data entered in the Purchase Information section of the online registration are attached as **Exhibit 2**. A pop-up note linked to the exemption question provided information that an official letter from the VA is required to verify the financial assistance and must include a description of the vehicle. A warning message was also included at the end of the questions in red letters, which stated: "Any information that you omit may result in additional fees being owed." The only document submitted during the online registration by the Taxpayers was the previous owner's Certificate of Title. A copy of the screen shot verifying data entered in the Registration/Title Documents Upload section of the online registration and the Arkansas Title uploaded by the Taxpayers are attached collectively as **Exhibit 3**. Although the Document Upload screen advised the Taxpayers that all original documents must be mailed in to the DFA MV Online Registration Division, the Taxpayers did not submit any other documentation relevant to the purchase of the vehicle.

The Arkansas Department of Finance and Administration (the "Department") determined that Taxpayers had an unpaid account balance and mailed Billing Statements on September 25, 2020, November 24, 2020, December 4, 2020, and December 21, 2020, to Taxpayers for failure to pay registration fees and sales tax. See Billing Statements, attached collectively as **Exhibit 4**. On November 24, 2020, the Department issued a Notice of Proposed Assessment to Taxpayers in the amount of [REDACTED]. The assessment consisted of tax in the amount of [REDACTED] and a penalty of [REDACTED], with credit given for payments in the amount of [REDACTED].⁴ No

² Except as noted, all exhibits support the statements for which they are cited.

³ The name of the seller is not listed within this filing.

⁴ The Department's Representative noted that application of this amount to the Taxpayers' sales tax liability resulted in nonpayment of the Taxpayers' registration and titling fees. Thus, those

interest was assessed. See Notice of Proposed Assessment, attached as **Exhibit 5**. On December 21, 2020, the Department issued a Notice of Registration Suspension based on taxes and fees due on the vehicle in the total amount of [REDACTED]. See Notice of Registration Suspension, attached as **Exhibit 6**.

Taxpayers disagree with the proposed assessment. Taxpayer states:

I am 100% disabled through the VA & Social Security and am therefor exempt.

A copy of the Protest is attached as **Exhibit 7**. Along with the Protest, Taxpayers also submitted a letter from the Department of Veteran Affairs which provides a summary of benefits received under the qualification of a 100% disabled veteran.

Within her Answers to Information Request, the Department's Representative argued that a sale of a motor vehicle is generally taxable at the time of the vehicle transfer. She rejected the Taxpayer's claim of the disabled veteran exemption, stating that exemption is limited to property taxes and does not apply to sales tax assessed on motor vehicle sales. She further explained that the exemptions under Ark. Code Ann. §§ 26-52-401(6) (Repl. 2020) and 26-52-415 (Repl. 2020) are also not applicable. She finally asserted that the assessment of the late payment penalty was appropriate under Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020).

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

fees are also owed by the Taxpayer. Registration and titling fees are outside the scope of an administrative hearing with this Office.

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

A. Tax Assessment

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 Taxpayers took ownership and possession of the Relevant Vehicle on July 24, 2020, for a total price of [REDACTED], including the cost of the service contract. The governing statutes demonstrate that ownership and taking possession of the motor vehicle triggers the tax liability. The Department has borne its burden of showing that a sale of tangible personal property to the Taxpayers occurred.

Regarding the disabled veteran exemption, Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Repl. 2020) provides as follows:

A disabled veteran who has been awarded special monthly compensation by the Department of Veterans Affairs for the loss of, or the loss of use of, one (1) or more limbs, for total blindness in one (1) or both eyes, or for service-connected one hundred percent (100%) total and permanent disability shall be exempt from payment of all state taxes on the homestead and personal property owned by the disabled veteran.

That exemption applies only to “all state taxes on the homestead and personal property owned by the disabled veteran.” With respect to the issue of whether a sales tax is a tax on personal property, two opinions of the Arkansas Supreme Court are controlling. In *Russell v. State*, 367 Ark. 557, 563-565, 242 S.W.3d 265, 269-270 (2006), the court stated that:

On appeal, the Louisiana Court of Appeals affirmed, but the Supreme Court reversed, pointing out that “a sales tax is a distinct and separate charge [that] the retail seller is required to collect as a pass-through entity for the benefit of the state and locality.” *Id.* at 1234-35. Moreover, the court noted that Louisiana's sales and use tax was “an excise tax, a tax upon the transaction itself, not the property involved in the transaction.” *Id.* at 1235. Therefore, the court concluded as follows:

[W]hile it may be said that sales tax may increase the cost to the buyer in the retail market, it is equally clear that *it does not increase the value of the property purchased*. Simply stated, ... a sales tax is a mandatory cost [that] state and local governments have added to the sale transaction, over and above the value of the purchased property.

...

In Arkansas, as in Iowa and Louisiana, the sales tax is an excise tax “upon the gross proceeds or gross receipts derived from all sales to any person” of goods and services enumerated in the statute, including “[t]angible personal property[.]” Ark. Code Ann. § 26-52-301(1) (Repl. 1997 & Supp. 2005). A sales tax is a tax “imposed on the sale of goods and services” that is usually “measured as a percentage of their price.” Black's Law Dictionary 1498 (8th ed. 2004). Clearly, the sales tax is a cost imposed on the transaction.

In *Borchert v. Scott*, 248 Ark. 1041, 1049, 460 S.W.2d 28, 43-44 (1970), the court discussed an excise tax similar to a sales tax and stated as follows:

Appellant Borchert's point V has already been disposed of by our holding under point III, that the tax levied under Act 239 is in the nature of an excise and not a property tax. An ad valorem tax is a tax on the value of property. (Black's Law Dictionary). Act 239 levied a 3% tax on the sale of real property, not on the property or its value; the amount of the tax is based on the consideration or price received in the transaction and not on the value of the property.

The sales tax imposed under the Arkansas Gross Receipts Act of 1941, Ark. Code Ann. § 26-52-101 et seq. (Repl. 2020), is not a property tax. Ark. Code Ann. § 26-3-306 (Repl. 2020) provides an exemption from real estate taxes and personal property taxes. However, the Taxpayers have failed to prove that Ark. Code Ann. § 26-3-306 (Repl. 2020) exempts them from sales tax. Consequently, the exemption located at Ark. Code Ann. § 26-3-306(a)(1)(A)(i) (Repl. 2020) is not applicable to the Taxpayers' motor vehicle purchase, and the exemption was properly denied by the Department.

Regarding a motor vehicle exemption for disabled veterans, Ark. Code Ann. § 26-52-401(6) (Repl. 2020) states the following: "Gross receipts or gross proceeds derived from the sale of motor vehicles and adaptive equipment to disabled veterans who have purchased the motor vehicles or adaptive equipment with the financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. §§ 3902-3903;" Here, the Taxpayers have not established that the motor vehicle was purchased with "financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. §§ 3902-3903. . . ." Consequently, the Taxpayers have likewise not proven entitlement to this exemption.

Regarding an additional motor vehicle exemption for disabled veterans, Ark. Code Ann. § 26-52-415(a) (Repl. 2020) states the following: "Gross receipts

and gross proceeds derived from the sale of new automobiles to a veteran of the United States Armed Forces who is blind as the result of a service-connected injury shall be exempt from the Arkansas gross receipts tax.” Here, the Taxpayers have likewise not demonstrated this exemption applies to the purchase of the Relevant Vehicle. Consequently, the Taxpayers have also not proven entitlement to this exemption.

The Taxpayers have not presented a successful defense to the enforcement of the tax. Consequently, the assessment of tax on the purchase of the Relevant Vehicle is sustained.

B. Late Payment Penalty

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) (Supp. 2019), 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 Taxpayers failed to timely pay the applicable taxes as provided in the relevant code sections. Consequently, the late payment penalty was properly assessed against the Taxpayers.


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.

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.⁵

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: May 20, 2021

⁵ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.