

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

ADMINISTRATIVE DECISION

IN THE MATTER OF
[REDACTED]

**MOTOR VEHICLE SALES
TAX ASSESSMENT
ACCT. NO.:** [REDACTED]

DOCKET NO.: 21-342

LETTER ID: [REDACTED]
(\$ [REDACTED])¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on March 16, 2021, and signed by [REDACTED] (individually, “Buyer”), on behalf of herself and [REDACTED] (individually, “Co-Buyer”),² the Taxpayers. The Taxpayers protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”).

A telephone hearing³ was held in Little Rock, Arkansas, on April 29, 2021, at 1:00 p.m. The Department was represented by Evelyn Gomez, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Ebony Morgan – Fiscal Support Analyst. The Buyer appeared at the hearing and represented the Taxpayers.

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

² The Co-Buyer is [REDACTED] of the Buyer.

³ All participants appeared via telephone.

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 January 26, 2021. The Department's Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayers' disagreement with the assessment as reflected by a handwritten statement on the Protest Form) and stated, as follows:

On or about August 31, 2018, [REDACTED] [REDACTED] ("Taxpayers") purchased a [REDACTED] . . . (the "Vehicle") from [REDACTED] for a total taxable vehicle sales price [REDACTED], including a vehicle price of \$ [REDACTED], a Service Contract of \$ [REDACTED], and a Service and Handling Fee of [REDACTED]. See Sales Contract, **Exhibit 1**.

The Department determined that Taxpayer had not registered the vehicle and on or about January 26, 2021, mailed to Taxpayer a Billing Statement (**Exhibit 2**), Explanation of Tax Adjustment (**Exhibit 3**), and Notice of Proposed Assessment (**Exhibit 4**) for [REDACTED], consisting of sales tax of \$ [REDACTED], interest in the amount of \$ [REDACTED], and a penalty in the amount of \$ [REDACTED].

Taxpayers filed a timely protest (the "Protest"; **Exhibit 5**) and have requested a hearing by telephone. As grounds for the Protest, Taxpayers state:

"I co-signed for [REDACTED] a car, the one I'm also being charged for but she only had the car 3 months - then was given back due to it being messed up mechanically. I can't afford to pay for her stuff as I don't think I should. This should solely be on her."

...

Taxpayers' obligation to pay sales tax on the purchase of the Vehicle arose on August 31, 2018, at the time of purchase. Arkansas Gross Receipts Tax Rule GR-12(C). The fact that Arkansas law permits

the sales tax to be paid "on or before the time for registration" and not immediately does not affect the Taxpayers' obligation to pay the tax. Taxpayers may not avoid the legal obligation to pay sales tax on the purchase of a vehicle by failing to register or to timely register the vehicle.

Taxpayers protest payment of the tax based upon the assertions that they "only had the car 3 months then it was given back due to it being messed up mechanically," and that [REDACTED] should bear sole responsibility for the tax debt. Assuming for the sake of argument that all facts and circumstances alleged in the Taxpayers' Protest are true, they do not constitute a defense to the Taxpayers' legal obligation to pay the sales tax.

The circumstances surrounding the length of the Taxpayers' use or possession of the Vehicle are not relevant to the Taxpayers' legal obligation to pay sales tax on the purchase of the Vehicle. Further, regardless of how the co-buyers choose to apportion the tax liability between themselves, each is responsible for payment of the motor vehicle sales tax as a "person" to whom a taxable "sale" was made under the Arkansas Gross Receipts Act of 1941, Ark. Code Ann. § 26-52-101 *et seq.* (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-12(A). Taxpayers failed to pay the sales tax within thirty days after the purchase of the Vehicle, and the law required the Department to assess all accrued interest and the 10% penalty at the time it issued the Notice of Proposed Assessment.

CONCLUSION

No valid defense for the failure to pay the tax has been presented. The Department has established by a preponderance of the evidence that the assessment of Arkansas sales tax for the Taxpayers' purchase of the motor vehicle was proper under Ark. Code Ann. § 26-52-510(a) (Repl. 2020) and Arkansas Gross Tax Receipts Rule GR-12(A); interest was properly assessed pursuant to Ark. Code Ann. § 26-18-508 (Repl. 2020); and a 10% penalty was properly assessed pursuant to Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020). For the reasons set forth above, the Department respectfully requests that the assessment of sales tax, including interest and penalty, be sustained in full. [P. 1-5].

The Fiscal Support Analyst 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.

The Buyer stated that: (1) this will be paid, I just don't know when it will be, I don't have that kind of money right now; (2) there is really no need for any of this to go on, it is going to be paid; (3) this is the responsibility of [REDACTED] also but she does not have the money either; (4) the vehicle was given back two [2] months after we got it because the dealership would not fix it; and (5) she does not understand why the Taxpayers have to pay taxes for a vehicle they don't even have.

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.

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(26) (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) (Repl. 2014), 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. . . . Tax is due on the total amount of the gross receipts for the sale of the warranty or service contract.

The evidence presented in this case established that the Taxpayers purchased the Vehicle on August 31, 2018, and they obtained possession of the

vehicle.⁴ The Taxpayers 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 Taxpayers regarding discontinued possession of the Vehicle is not a defense to the enforcement of the tax law. Additionally, repossession of the Vehicle (voluntary or involuntary) does 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 sale⁵ relieved the Taxpayers from sales tax liability on the purchase of the Vehicle.⁶ Consequently, the Department correctly assessed sales tax against the Taxpayers.

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 Taxpayers 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.

⁴ The total purchase price of the vehicle was \$ [REDACTED] (which included \$ [REDACTED] for a taxable warranty and a \$ [REDACTED] handling fee).

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

⁶ The case file does not contain a completed Rescinded Sale Form relating to the Vehicle.

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.⁷

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 3, 2021

⁷ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.