

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

**ACCT. NO.:**

**DOCKET NO.: 21-349**

**MOTOR VEHICLE SALES  
TAX ASSESSMENT**

**LETTER ID:**

**(\$ )**

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**RAY HOWARD, ADMINISTRATIVE LAW JUDGE**

This case is before the Office of Hearings and Appeals upon a written protest submitted on March 21, 2021, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration ("Department").

This case was submitted on written documents at the request of the Taxpayer. The Department was represented by John Theis, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented herself. A Briefing Schedule was mailed to the parties on March 31, 2021. The Department's Opening Brief was filed on April 5, 2021. The Taxpayer did not file a Response Brief.<sup>1</sup> This matter was submitted for decision on May 12, 2021.

**ISSUE**

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

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<sup>1</sup> The Taxpayer's Protest Form, an email from the Taxpayer, and a [REDACTED] for the Taxpayer's husband were received into evidence.

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on February 1, 2021.<sup>2</sup> The Department's Opening Brief addressed the facts and legal issues involved in this case (including the basis for the Taxpayer's disagreement with the proposed assessment as reflected by a portion of an email the Taxpayer submitted with her Protest Form) and stated, in pertinent part, as follows:

On June 1, 2020, [REDACTED] ("Taxpayer") purchased a [REDACTED] [REDACTED] . . . (the "Vehicle") from [REDACTED] (the "Dealer"). The Motor Vehicle Retail Installment Sales Contract (the "Sales Contract") reflects that the total purchase price of the vehicle was \$[REDACTED]. See Sales Contract, **Exhibit 1**.

An Application for Title was filed with Department for the Vehicle on January 30, 2021. This application was made by mail and it is unclear whether it was filed by Taxpayer or by the Dealer. Regardless of who filed the application for title, neither the sales tax of \$[REDACTED] or registration fees and late registration penalties were paid. See **Exhibit 2**. Upon receiving this Application for Title, the Department issued a Notice of Proposed Assessment dated February 1, 2021 to Taxpayer assessing sales tax and 10% late payment penalties in the amount of \$[REDACTED]. See **Exhibit 3**. Interest at the rate of 10% per annum has continued to accrue on that tax assessment since the date it was issued.

The Taxpayer filed a timely protest (**Exhibit 4**) and has requested a hearing on written documents. As grounds for the Protest, Taxpayer states:

*"When my husband and I purchased our truck, the dealership informed us we are tax exempt as the truck is for farm use, and because my husband [REDACTED] [REDACTED]. The truck is used for my [REDACTED]. I as also furloughed from my job due to COVID.*

Taxpayer attached a letter to [REDACTED] of [REDACTED], [REDACTED] indicating the he is a [REDACTED]. A copy of that document is included with **Exhibit 4**.

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<sup>2</sup> See Department Exhibit 3.

...

Arkansas Gross Receipts Tax Rule GR-12(C) provides that the "sale" of a motor vehicle and corresponding obligation to pay the tax occurs at the time that either possession of or title to the motor vehicle is transferred. The transfer of title or possession of a motor vehicle in Arkansas triggers the application of the Arkansas Gross Receipts Tax. Although payment of the sales tax levied on the sale of a new or used vehicle must be made by the purchaser no later than the time of registration, the *obligation* to pay sales tax on the purchase of a vehicle arises at the time of the sale, not at the time of registration.

## SALES TAX EXEMPTIONS

Arkansas Code Annotated § 26-52-403 provides a sales tax exemption for farm equipment and machinery used exclusively and directly in farming. The term "farm equipment and machinery" does not include motor vehicles of a type subject to registration. See Ark. Code Ann. § 26-52-403(a)(1)(C) (Repl. 2020).

Arkansas Code Annotated § 26-52-401(6) (Repl. 2020) provides a sales tax exemption for the purchase of certain motor vehicles by a disabled veteran as follows:

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;

...

The Taxpayer's obligation to pay sales tax on the purchase of the vehicle arose on June 1, 2020, 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 Taxpayer's obligation to pay the tax. The Taxpayer 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.

The purchase of the [REDACTED] is not exempt from sales tax either as the purchase of farm machinery or as the purchase of a vehicle by a [REDACTED]. The term "farm machinery and equipment" specifically excludes motor vehicles of a type subject to registration from being considered as farm

machinery or equipment. Accordingly, that tax exemption is unavailable on the purchase of a motor vehicle.

The purchase of the Vehicle also does not qualify for exemption under Ark. Code Ann. § 26-52-401(6). First, the sales documents from the Dealer do not reflect that [REDACTED] was a purchaser of the vehicle. Instead, only Taxpayer is identified as the vehicle purchaser. Also, the tax exemption contained in Ark. Code Ann. § 26-52-401(6) (Repl. 2020) is available only when the motor vehicle in question was purchased with [REDACTED]

[REDACTED] The letter provided with Taxpayer's protest does not indicate that the [REDACTED] provided [REDACTED] with regard to the purchase of the vehicle. The Department routinely receives sales tax exemption requests regarding the sales tax exemption in Ark. Code Ann. § 26-52-401(6). When the [REDACTED] [REDACTED] to the purchaser of a vehicle, the [REDACTED] always includes the Vehicle Identification Number of the vehicle purchased. The information supplied by Taxpayer does not contain that information or any other indication that [REDACTED] with regard to the vehicle purchase.

...

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 Taxpayer's purchase of a motor vehicle was proper under Ark. Code Ann. § 26-52-510(a) (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-12(A); interest was properly assessed pursuant to Ark. Code Ann. § 26-18-508(1) (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].

## **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(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.

The evidence presented in this case established that the Taxpayer purchased the Vehicle on June 1, 2021, and she obtained possession of the vehicle.<sup>3</sup> Subject to the applicability of an exemption, the Taxpayer owed sales tax upon the purchase of the vehicle. For the reasons stated in the Department's Opening Brief, the Taxpayer failed to prove that the vehicle was exempt from tax as farm machinery or equipment<sup>4</sup> or under Ark. Code Ann. § 26-52-401(6) (Repl. 2020).<sup>5</sup> The Taxpayer failed to timely register the Vehicle or pay the applicable sales tax liability. Consequently, the Department correctly assessed sales tax against the Taxpayer.

### **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) (Rep. 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.

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<sup>3</sup> The total purchase price of the vehicle was \$ [REDACTED].

<sup>4</sup> GR-51 specifically excludes motor vehicles subject to registration from qualifying as farm machinery or equipment.

<sup>5</sup> There is no evidence in the case file to establish that the Taxpayer's husband [REDACTED] was a purchaser of the Vehicle or that the Vehicle was purchased [REDACTED].

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, 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>6</sup>

**OFFICE OF HEARINGS & APPEALS**



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

DATED: May 13, 2021

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<sup>6</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.