

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF** [REDACTED]  
[REDACTED]  
**(LICENSE ID: [REDACTED])**

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

**DOCKET NO.: 21-353**

[REDACTED]<sup>1</sup>

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated February 4, 2021, signed by [REDACTED] on behalf of herself and [REDACTED], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Dan Parker, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”).<sup>2</sup>

At the request of the Taxpayers, this matter was considered based on written documents. A briefing schedule was established for the parties by letter dated March 31, 2021. The Department filed his opening brief on April 6, 2021. The Taxpayers did not file a response brief, but their protest was received into evidence. The record was closed and the matter was submitted for a decision on May 21, 2021.

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<sup>1</sup> This amount represents [REDACTED] (tax), [REDACTED] (fraud penalty), and [REDACTED] (interest).

<sup>2</sup> The Department’s Representative is no longer employed by the Department.

## ISSUE

Whether the assessment issued by the Department should be sustained.

Yes.

## FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

### A. Opening Brief

The Department's Representative provided a statement of relevant facts within his Opening Brief, stating as follows, in pertinent part<sup>3</sup>:

On October 30, 2020, [REDACTED] ("Taxpayers") submitted an Application for Title, **Exhibit 1**, to register a [REDACTED] ["Relevant Vehicle"] reflecting a vehicle purchase price of [REDACTED]<sup>4</sup> on October 25, 2020. Copies of the Certificate of Title, Title Assignment<sup>5</sup>, Odometer Disclosure, and Bill of Sale are attached collectively as **Exhibit 2**.<sup>6</sup> The purchase price of the vehicle on the registration Bill of Sale and the mileage on the Odometer Disclosure are written in different handwriting and a darker color.

On October 28, 2020, the Department of Finance and Administration (the "Department") received from Taxpayers' seller of the [REDACTED] the Claim for Sales or Use Tax Refund and Bill of Sale attached collectively as **Exhibit 3**<sup>7</sup>, each listing the October 25, 2020, sale date but an [REDACTED] sale price. The signatures of the sellers and [REDACTED]<sup>8</sup> on the refund Bill of Sale appear identical to these parties' signatures on the registration Bill of Sale, and the handwriting and ink tone is consistent for all information provided on the refund Bill of Sale.

On November 16, 2020, the Department received from the sellers a three-page fax, redacted and attached as **Exhibit 4**, in response to its request for additional information to support the refund claim. The additional

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<sup>3</sup> Except as noted, all exhibits support the statements for which they are cited.

<sup>4</sup> The Department's Representative noted that no sales tax is due if the consideration for a vehicle purchase does not exceed \$4,000.00 under Ark. Code Ann. § 26-52-510(b)(1)(B) (Repl. 2020).

<sup>5</sup> This document contains a mileage amount and sales price that appears to have been entered with a different pen than the rest of the bill of sale upon the back of the title.

<sup>6</sup> Exhibit 2 only includes a copy of the Certificate of Title and the Title Assignment and Odometer Disclosure from the back of the title.

<sup>7</sup> This entire document appears to have been completed with the same pen.

<sup>8</sup> [REDACTED] signature on the title assignment matches the signature on the bill of sale provided by the sellers.

information provided reflects a deposit of [REDACTED] into the sellers' account on October 27, 2020, two days after the October 25, 2020 sale of the [REDACTED]. The Department allowed the refund claim based upon the [REDACTED] purchase price.

An internet search of the National Automotive Dealers' Association Used Car Guide for a [REDACTED] with the mileage specified in the October 25, 2020, Odometer Statement ([REDACTED]) produced the values attached as **Exhibit 5**. The NADA values reflect a "Clean Trade-In" value of [REDACTED] and a "Clean Retail" value of [REDACTED].

On January 28, 2021, the Department mailed to Taxpayers a Billing Statement, **Exhibit 6**, Explanation of Tax Adjustment, **Exhibit 7**<sup>9</sup>, and Notice of Proposed Assessment, **Exhibit 8**, in the amount of [REDACTED], consisting of sales tax in the amount of [REDACTED], a 50% penalty pursuant to Ark. Code. Ann§ 26-18-208(5) of [REDACTED], and interest in the amount of [REDACTED]. The Explanation of Tax Adjustment advised Taxpayers that the [REDACTED] vehicle registration had been adjusted to reflect the [REDACTED] purchase price due to the discrepancy shown by the Department's records.

Taxpayers filed a timely Protest consisting of the six pages faxed to the Department attached as **Exhibit 9** and have requested a hearing on written documents. As grounds for the Protest, Taxpayers:

(1) Attach a third Bill of Sale dated October 25, 2020<sup>10</sup>, reflecting a [REDACTED] purchase price that appears to be in the same ink tone and handwriting, and signed by the sellers and [REDACTED];

(2) State on the Protest Form signed by [REDACTED]:

*"I have attached the bill of sale signed by both parties on the purchase date of the vehicle (10-25-2020) for purchase price of [REDACTED] and no change as was stated on the title"; and*

(3) Provided the following written statement that appears to be signed by [REDACTED] and dated February 4, 2021:

*"On 10/25/2020 I [REDACTED] purchased a used [REDACTED] from the former owners [REDACTED]. At the end of this sale both [REDACTED] and I signed title as well as a bill of sale stating the purchase price, vehicle information, and*

<sup>9</sup> This Exhibit states that the Taxpayers were assessed based on a sales price of [REDACTED].

<sup>10</sup> This document appears to have consistent handwriting with the Bill of Sale provided by the sellers, but the price is listed as [REDACTED]. The Taxpayers' bill of sale also increases the odometer reading by [REDACTED]

*the party's information to be used as a receipt upon the purchase. Purchase price of vehicle was obtained on the attached bill of sale as well as title. [REDACTED] was the individual to meet both me and [REDACTED] the day of the sale to initiate the transaction, [REDACTED] was present in the instance of the documents being signed. You can verify that the bill of sale matches the sale price noted on the title that was turned in for registration."*

In his Opening Brief, the Department's Representative asserted that the Taxpayers and sellers submitted conflicting bills of sale for the purchase of the Relevant Vehicle. He noted that Ark. Code Ann. § 26-52-510(g)(1)(A) (Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-12(E)(2) requires the Department to assess taxes based upon the greater of the actual sales price from a bill of sale or the average loan value listed within the most current edition of the National Automotive Dealers' Association Office Used Car Guide.<sup>11</sup> He declared that the Taxpayers have not established the accuracy of the alleged [REDACTED] purchase price. He stated that the [REDACTED] purchase price was supported by an unaltered bill of sale, bank deposit records, and the higher NADA value. He averred that the alleged [REDACTED] purchase is supported by a conflicting bill of sale, an altered bill of sale from the back of the title, and uncorroborated statements. He declared the fraud penalty to be appropriate as a result of the altered bill of sale and the signing of a conflicting bill of sale. He concluded the assessment of interest was appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2020).

After a general discussion of the burdens of proof in tax proceedings, a legal analysis shall follow.

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<sup>11</sup> The Department's Representative noted that the Department decided to use the corroborated [REDACTED] vehicle price rather than the higher NADA loan value, benefitting the Taxpayers.

## **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 consideration for all sales of tangible personal property (including motor vehicles) and certain specifically enumerated services within the State of Arkansas. A sale is defined as a transfer of title or possession. Ark. Code Ann. § 26-52-103(31)(A) (Repl. 2020). Ark. Code Ann. § 26-52-301 (Repl. 2020). An exemption from sales tax exists for sales of motor vehicles where the total consideration does not exceed four thousand dollars (\$4,000.00). Ark. Code Ann. § 26-52-510(b)(1)(B) (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). 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).

Addressing the calculation of the consideration for motor vehicle sales, Ark. Code Ann. § 26-52-510(g) (Repl. 2020) provides the following:

- (1)(A) For purposes of this section, the total consideration for a used motor vehicle **shall be presumed to be the greater of the actual sales price as provided on the bill of sale, invoice or financing agreement, or the average loan value price of the vehicle as listed in the most current edition of a publication which is generally accepted by the industry as providing an accurate valuation of used vehicles.**
- (B) If the published loan value exceeds the invoiced price, then the taxpayer must establish to the secretary's satisfaction that the price reflected on the invoice or other document is true and correct.

- (C) If the secretary determines that the invoiced price is not the actual selling price of the vehicle, then the total consideration will be deemed to be the published loan value.
- (2)(A) For purposes of this section, the total consideration for a new or used trailer or semitrailer shall be the actual sales price as provided on a bill of sale, invoice, or financing agreement.
- (B) The secretary may require additional information to conclusively establish the true selling price of the new or used trailer or semitrailer. [Emphasis supplied.]

Here, the Relevant Vehicle qualifies as tangible personal property. The governing statutes demonstrate that ownership and taking possession of the vehicle triggers the tax liability. The Department has established that a bill of sale associated with the purchase of the Relevant Vehicle reflects a purchase price of [REDACTED]<sup>12</sup> and that price is reflected in a bank deposit made by the sellers shortly after the sale<sup>13</sup>. The NADA values for the Relevant Vehicle also support an [REDACTED] purchase price over the [REDACTED] sales price advocated by the Taxpayers.<sup>14</sup> While the Taxpayers have provided Bills of Sale reflecting a lower purchase price for the Relevant Vehicle, the higher sales price reflected in the NADA valuations are presumed to be correct unless the Taxpayers establish a lower actual sales price under Ark. Code Ann. § 26-52-510(g) (Repl. 2020). Further, the Taxpayers bear the burden of proving entitlement to an exemption by a preponderance of the evidence. Ark. Code Ann. § 26-18-313(d) (Repl. 2020).

The sellers' bill of sale price is supported by a bill of sales that appears to have been executed by the parties, a contemporaneous deposit record, and the NADA valuation for the Relevant Vehicle. The Taxpayers have only provided one bill of sale where the price appears to have been altered or entered after signing

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<sup>12</sup> See Department's Exhibit 3.

<sup>13</sup> See Department's Exhibit 4.

<sup>14</sup> See Department's Exhibit 4.

and a second bill of sale reflecting the lower purchase price that appears to have also been executed by the parties. The preponderance of the evidence supports a finding that the Relevant Vehicle sold for the [REDACTED] purchase price. Consequently, the assessment of tax is sustained.

Regarding the fraud penalty, the Department's Representative asserted that the penalty was assessed pursuant to Ark. Code Ann. § 26-18-208(5) (Repl. 2012), which provides as follows:

(5)(A) If any part of any deficiency of any state tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency in addition to any interest provided by law.

(B) If any penalty is assessed under subdivision (5)(A) of this section, then no penalty shall be assessed under subdivisions (1)-(4) of this section; . . .

In *Arkansas Valley Compress & Warehouse Co. v. Morgan*, 217 Ark. 161, 229 S.W.2d 133 (1950), the Arkansas Supreme Court stated that, “[f]raud consists of a deceitful practice or willful device resorted to by a person with the intent to deprive another of his right or in some manner to do him an injury.” *Id.* at 164, 229 S.W.2d at 136. In *Petzoldt v. Commissioner*, 92 T.C. 661 (1989), the U. S. Tax Court stated that fraud cannot be imputed or presumed, but rather, must be “established by independent evidence” of fraudulent intent. *Id.* at 699.

Here, based on the record, the Taxpayers provided bills of sale signed by the parties reporting a sales price of [REDACTED] for the Relevant Vehicle. The sellers, however, have also provided a bill of sale signed by the parties reporting a sales price of [REDACTED] for the Relevant Vehicle. The higher sales price is also supported by a contemporaneous bank deposit and NADA valuation. Further, the provision of two contradictory bills of sale that both appear to have been



completed and signed by the Taxpayers has not been explained. Based on the presented evidence, the assessment of the fraud penalty is appropriate.

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. *See* Ark. Code Ann. § 26-18-508 (Repl. 2020). Consequently, the assessment of interest on the tax balance is sustained.

### **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](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 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.<sup>15</sup>

OFFICE OF HEARINGS & APPEALS



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TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: May 24, 2021

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<sup>15</sup> See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.