

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 21-379

**MOTOR VEHICLE SALES
TAX ASSESSMENT**

LETTER ID:

(\$)¹

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on March 15, 2021, and signed by , the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax resulting from a review conducted by the Department of Finance and Administration (“Department”).

A telephone hearing² was held in Little Rock, Arkansas, on May 18, 2021, at 2:00 p.m. The Department was represented by Caroline Calvert, Attorney at Law, Office of Revenue Legal Counsel. Present for the Department was Barbara Montgomery – Tax Credits Supervisor. The Taxpayer appeared at the hearing and represented herself.

ISSUE

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

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

² All participants appeared via telephone.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on January 11, 2021. The Department's Answers to Information Request summarized the facts and issues involved in this case (including the basis for the Taxpayer's disagreement with the assessment as reflected by the handwritten statement on the Taxpayer's Protest Form) and stated, as follows:

On September 27, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] . . . (the "[REDACTED]") from [REDACTED] for \$[REDACTED]. A copy of the Bill of Sale is attached as **Exhibit 1**. At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of October 27, 2018. See **Exhibit 2**.

On or about November 13, 2018, the Arkansas Department of Finance and Administration (the "Department") determined that Taxpayer did not register the vehicle and mailed a Temp Tag on Vehicle Not Titled letter to Taxpayer for failure to register the vehicle and pay the sales tax. See Temp Tag on Vehicle Not Titled, attached as **Exhibit 3**. The Department then issued a Notice of Proposed Assessment to Taxpayer in the amount of \$[REDACTED]. The assessment consists of tax in the amount of \$[REDACTED], a penalty of \$[REDACTED], and interest in the amount of \$[REDACTED]. See Notice of Proposed Assessment, attached as **Exhibit 4**. The assessment was based on the purchased vehicle price of \$[REDACTED], as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on January 11, 2021. A copy of the Explanation of Tax Adjustment is attached as **Exhibit 5**.

Taxpayer timely protested the assessment. Taxpayer disagrees with the proposed assessment claiming she returned vehicle to the dealer less than 24 hours after purchasing it. Taxpayer states:

The car was not driveable [sic] less than 24hrs later I took the car back to their lot.

A copy of the Protest is attached as **Exhibit 6**.

. . .

Applying the law to the facts of this case, the Taxpayer's liability for the sales tax on the vehicle fully accrued on September 27, 2018, the

purchase date of the vehicle. Taxpayer failed to timely register the vehicle or pay the applicable sales tax due. Taxpayer has not presented a valid defense to the assessment of tax for the vehicle purchase. The Taxpayer's argument that she returned the vehicle is not relevant to the question of taxability. Whether the vehicle is no longer owned due to repossession, either voluntary or involuntary, is not relevant to the obligation to pay sales tax on the purchase of the vehicle. In the absence of proof that the sale was rescinded, a sale of a motor vehicle is taxable regardless of whether the motor vehicle is later returned to the seller. The Department's assessment of sales tax on the vehicle was proper and should be sustained.

Penalty and Interest

A penalty equal to ten percent (10%) of the amount of taxes due is assessed when a taxpayer fails to timely register and pay the sales tax on the motor vehicle. *See* Ark. Code Ann. § 26-52-510(a)(4) (Repl. 2020). Interest is required to be assessed upon tax deficiencies for the use of the State's tax dollars. *See* Ark. Code Ann. § 26-18-508 (Repl. 2020). A tax levied under any state tax law which is not paid when due is delinquent. Interest at the rate of ten percent (10%) per annum shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment. *Id.* Thus, under the law, penalty and interest were properly assessed in this case. [P. 1 - 3].

The Tax Credits Supervisor presented testimony at the hearing consistent with the facts set forth in the Department's Answers to Information Request and also testified that: (1) her file does not contain a completed Rescinded Sale Form relating to the [REDACTED]; and (2) the Taxpayer has not presented any information that changed the Department's position regarding the sales tax liability in this case.

The Taxpayer testified that: (1) the original documents from the Department went to an address where she has never lived and did not provide notice to her in a timely manner; (2) she returned the [REDACTED] to the dealership the day after she bought it because it was unsafe; (3) the dealership did not

return her down payment; and (4) if she had been notified of this case sooner, she might have been able to get the necessary forms from the dealership.

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 [REDACTED] on September 27, 2018, and she obtained possession of the [REDACTED].³ The Taxpayer owed sales tax upon the purchase of the [REDACTED] and failed to timely register the [REDACTED] or pay the applicable sales tax liability. The point raised by the Taxpayer regarding discontinued possession of the [REDACTED] is not a defense to the enforcement of the tax law.

Repossession of the [REDACTED] (voluntary or involuntary) did not extinguish the liability for the sales tax due on the purchase of the [REDACTED]. Additionally, the evidence does not support a finding that a rescinded sale⁴ relieved the Taxpayer from sales tax liability on the purchase of the [REDACTED].⁵ Consequently, the Department correctly assessed sales tax against the Taxpayer.

³ The total purchase price of the [REDACTED] was \$[REDACTED].

⁴ 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.

⁵ The case file does not contain a completed Rescinded Sale Form relating to the [REDACTED].

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 [REDACTED] 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).

Statute of Limitations

With respect to the Taxpayer's argument concerning the time lapse between the purchase date of the [REDACTED] and the date of the Notice of Proposed Assessment, the general three-year statute of limitations (See Ark. Code Ann. § 26-18-306 (Repl. 2020)) is applicable to the case. The Taxpayer's liability for the sales tax on the [REDACTED] fully accrued on September 27, 2018, the date she purchased the [REDACTED]. The Notice of Proposed Assessment was issued on January 11, 2021, and was issued within the time limit of Ark. Code Ann. § 26-18-306 (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. 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. 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.⁶

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 20, 2021

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