

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

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

**GROSS RECEIPTS (SALES) TAX  
ASSESSMENT**

**DOCKET NO.: 21-404**

**AMOUNT:** [REDACTED]<sup>1</sup>  
**LETTER ID:** [REDACTED]

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE  
APPEARANCES**

This case is before the Office of Hearings and Appeals upon written protest received February 2, 2021, signed by [REDACTED], the Taxpayer. The Taxpayer 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 Taxpayer, this matter was taken under consideration of written documents. A briefing schedule was established for the parties by letter dated April 22, 2021. The Department’s Representative filed her Opening Brief on April 26, 2021. The Taxpayer did not file a response, but her protest was received into evidence. The record was closed and this matter was submitted for a decision on June 14, 2021.

**ISSUE**

Whether the Taxpayer demonstrated that she qualified for a credit for taxes paid to another state. No.

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

## FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

### Opening Brief

The Department's Representative provided a statement of relevant facts and an analysis within her Opening Brief, stating as follows, in pertinent part<sup>2</sup>:

On or about March 14, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] ["Relevant Vehicle"] from [REDACTED] for [REDACTED] [REDACTED] t). Taxpayer financed [REDACTED] of the purchase price through [REDACTED].<sup>3</sup> At the time of purchase, Taxpayer was issued temporary tag [REDACTED] with an expiration date of April 8, 2018.<sup>4</sup> On April 23, 2018, the Office of Motor Vehicle (OMV) sent out Notice of Temp Tag to the Taxpayer after she failed to register the vehicle within thirty (30) days of purchase.<sup>5</sup> No sales tax was ever paid on the purchase of the vehicle.

More than two (2) years later, on July 31, 2020, the Taxpayer registered the [REDACTED] and applied for a motor vehicle title in the [REDACTED].<sup>6</sup> At the time of registration, Taxpayer claimed that the [REDACTED] should be registered as a transfer of registration from another state and not as a new sale. No sales tax was charged by the OMV at that time.<sup>7</sup>

When the motor vehicle titling and registration documents were received in the Tax Credits Section of the Department of Finance and Administration (the "Department") for review, the temp tag file, which included the Security Agreement (Exhibit 1), was included. The paperwork submitted at the time of registration was a [REDACTED] registration of the vehicle with an Arkansas address – specifically, the same address listed on the purchase docs. Based on the Department's records, the Taxpayer purchased the [REDACTED] in Arkansas on March 14, 2018, but failed to pay the sales tax due on that date.

On or about December 8, 2020, the Department mailed a Billing Statement to the Taxpayer due to her failure to pay the sales tax.<sup>8</sup> The

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

<sup>3</sup> The Department's Representative cited Exhibit 1.

<sup>4</sup> The Department's Representative cited Exhibit 2.

<sup>5</sup> The Department's Representative cited Exhibit 3.

<sup>6</sup> The Department's Representative cited Exhibit 4.

<sup>7</sup> The Department's Representative cited Exhibit 5. It appears that the Department's Representative intended to cite Exhibit 4. Exhibit 5 was a copy of the Taxpayers 2019 [REDACTED] vehicle registration for the Relevant Vehicle, listed the Taxpayer's address as being within [REDACTED], and stated that the Taxpayer remitted property taxes of [REDACTED] towards the vehicle.

<sup>8</sup> The Department's Representative cited Exhibit 6.

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].<sup>9</sup> The assessment was based on the purchased vehicle price of [REDACTED], as detailed in the Explanation of Tax Adjustment mailed to Taxpayer on December 8, 2020.<sup>10</sup>

In her protest,<sup>11</sup> Taxpayer disagrees with the proposed assessment claiming that taxes were already paid on the vehicle. Taxpayer states:

*Taxes have been paid in [REDACTED] because the vehicle was registered in [REDACTED] after purchase. See receipt attached.*

Within her Opening Brief, the Department's Representative asserted that the Taxpayer's purchase of the Relevant Vehicle within Arkansas was generally taxable at the time of sale. She averred that the taxability of the transaction cannot be avoided by the Taxpayer first registering the Relevant Vehicle within another state prior to the Arkansas registration. While the Taxpayer claims that sales taxes were paid to [REDACTED], she stated that a review of those documents demonstrates that only property tax (not sales tax) was remitted to that jurisdiction. She concluded that the Taxpayer has failed to present a defense to the enforcement of the assessment. She also declared the assessment of interest and the late payment penalty was appropriate under Ark. Code Ann. §§ 26-18-508 (Repl. 2020) and 26-18-510(a)(4), respectively.

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**

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<sup>9</sup> The Department's Representative cited Exhibit 7.

<sup>10</sup> The Department's Representative cited Exhibit 8. This document states that the Taxpayer was assessed based on a purchase price of [REDACTED] and a service contract cost of [REDACTED].

<sup>11</sup> The Department's Representative cited Exhibit 9.

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). Ark. Code Ann. § 26-18-507 (Repl. 2012) provides for a refund of any state tax erroneously paid in excess of the taxes lawfully due. The

Taxpayer bears the burden of proving by a preponderance of the evidence that the claimed refund was erroneously paid and in excess of the taxes lawfully due.

### **Legal Analysis**

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 Taxpayer took ownership and possession of the Relevant Vehicle on March 14, 2018, for a total price of [REDACTED], including the service contract. Further, the motor vehicle constituted tangible personal property. The governing statutes demonstrate that ownership and taking possession of the car triggers the tax liability. The Department has

borne its burden of showing that a sale of tangible personal property to the Taxpayer occurred.

The Taxpayer has not cited to authority for the allowance of an Arkansas sales tax credit for taxes paid to another state upon a sale that occurred within Arkansas. Even if such a credit existed, however, the Taxpayer has not proven that she incurred and paid an additional tax upon her purchase of the relevant vehicle. The only evidence of a tax payment reflects that the Taxpayer paid property taxes upon the value of the Relevant Vehicle (not the Taxpayer's purchase transaction) within [REDACTED]. The Taxpayer's request for a tax credit relating to that purchase is not persuasive. Consequently, the Department correctly disallowed that tax credit and the assessment of tax is sustained.

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) (Repl. 2020), 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 Taxpayer failed to timely register the vehicle and timely pay the applicable taxes as provided in the relevant code sections. Consequently, the late payment penalty was properly assessed against the Taxpayer. 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 issued by the Department 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](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>12</sup>

OFFICE OF HEARINGS & APPEALS

  
TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: June 18, 2021

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