

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

ADMINISTRATIVE DECISION

IN THE MATTER OF [REDACTED]
[REDACTED]
(ACCT. NO.: [REDACTED] **)**

**GROSS RECEIPTS (SALES) TAX
ASSESSMENT
AUDIT NO.** [REDACTED]
LETTER ID: [REDACTED]

DOCKET NO.: 22-311

[REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon written protest dated June 25, 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 Caroline Calvert, 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 January 12, 2022. The Department’s Representative filed his Opening Brief on February 23, 2022. The Taxpayer did not file a response. The record was closed and this matter was submitted for a decision on March 31, 2022.

ISSUE

Whether the Department’s assessment is correct under Arkansas law. Yes.

¹ This amount represents [REDACTED] (tax) and [REDACTED] (interest).

FACTS AND CONTENTIONS OF THE PARTIES

1. Prehearing Filings

The Department's Answers to Information Request provided a summary of relevant information, stating as follows in part²:

On December 28, 2020, [REDACTED] ("Taxpayer") sold a [REDACTED] [REDACTED] ["Relevant Aircraft"] registered with the FAA.³ The Taxpayer sold the aircraft to [REDACTED] (the "buyer") located in [REDACTED] for [REDACTED].⁴ Although the Purchase Agreement states that the buyer is responsible for the payment of the sales tax on the aircraft purchase, the Taxpayer did not collect the sales tax at the time of the sale. On or about May 3, 2021, the Arkansas Department of Finance and Administration (the "Department") sent a letter to request proof of sales tax payment for the sale of the aircraft.⁵ The Taxpayer sent a response letter to the Department on May 10, 2021 to dispute that he owed sales tax for the sale of the aircraft and argued that the buyer should pay the sales tax to the Department directly. The Taxpayer provided no additional documentation with the letter.⁶

On or about June 7, 2021, the Department determined that the Taxpayer failed to collect and remit sales tax for the sale of the aircraft and issued a Summary of Findings to the Taxpayer.⁷ The Department then issued a Notice of Proposed Assessment, where the assessment consists of tax in the amount of [REDACTED] and interest in the amount of [REDACTED].⁸

Taxpayer filed his protest on June 25, 2021 disagreeing with the proposed assessment claiming that:

*This sales tax is the unique responsibility of the Buyer as expressed on page 2 of the bill of sale. The request of payment of this tax should be addressed to the buyer [REDACTED] address on the bill of sale.*⁹

Within her Opening Brief, the Department's Representative noted that aircraft sales are generally taxable. She noted that Ark. Code Ann. § 26-52-505(a)

² All exhibits support the statements for which they are cited.

³ The Department's Representative cited Exhibit 1.

⁴ The Department's Representative cited Exhibit 2.

⁵ The Department's Representative cited Exhibit 3.

⁶ The Department's Representative cited Exhibit 4.

⁷ The Department's Representative cited Exhibit 5.

⁸ The Department's Representative cited Exhibit 6.

⁹ The Department's Representative cited Exhibit 7. Page 2 of the bill of sale was not provided within the record.

(Repl. 2020) and Arkansas Gross Receipts Tax Rule GR-14(C) requires sellers to collect and remit Arkansas sales taxes upon aircraft sales. While the Taxpayer may have contracted with the purchaser to address sales tax payment, she contended that Arkansas statutes place the tax burden upon the Taxpayer. She noted that no evidence of collection of taxes on the sale have been discovered. Additionally, the tax liability remains outstanding. Consequently, she reasoned that the assessment should be upheld.

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

CONCLUSIONS OF LAW

Burdens 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).

Assessment

Arkansas Gross Receipts (sales) Tax generally applies to all sales of tangible personal property and certain specifically enumerated services, unless an exemption or credit is shown to apply. Ark. Code Ann. § 26-52-301 (Supp. 2021). Initially, the Relevant Aircraft at issue qualifies as tangible personal property and, thus, its sale is generally taxable. Consequently, the transaction is taxable unless an exemption is shown to apply.

Generally, the liability for collection and remittance of sales tax is upon the seller. Ark. Code Ann. § 26-52-508 (Repl. 2020). Additionally, all sellers of airplanes are explicitly responsible for obtaining a sales tax permit and collecting and remitting sales tax to the State on their airplane sales. Ark. Code Ann. § 26-52-505 (Repl. 2020). A seller, however, may be relieved of this liability if a customer makes an exemption claim and the seller obtains certain information

from that customer. Ark. Code Ann. § 26-52-517(a) (Repl. 2020). At that point, the purchaser will become liable for the sales tax liability if the Department ultimately determines that the purchaser improperly claimed an exemption. Ark. Code Ann. § 26-52-517(e) (Repl. 2020).

Here, it does not appear that the purchaser made an exemption claim on the airplane purchase. As noted above, the seller of an airplane is liable for collection and remittance of Arkansas sales tax upon airplane sales. The Taxpayer alleges that a contractual provision on the second page of the bill of sale requires the purchaser to pay any applicable taxes. That page is not contained within the record. Even if that was true, however, the Department was not a party to that agreement and is not bound by it. The Taxpayer remains liable for the collection and remittance of Arkansas sales tax upon his airplane sale. Consequently, the assessment of sales tax in this matter is sustained.

Interest must be assessed upon any 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 is sustained.

DECISION AND ORDER

The assessment is sustained in full. 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 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.¹⁰

OFFICE OF HEARINGS & APPEALS

A handwritten signature in blue ink, appearing to read 'T. Evans', is written over a horizontal line. There is a small handwritten number '3' above the signature.

TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 31, 2022

¹⁰ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.