

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

**ADMINISTRATIVE DECISION**

**IN THE MATTER OF**

**ACCT. NO.:** [REDACTED]

**DOCKET NO.:** 22-350

**GROSS RECEIPTS  
TAX ASSESSMENT**

**LETTER ID:** [REDACTED]  
**(\$ [REDACTED])<sup>1</sup>**

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**RAY HOWARD, ADMINISTRATIVE LAW JUDGE**

**APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated November 6, 2021, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Gross Receipts Tax (“sales tax”) resulting from an audit conducted by the Department of Finance and Administration (“Department”). The Department was represented by Taylor Skipper, Attorney at Law, Office of Revenue Legal Counsel. The Taxpayer represented himself. The Audit ID Number is [REDACTED].

At the request of the Taxpayer, this matter was taken under consideration of written documents to be submitted by the parties. A briefing schedule was mailed to the parties on January 26, 2022. The Department’s Opening Brief was filed on January 27, 2022. The Taxpayer’s Response Brief was filed on February 25, 2022. The Department’s Reply Brief was filed on March 16, 2022. The matter was submitted for a decision on March 25, 2022.

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<sup>1</sup> The reflected amount includes tax ([REDACTED]) and interest (\$ [REDACTED]).

## ISSUE

Whether the Department's assessment against the Taxpayer, resulting from disallowance of a claimed exemption, should be sustained? Yes.

### FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on December 7, 2021. The Department's Opening Brief 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, in pertinent part, as follows:

On September 19, 2019, [REDACTED] ("Taxpayer") purchased two [REDACTED] (the [REDACTED]) from [REDACTED] for the total sales price of [REDACTED]. At the time of purchase, Taxpayer signed a "Commercial Farming Machinery & Equipment Sales Tax Exemption Certification" certifying that the [REDACTED] purchased would be used exclusively and directly in the commercial production of food or fiber. No sales tax was paid on the transaction.

On October 22, 2021, the Department of Finance and Administration ("Department") sent an inquiry letter, and a copy of Arkansas Gross Receipts Tax Rule GR-51, to Taxpayer requesting proof to demonstrate that the [REDACTED] purchased were used for allowable purposes. Specifically, the Department requested documentation of the Taxpayer's commercial farming activities, including individual income tax returns and related schedules verifying farming activities, depreciation schedules for the [REDACTED], or other documents indicating direct or exclusive farm use of the [REDACTED].

Taxpayer did not provide income tax returns or schedules evidencing that he was involved in the commercial production of food or fiber. Taxpayer did not provide any evidence to demonstrate that the [REDACTED] were used *exclusively* or *directly* in the *production of food or fiber as a commercial business*. The Department determined that Taxpayer did not prove entitlement to the farming sales tax exemption.

The Department disallowed the exemption and issued a Summary

of Findings on November 22, 2021. The Department then issued a Notice of Proposed Assessment to Taxpayer on December 7, 2021 in the total amount of [REDACTED]. The assessment consists of tax in the amount of \$ [REDACTED] and interest in the amount of \$ [REDACTED]. The Taxpayer disagrees with the proposed assessment and has asked for a protest on consideration of documents. In his protest, Taxpayer states:

*I am a farmer and these are used on the farm. See [REDACTED]  
[REDACTED]*

With his protest, Taxpayer provided an [REDACTED]  
[REDACTED] between Taxpayer and the [REDACTED].

...

### DISCUSSION

Taxpayer's liability for the sales tax on the [REDACTED] fully accrued on September 19, 2019, the purchase date of the [REDACTED]. The [REDACTED] subject to the assessment are tangible personal property and are therefore subject to sales tax unless an exemption applies. It is the Taxpayer's burden to establish, by a preponderance of the evidence, his entitlement to the exemption.

Taxpayer certified that he was engaged in the commercial production of *food or fiber* by signing a Commercial Farming Sales Tax Exemption certificate in connection with his purchase of the [REDACTED]. Because the Taxpayer claimed the farm exemption, he paid no sales tax on the transaction. However, Taxpayer has failed to provide evidence that the [REDACTED] are used *directly and exclusively* in the production of *food or fiber*. The contract included with Taxpayer's protest is wholly unrelated to Taxpayer's use of the [REDACTED].

Sales tax was correctly assessed against Taxpayer because Taxpayer has failed to provide evidence of his entitlement to the exemption. The assessment of interest was proper because the tax was due, but not paid, and thereby deprived the State of the use of such funds. The Department has established that the Assessment for sales tax for the purchase of the [REDACTED] was proper, and as the sales tax was not timely paid, interest is required to be assessed in this case under Ark. Code Ann. § 26-18-508 (Repl. 2020). [Footnotes omitted, P. 1 - 4].

The Taxpayer's Response Brief stated that, "[h]ere just a few receipts that

show I farm I bout two [REDACTED] to use on the farm also I have bout a [REDACTED] to use but I havn't been able yet to make enough to even file a tax return, due to a lease agreement for [REDACTED] wasn't available for me to farm until 2012 the four wheelers were used for [REDACTED]. [P. 1.]”

The Department's Reply Brief addressed the Taxpayer's contentions and stated as follows:

In his response brief, Taxpayer provided information on the use of the [REDACTED] and his farming activities. He also included receipts evidencing purchases of [REDACTED]. Taxpayer has failed to provide evidence that the [REDACTED] are used *directly* and *exclusively* in the production of *food or fiber*. The Department's assessment of tax and interest should be sustained in full. [P. 1.]

### **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).

### **Sales Tax Assessment**

Subject to the applicability of an exemption, deduction, or credit, sales tax is imposed on sales of tangible personal property made by in-state vendors to in-state purchasers. See Ark. Code Ann. § 26-52-101 et seq. (Repl. 2020 & Supp. 2021). Ark. Code Ann. § 26-52-103(35)(A) (Supp. 2021) 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.” The [REDACTED] purchased by the Taxpayer were tangible personal property. Consequently, the Department satisfied its burden of proof regarding taxability.

Ark. Code Ann. § 26-52-403(b) (Repl. 2020) exempts the sale of farm equipment and machinery from sales tax. “Farm equipment and machinery”

means implements used exclusively and directly in farming. See Ark. Code Ann. § 26-52-403(a)(1)(A) (Repl. 2020). "Farming" means the agricultural production of food or fiber as a business. See Ark. Code Ann. § 26-52-403(a)(2) (Repl. 2020).

Pursuant to Ark. Code Ann. § 26-52-105(b) (Repl. 2020), the Secretary of the Department is directed to promulgate rules for the proper enforcement of the sales tax laws. Arkansas Gross Receipts Tax Rule GR-51 ("GR-51") provides, in pertinent part, as follows:

B. DEFINITIONS.

1. "Farm equipment and machinery" means agricultural implements used exclusively and directly for the agricultural production of food or fiber as a commercial business or the agricultural production of grass sod or nursery products as a commercial business.

...

C. The list of exempt items in GR-51(B)(1)(a) is not intended to be exclusive. Other agricultural implements may qualify for this exemption provided they meet the requirements of GR-51(C)(1) and GR-51(C)(2).

1. An implement may not be treated as tax exempt unless it is used "exclusively" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business.

a. An implement will be presumed to be used exclusively in the agricultural production of food, fiber, grass sod, or nursery products as a business if the implement is used on land owned or leased for the purpose of agricultural production of food, fiber, grass sod, or nursery products.

...

2. An implement may not be treated as tax exempt unless it is used "directly" in the agricultural production of food or fiber as a business or the agricultural production of grass sod or nursery products as a business. **The term "directly" limits the exemption to the following:**

a. **Only those implements used in the actual agricultural production of food, fiber, grass sod, or**

**nursery products to be sold in processed form or otherwise at retail; or**

**b. Machinery and equipment used in the agricultural production of farm products to be fed to livestock or poultry which is to be sold ultimately in processed form at retail. [Emphasis added.]**

...

Under Ark. Code Ann. § 26-18-313(d) (Repl. 2020), the Taxpayer has the burden of proving entitlement to the tax exemption for farm machinery. The Department has consistently interpreted Ark. Code Ann. § 26-52-403(b) (Repl. 2020) and GR-51 in a manner so that the use of machinery or equipment to mow fence rows or mow around chicken houses (or perform other maintenance functions required at a farm) results in machinery or equipment failing to satisfy the “directly” test. Evidence that only proves a taxpayer uses or operates machinery or equipment on a farm does not establish entitlement to the tax exemption for farm machinery and equipment. The evidence must establish that the machinery or equipment was used directly in the actual production of food or fiber as a business.

When the Taxpayer claimed the sales tax exemption for farm equipment and machinery on the purchase of the [REDACTED], he left blank the portion of the certification indicating the “products grown or raised” for which the [REDACTED] would be used to produce. See Department Exhibit 2. The Taxpayer’s Response Brief indicated that the [REDACTED] “were used for [REDACTED] [REDACTED].” Even though the use of the [REDACTED] may have been beneficial to the Taxpayer’s farm, there is insufficient evidence in the record to prove that the [REDACTED] were directly in the actual agricultural production of food or fiber as

a business. Consequently, the Department correctly assessed sales tax against the Taxpayer on the purchase of the [REDACTED]

Interest was properly assessed on the tax deficiency for the use of the State's tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). No penalty was assessed against the Taxpayer.

### **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](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>2</sup>

**OFFICE OF HEARINGS & APPEALS**



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

DATED: March 29, 2022

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<sup>2</sup> See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.