

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

ADMINISTRATIVE DECISION

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

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

DOCKET NO.: 21-243

ASSESSED AMOUNT: [REDACTED]¹

TODD EVANS, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest received October 6, 2020, signed by [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by David Scott, Attorney at Law – Office of Revenue Legal Counsel (“Department’s Representative”).

At the request of the Taxpayer, this matter was considered based on written documents. A briefing schedule was established for the parties by letter dated January 28, 2021. The Department’s Representative filed his Opening Brief on January 29, 2021. The Taxpayer did not file a response but his protest was received into evidence. The record was closed and the matter was submitted for a decision on March 22, 2021.

¹ This amount represents [REDACTED] (tax) and [REDACTED] (interest) after application of a payment in the amount [REDACTED].

ISSUE

Whether the Taxpayer demonstrated that he qualified for the motor vehicle tax credit² by a preponderance of the evidence. No.

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filings

Within his Answers to Information Request, the Department's Representative provided a statement of relevant facts and his analysis, stating as follows, in pertinent part³:

On August 6, 2018, [REDACTED] ("Taxpayer") purchased a [REDACTED] [REDACTED] ["Vehicle A"] from [REDACTED] for [REDACTED]. A copy of the Bill of Sale Retail Installment Contract is attached as **Exhibit 1**.⁴ Taxpayer registered the [REDACTED] on November 1, 2018. A copy of Application for Title attached as **Exhibit 2**. At the time of registration and application for title, Taxpayer claimed, and was allowed, a deduction for the private sale of a motor vehicle in the sum of [REDACTED]. Taxpayer provided a Bill of Sale for a [REDACTED] [REDACTED] ["Vehicle B"] which reflects that it was sold on August 6, 2018 for [REDACTED]. A copy of the Bill of Sale for the [REDACTED] attached as **Exhibit 3**.⁵

On or about July 9, 2020, the Department determined that Taxpayer was still the registered owner of the [REDACTED] and mailed a Deduction from New Purchase letter to Taxpayer regarding the sales tax credit for the vehicle. A copy of Deduction from New Purchase letter attached as **Exhibit 4**. The Department informed Taxpayer that he still owned the [REDACTED] which he claimed to be sold. Accordingly, the Department denied the trade in credit on the [REDACTED]. As a result, the Department further informed Taxpayer that additional tax and interest were due on the purchase of the [REDACTED]. The

² The sales tax credit authorized under Ark. Code Ann. § 26-52-510(b)(1)(C)(i) (Repl. 2020) shall be referred to as the "motor vehicle tax credit" in this decision.

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

⁴ These documents do not state whether Vehicle A is a [REDACTED]. Additionally, the documents indicate that the Taxpayer remitted a [REDACTED] down payment towards this purchase.

⁵ This document includes the VIN number for the vehicle that was allegedly sold but does not list the year, make, and model for the vehicle. The document further states that the Taxpayer sold Vehicle B to [REDACTED] of [REDACTED].

Title for the [REDACTED] reflects that the Taxpayer is a co-owner of the [REDACTED]. A copy of the Title is attached as **Exhibit 5**.⁶

On September 2, 2020, the Department issued a Notice of Proposed Assessment to Taxpayer in the amount of [REDACTED] which consisted of tax in the amount of [REDACTED], interest in the amount of [REDACTED], and a credit for previous payments in the amount of [REDACTED] [REDACTED] [REDACTED]). A copy of the Notice of Proposed Assessment attached as **Exhibit 6**. The assessment was based on the purchased vehicle price of [REDACTED], with no trade-in allowance as detailed in the Explanation of Tax Adjustment. A copy of the Explanation of Tax Adjustment attached as **Exhibit 7**. Taxpayer timely protested the assessment. A copy of the Protest is attached as **Exhibit 8**.⁷

In his protest Taxpayer stated:

See inclosed [sic] Bank loan Document's [sic] showing The Sale To [REDACTED] on 8-9-18

The Department avers that, in addition to the Title (**Exhibit 5**), the Taxpayer's protest documents reflect that he is a co-borrower on the loan which funded the purchase of the [REDACTED] and is therefore a co-owner. Taxpayer has failed to meet his burden of proving his entitlement to the trade in credit. Accordingly, the assessment of tax and interest was proper and should be sustained.

Within his Answers to Information Request, the Department's Representative asserted that the Taxpayer has failed to demonstrate that ownership to Vehicle B was transferred to a purchaser. Consequently, he reasoned that the Taxpayer was not entitled to the motor vehicle tax credit with respect to Vehicle B. He additionally asserted that 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.

⁶ This document (dated February 15, 2019) lists the Taxpayer as a joint owner of Vehicle B with [REDACTED]. Both names are separated by an "or."

⁷ The Taxpayer attached a copy of the Explanation of Tax Adjustment, Billing Statement (dated September 2, 2020), and a Promissory Note from [REDACTED]. The promissory note (dated August 14, 2018) lists the Taxpayer and [REDACTED] as coborrowers on a loan in the amount of [REDACTED] for a purchase of Vehicle B.

FINDINGS OF FACT AND 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 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). 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). 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). The Department has established that the Taxpayer purchased Vehicle A, which is generally taxable on the full proceeds from the sale. Consequently, the Department has borne its burden of proof in this matter.

While the Taxpayer has provided a completed bill of sale for his alleged sale of Vehicle B on August 6, 2018, the Taxpayer remained a co-owner of Vehicle B on that vehicle's title.⁸ Further, the Taxpayer has also provided evidence that he remains an owner of Vehicle B even after the alleged sale. While the Taxpayer indicates that he sold Vehicle B, it is his burden to establish the sale by a preponderance of the evidence. Based on the record, the Taxpayer has not

⁸ The Department is instructed to make examinations of applications for registration and reject such applications if unsatisfied with the genuineness, regularity, and legality. Ark. Code Ann. § 27-14-409 (Repl. 2014).

established that he sold Vehicle B on August 6, 2018, for [REDACTED] by a preponderance of the evidence. Consequently, the tax assessment must be sustained.

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 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.⁹

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 29, 2021

⁹ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.