



STATE OF ARKANSAS
**Department of Finance
and Administration**

OFFICE OF THE DIRECTOR

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May 21, 2019

[REDACTED]
[REDACTED]
[REDACTED]

RE: In the Matter of [REDACTED]
Docket No: 18-408
Request for Revision

[REDACTED]:

This letter is prepared in response to your request for a revision of the administrative decision entered in the above referenced matter on September 17, 2018. Your request for revision, received on October 4, 2018, is considered timely. This letter will constitute the final decision of the Arkansas Department of Finance and Administration ("Department") under Ark. Code Ann. § 26-18-405 (Repl. 2012 and Supp. 2017) regarding the above referenced matter.

FACTS

Your request for revision does not set forth any new facts or legal arguments. Therefore, the facts set forth in this section have been derived from a review of the record in the above referenced matter. You reported \$13,368 in gross income on your 2015 Arkansas income tax return. The Department subsequently received from the United States Internal Revenue Service ("IRS") a Revenue Agent Report ("RAR"), which reflected that the IRS had adjusted your gross income for the 2015 tax year to \$46,885. An IRS account transcript provided to an employee of the Arkansas Individual Income Tax Section reflected that the federal adjustment to your income resulted in additional federal income tax which you paid to the IRS.

You did not file an amended 2015 Arkansas income tax return to report the change made to your income. The Department, using the IRS RAR, adjusted your 2015 gross income from \$13,368 to \$36,960. This adjustment did not include Social Security income or United States bond interest income as Arkansas does not impose income tax on those income sources. The adjustment to your Arkansas income resulted in an assessment of additional Arkansas income tax, an underestimated payment penalty, and interest.

In March 2018, you protested the assessment of tax, penalty, and interest. A hearing was held on your protest on September 6, 2018. At the hearing, you testified that you have maintained an investment account since 1984 and that the investment account likely receives income from interest, dividends, and appreciated stock sales. You further testified that in 2015 you were told

that your investments in the account were not receiving a good return, and it was recommended to you that you transfer the funds in the investment account to a different account to make more money. Finally, you testified that, to transfer the funds to another account, your financial advisor likely had to sell certain stocks or other investments that were held by the investment account. The sale of these assets resulted in a gain which appears to have been the basis of the adjustment to your gross income during the 2015 tax year.

After the administrative hearing, the hearing officer issued an administrative decision which fully sustained the assessment of tax, penalty, and interest made by the Department.

ANALYSIS

If a taxpayer's taxable income is changed and corrected by the Commissioner of Internal Revenue or an officer of the United States of competent authority, the taxpayer is required to report the change by filing an amended Arkansas income tax return within one hundred eighty (180) days after the taxpayer receives a notice and demand for payment by the Internal Revenue Service. Ark. Code Ann. § 26-18-306(b)(1) (Supp. 2017). If there is additional Arkansas income tax due because of the correction by the IRS, the Department must assess that tax within one (1) year of the date of the taxpayer's filing of the required amended return. *Id.* at (b)(2)(A). If a taxpayer does not file the required amended return, the Department has three (3) years from the date the amended return was required to be filed to make an assessment based upon the information provided to the Department by the IRS. *Id.* at (b)(2)(B). If the taxpayer appeals the assessment made by the IRS, the Department has three (3) years from the later of the date of the final IRS assessment or the taxpayer's payment of the federal tax assessment to assess additional Arkansas income tax. *Id.* at (b)(2)(C).

Here, the IRS adjusted the gross income you reported for tax year 2015. You did not report the correction to the Department as required by law, and the Department issued to you a Notice of Proposed Assessment based on the federal adjustment. Further, you did not appeal the federal tax assessment made by the IRS but instead paid that assessment. Accordingly, it was proper for the Department to adjust your income for tax year 2015 and issue an assessment of additional tax due.

At the administrative hearing, you argued that you were not aware that your investment advisor was going to sell your investments but instead understood that the investments would only be rolled over. You also argued that you did not know that the sale of the investments would result in an assessment of tax due, and that your financial advisor told you that you would only be liable for tax associated with a capital gains distribution of \$667.24. In your request for revision, you repeat these arguments. Lack of actual or constructive knowledge of the tax consequences of a financial decision is inadequate to avoid imposition of the tax. Every person is presumed to know the law and lack of knowledge is not an excuse for failure to comply with the mandates of the law. *See Duchac v. City of Hot Springs*, 67 Ark. App. 98, 992 S.W.2d 174 (1999).

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Your request for revision also asks for an explanation of what is meant by footnote 5 of the administrative decision which states as follows:

This Exhibit provides a consolidation of several of the Taxpayer's 2015 IRS tax forms, including her 1099-B. The 1099-B provides that the Taxpayer received \$25,582.77 in proceeds from broker and barter exchange transactions. Those proceeds represented \$2,663.17 in covered securities and \$22,919.60 in noncovered securities. A basis of \$2,666.73 was provided for the covered securities. No basis was provided for the noncovered securities.

A review of the record reveals that your basis in the assets held by the investment account was not a contested issue in your protest. Please note that the purpose of the Commissioner's response to a taxpayer's request for a revision of an administrative decision generally is not to explain the decision or answer a taxpayer's questions. Instead, a taxpayer should consult with a tax professional or attorney to receive professional advice. However, for your convenience, basis is generally the amount of your capital investment in property for tax purposes and is used to figure depreciation, amortization, depletion, casualty losses, and any gain or loss on the sale, exchange, or other disposition of the property. *See generally* Ark. Code. Ann. § 26-51-411 (Repl. 2012).

Lastly, your request for revision alleges that you were never given the information described in footnote 11, which states in relevant part, "[The auditor] said that certain programs are available within the Department to request interest and penalty waivers if the Taxpayer can demonstrate that she qualifies for those programs." The duties of a hearing officer appointed by the Department are limited to reviewing written protests and making written findings as to the applicability of a proposed assessment or denial of a claim for refund. Accordingly, it is outside the scope of the duties of the hearing officer to provide taxpayers with guidance concerning the existence of programs to request a waiver of interest or penalties. However, if you wish to discuss a request for a waiver of the assessed penalty and interest in this matter, please contact the Department's Problem Resolution and Tax Information office at (501) 682-7751.

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CONCLUSION

For the reasons set forth above, the decision of the hearing officer is sustained. This concludes your administrative remedies under the Tax Procedure Act. Relief from this decision may be sought according to the procedure set forth in Ark. Code Ann. § 26-18-406 (Repl. 2014 and Supp. 2017).

Sincerely,

Walter Anger
Deputy Director and
Commissioner of Revenue