

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

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

**INDIVIDUAL INCOME TAX
ASSESSMENT**

DOCKET NO.: 21-216 (2019)

[REDACTED]¹

**TODD EVANS, ADMINISTRATIVE LAW JUDGE
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received September 11, 2020, sent by [REDACTED] on behalf of himself and [REDACTED], the Taxpayers. The Taxpayers protested an assessment issued by the Department of Finance and Administration (“Department”). The Department was represented by Parker Cope, 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 11, 2021. The Department’s Representative filed his Opening Brief on February 10, 2021. The Taxpayers did not file a Response Brief. The record was closed and the matter was submitted for a decision on March 31, 2021.

ISSUE

Whether the assessment issued against the Taxpayers should be sustained? Yes.

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Opening Brief

Within his Opening the Department's Representative provided a rendition of factual allegations, stating the following²:

In 2019, [REDACTED] (the "Taxpayers") filed an AR1000F and reported [REDACTED] in wages, salaries, tips, etc. on line 8. **Exhibit A.** The Taxpayers attached a W-2 from [REDACTED] for [REDACTED] reporting [REDACTED] on line 16 for wages, tips, etc. and [REDACTED] on line 17 for state income tax withheld. **Exhibit B.** The Taxpayers attached a second W-2 from [REDACTED] for [REDACTED] reporting [REDACTED] on line 16 for wages, tips, etc. and [REDACTED] on line 17 for state income tax withheld. **Exhibit C.** The Taxpayers attached no other W-2 forms.

On September 1, 2020, Wade Gambill ("Auditor") issued a Summary of Findings letter to the Taxpayers indicating that the Department intended to assess income tax based on unreported income on the Taxpayers' 2019 return. **Exhibit D.** The Auditor adjusted the Taxpayer's income to add [REDACTED] in W-2 income electronically reported to the Department from [REDACTED]. **Exhibit E.**

In accordance with the Auditor's findings, the Department issued a Notice of Proposed Assessment on September 1, 2020 assessing the Taxpayers [REDACTED] in tax, [REDACTED] in interest, and no penalty, for a total assessment of [REDACTED]. This letter included a Basis for Adjustment explaining that the Auditor adjusted the Taxpayers' 2019 tax liability based on W-2 income electronically reported to the Department from [REDACTED]. **Exhibit F.**

The Taxpayers filed a timely protest on September 11, 2020, stating: "These employers never sent W2s. Not my fault." **Exhibit G.** The Taxpayers did not include any further explanation or documentation with their protest to indicate that their unreported W-2 income was exempt from state income tax.

Within his Opening Brief, the Department's Representative noted that all of the Taxpayers' income was generally taxable under Ark. Code Ann. § 26-51-201

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

(Repl. 2020). He noted that the Taxpayers bear a responsibility to preserve their tax records and to file an accurate tax return, citing Ark. Code Ann. § 26-18-506 (Repl. 2020). He averred that the Taxpayers have failed to demonstrate that the additional assessed income was exempted under Arkansas law. Additionally, he asserted that the assessment of interest is 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 with associated conclusions shall follow.

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).

Tax Assessment

Ark. Code Ann. § 26-51-201 (Repl. 2020) imposes the Arkansas individual income tax upon, and with respect to, the entire income of every resident, individual, trust, or estate regardless of whether that income is earned inside or outside the state. Additionally, gross income includes “[g]ains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid . . .” The tax is levied, collected, and paid annually upon the entire net income of the individuals. For the purpose of tax imposition, the term “Resident” is defined at Ark. Code Ann. § 26-51-102 (Repl. 2020) as follows:

(13) “Resident” means natural persons and includes, for the purpose of determining liability for the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., upon or with reference to the income of any taxable year, **any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within this**

state and spends in the aggregate more than six (6) months of the taxable year within this state [.] [Emphasis added].

The Taxpayers have not objected to Department's finding that they are residents of the State of Arkansas. The Taxpayers also have not contended that the additional assessed amount does not represent taxable income or otherwise qualifies for an applicable income tax deduction or exemption. The income received by the Taxpayers from the additional employers is generally taxable. While the Taxpayers failure to include that income upon their filed return may have been the result of the employers' failure to timely provide the associated W-2s, that event would not represent a defense to the enforcement of the Arkansas income tax with respect to that income even if proven. The assessment of tax is upheld.

Interest

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). The assessment of interest 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 Taxpayers request 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 Taxpayers have 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.³

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 31, 2021

³ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.