

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

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

**GROSS RECEIPTS TAX
ASSESSMENT
AUDIT NO.:** [REDACTED]
**AUDIT PERIOD: JAN. 2014
THROUGH AUGUST 2020**

DOCKET NO.: 21-262

[REDACTED]¹

**TODD EVANS, ADMINISTRATIVE LAW JUDGE
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest received October 1, 2020, signed by [REDACTED], Attorney at Law, (“Taxpayer’s Representative”) on behalf of [REDACTED], the Taxpayer. The Taxpayer protested an assessment issued by the Department of Finance and Administration (“Department”).

A hearing was held in this matter on March 16, 2021, at 1:00 p.m. in Little Rock, Arkansas.² The Department was represented by David Scott, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Also present for the Department was Steve McCune, Auditor, and David Wilson, Audit Supervisor. The Taxpayer’s Representative appeared at the hearing and represented the Taxpayer. Also present for the Taxpayer was the Taxpayer and [REDACTED] (“Director”).

ISSUE

Whether the Department’s assessment should be sustained? No.

¹ This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).

² All parties appeared by telephone.

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filings

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

A gross receipts ("sales") tax audit was conducted for the period January 1, 2014 through August 31, 2020 by Steve McCune, Tax Auditor for the Arkansas Department of Finance and Administration. [REDACTED] ("Taxpayer"). At the time of the estimated assessment, the Taxpayer was an unregistered taxpayer providing photography services in Arkansas. Taxpayer is located at [REDACTED]. Taxpayer is engaged in performing photography services.⁴

Between December 5, 2019 and May 13, 2020, auditor Steve McCune sent a series of five (5) letters and a Summons for Records ("Summons") to Taxpayer. In his letters, the auditor requested that Taxpayer register her business with the state for Sales and Use Tax purposes and provide sales information because the auditor had received information that Taxpayer provides photography services within Arkansas.⁵ The letters informed the Taxpayer that she was not registered for sales tax purposes and not current with sales tax filing requirements. In the Summons issued on April 16, 2020, the auditor requested Taxpayer to produce all books, records, a completed "Combined Business Tax Registration" form (AR-1R), and all sales information from December 1, 2013 through March 31, 2020.

Taxpayer's attorney, [REDACTED] ("Taxpayer's counsel") responded to the Summons by letter, but did not provide the requested sales information or registration information.⁶ Taxpayer's counsel stated, among other things, in his May 5, 2020 letter that [REDACTED] founded

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

⁴ The Department's Representative stated that the Taxpayer advertises her services on [REDACTED] and at her website [REDACTED] with screenshots attached as Exhibit 1. These screenshots do include a description of provided photography services and costs by a company utilizing the Taxpayer's name.

⁵ The Department's Representative cited Exhibit 2.

⁶ Copies of Taxpayer's Counsel's May 5, 2020 and June 16, 2020 letter and a Limited Power of Attorney were attached Exhibit 3. Within his letters, the Taxpayer's Representative acknowledged that the Taxpayer began a photography business but asserted that she only did the freelance work for donations that were reported upon income tax returns.

██████████” and “[s]he did do some freelance work in which she was essentially working for donations.”⁷

As a result of lack of registration information and suitable records, a sales tax account was set up for assessment purposes and an estimated assessment was prepared related to the Taxpayer's photography services. The auditor made the estimated assessment using an estimate calculator prepared by the auditor which included reported sales data from his prior assessments related to photography services. The prior assessments, used in the estimate calculator, were made on the basis of sales information provided by taxpayers previously assessed for providing photography services in Arkansas. In the estimate calculator, the auditor used the sales information from the previously issued assessments to calculate a monthly average which was then applied to each filing period included in the Taxpayer's estimated assessment period.⁸

The auditor determined that the taxpayer was liable for sales tax in the amount of ██████████ plus interest in the amount of ██████████, plus penalty in the amount of ██████████, for a total assessment of ██████████. The Department issued a Summary of Findings on September 15, 2020.⁹ On the last page of the auditor's spreadsheet printout (**Exhibit 4**), under the column labeled, “Average” is the estimated unreported sales amount for the assessment, totaling for the audit period, ██████████. *Id.* The auditor used actual reported sales data from the previous photography assessments to compute the “Average” sales amounts for periods January 2014 to May 2020. For the final three monthly periods, June 2020, July 2020, and August 2020, the auditor projected the amount of ██████████ from the calculation of an average of the “Average” numbers column from January 2014 to May 2020 and used that amount to project sales amounts for the months of June, July, and August 2020. Page 6 of the Summary of Findings (**Exhibit 5**) reflects “Estimated unreported sales of photography services to consumer located within the State” in the amount of ██████████. The same amount of unreported “Taxable Services” was found for ██████████ See **Exhibit 5**.

The Notice of Proposed Assessment resulting from the auditor's findings was issued on September 16, 2020.¹⁰ Taxpayer's counsel timely protested the assessment on behalf of Taxpayer.¹¹

In the protest letter, Taxpayer's Counsel stated, in pertinent part, as follows:

⁷ The Department's Representative cited Exhibit 3.

⁸ The Department's Representative cited Exhibit 4.

⁹ The Department's Representative cited Exhibit 5.

¹⁰ The Department's Representative cited Exhibit 6.

¹¹ The Department's Representative cited Exhibit 7.

*My client would like this notice to serve that she disputes fully each and every amount assessed for any tax associated with **her photography business**. There is no basis for the same. Please note our objection to the assessment of any tax on the record and allow this to serve as an official notice to begin any appeal process necessary to resolve this matter.*

Exhibit 7 (Emphasis added).

In the protest letter, Taxpayer's counsel states that Taxpayer has a photography business. The statement that there is no basis for any tax associated with her photography business is a self-serving statement that has come forth after an unsatisfactory tax audit and should be afforded little to no evidentiary weight pursuant to Arkansas law. Taxpayer has produced no credible evidence that the audit methodology was unreasonable.

Within his Answers to Information Request, the Department's Representative noted that sales of photography services are generally subject to Arkansas sales tax. He further asserted that the Taxpayer is required to maintain adequate records to accurately determine her tax liability. In the absence of suitable records, he asserted that the Department is authorized to issue an estimated assessment, placing the burden of proof upon the Taxpayer to rebut that assessment by more than self-serving testimony. He stated that the Auditor made numerous, unsuccessful attempts to obtain tax records from the Taxpayer and her counsel. He asserted that the Taxpayer has held herself out as a professional photographer for pay. He concluded that the Taxpayer has failed to rebut the Department's estimated assessment and that the utilization of a six-year audit period was warranted due to the nonfiling and twenty-five percent (25%) or greater underreporting. Additionally, he declared the assessment of interest to be appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2020) and

the assessment of the failure to file penalty was appropriate under Ark. Code Ann. § 26-18-208 (Repl. 2020).

The Department's Representative later supplemented this filing with Exhibit 8. That Exhibit included additional pages from the Taxpayer's website. It included examples of the Taxpayer's photos from [REDACTED] [REDACTED] and other photos. It appears that the Taxpayer also provides photos for [REDACTED] and provided various examples of [REDACTED]. He further highlighted the following [REDACTED] and [REDACTED] from the Taxpayer's website:

[REDACTED] is [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Her work is deeply emotional, and is often inspired by her own life experiences, as well as those of her [REDACTED]. [REDACTED] is most known for her work featuring [REDACTED] from [REDACTED]. Her series " [REDACTED] became an [REDACTED] and [REDACTED]. The following year [REDACTED] was a top ten finalist in the [REDACTED].

A lifelong lover of photography, it wasn't until 2010 when [REDACTED] she pursued her art fully. Her work has been featured by [REDACTED] [REDACTED]. You will also find [REDACTED].

Tammy is represented by [REDACTED] [REDACTED]

As an artist, photography is my medium of choice. There's a little bit of me in all of my work, including my portraits of people and animals. I find that when I am behind a camera, I am able to connect with the brokenness of us all.

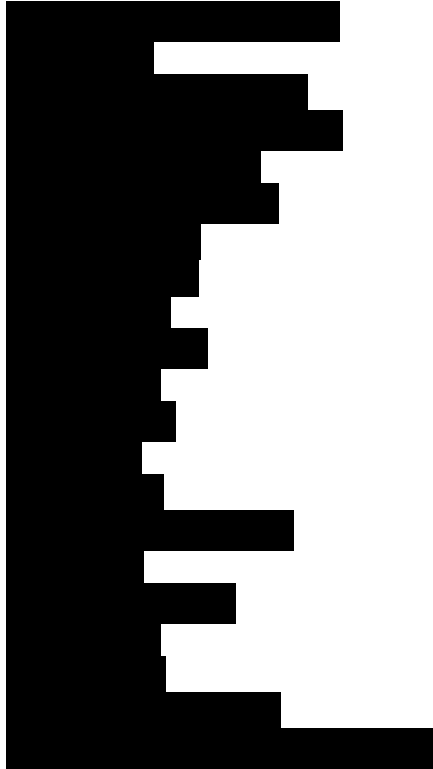
I believe that everyone carries a sadness peculiar to themselves, that everyone is "broken". We don't see each other's brokenness, because most of us have managed to put ourselves back together – with super glue or with tape and spit and a prayer. How well we've put ourselves back

together doesn't really matter; what matters is that we all are cracked, and we all carry pain.

[REDACTED]

[REDACTED]

[REDACTED]



Within his Answers to Information Request, the Taxpayer's Representative provided a summary of alleged relevant facts and some analysis, stating as follows in pertinent part¹²:

The respondent, [REDACTED], is like many hobby businesses, who create websites and other social media accounts believing that they will be able to make a side business of the same; however, life get in the way. No professional photography was undertaken for income. There is no proof through subpoena of bank records or other accounts to show that [REDACTED] received any income. [REDACTED] gave [REDACTED] [REDACTED]s about her photography endeavors being on hold due to her obligations to care for [REDACTED] [REDACTED]. She did not collect any income during the periods of assessed tax.

...

[REDACTED] received a notice of the assessment. Such response was met with a letter stating that she earned no income. It is only being assumed that she did. There is no proof that [REDACTED] at all, undertook

¹² Except as noted, all exhibits support the statements for which they are cited.

professional photography work. In fact, are [REDACTED] [REDACTED] timeframe showing that [REDACTED] had decided not to do photography professionally at time because of her obligations to care for [REDACTED]

[REDACTED] continues to care for [REDACTED] Without the proof of additional income in some way, it is simply speculation as to the respondent's level of involvement with the photography business. Further, [REDACTED] proactively reached out to the Department in 2017 to gather facts about starting the business and received the attached email response from DFA worker, Justin Payne.¹³ Additional exhibits and citations to news reports attached.

...

The respondent, [REDACTED] has the burden as a taxpayer to prove that she did not undertake, and therefore does not owe the tax. The respondent intends to prove that by the submission of the articles attached hereto, as well as testimony from the [REDACTED] of the [REDACTED] for which [REDACTED] volunteered at the time the photographs were taken and the fact that she received no remuneration for the same.

...

The respondent, [REDACTED], is only required to keep suitable records, if she did in fact undertake work which would create the obligation of the tax. Keeping records of work that was never performed, only considered to be performed and advertised, is no proof of the incurrence of the tax.

In support of his statements, the Taxpayer's Representative cited a website

([REDACTED] [REDACTED]) and stated that this article discussed the Taxpayer and her [REDACTED] and quoted the Taxpayer as having difficulty maintaining her photography appointments. This website link, however, did not function. It appears that the correct website was URL is:

[REDACTED]

¹³ Within this email conversation (on or about April 3, 2017), the Departments employee discussed how the Taxpayer could register her business with her local government, Secretary of State, and the Department's Sales Tax Office. The Department's employee noted that photography services are taxable, including a copy of the relevant Sales Tax rule.

[REDACTED] dated August 30, 2016. The correct website supports his statement; however, the Taxpayer also describes herself as a professional photographer.

The Taxpayer's Representative also cited another website [REDACTED] [REDACTED]) dated September 1, 2016 as clearly stating that the Taxpayer does not work and donates to [REDACTED]. This video discusses the Taxpayer's [REDACTED] as a volunteer activity for the [REDACTED] [REDACTED] with associated merchandise sales proceeds going to the [REDACTED], and her juggling her photography while caring for her family.

The Taxpayer's Representative also cited an interview allegedly given to a journalism student in October 6, 2016, where he states that the Taxpayer specifically said that she put her photography career on hold while she cares for her family. A copy of the article, entitled [REDACTED] [REDACTED], by [REDACTED] discusses the Taxpayer's [REDACTED] activities with the [REDACTED] and states that the Taxpayer had put her career on hold prior to the [REDACTED] and difficulties with scheduling clients. The article is not dated.

The Taxpayer's Representative also included a link to an [REDACTED] submitted by the Taxpayer to an [REDACTED] in December 2014 [REDACTED] [REDACTED] [REDACTED]. Finally, the Taxpayer's Representative linked to an article [REDACTED] [REDACTED]

requests began in December 2019 and concluded with a summons and a final letter in May 2020.

The Auditor never received any sales documents. The Taxpayer's Representative did contact the Department and acknowledge that the Taxpayer attempted to start a photography business and stated that the Taxpayer did photography work for small donations.

In the absence of actual sales records, the Auditor decided to estimate the associated sales based on prior audits of other photographers during the preceding eight (8) to nine (9) years. Exhibit 4 represents his estimation of the assessed sales proceeds by month. The sales for the months of June through August 2020 were based on an average of all of the prior months since none of the earlier taxpayers' audits included those months. His calculations resulted in total sales of [REDACTED]. A Summary of Findings and Notice of Proposed Assessment was sent to the Taxpayer. He utilized the Taxpayers home address (which is outside city limits) for the sourcing of her services. A failure to file penalty and interest was assessed as required by Arkansas law. The Taxpayer protest claiming that no paying photography services were performed. As an estimated assessment, he argued that the Taxpayer bore the burden of rebutting it.

Reviewing Exhibit 8, the Auditor explained that document was a collection of printouts from an updated website for the Taxpayer. He discussed the various portraits provided therein, which he deemed to qualify as taxable photography. The Auditor described the various gallery exhibitions and awards that the website listed for the Taxpayer from 2014 to 2021. All but one exhibition appeared to be

██████████. He never contacted any of the galleries to see if the Taxpayer's works were sold. He does not know whether any photographed person was other than a family or friend or paid the Taxpayer for her photographs. He also does not know if the photos of chairs or towels represented paid work. He is unable to contact third parties regarding his assessment unless the Taxpayer provides written authorization to allow those conversations. If he was confident that a taxpayer had no sales, then no assessment would be issued. Even if a taxpayer has no sales proceeds, he declared that they should still register and file zero-dollar (\$0) returns. The Auditor conceded that sales of photos outside of Arkansas would not be subject to sales tax within Arkansas.

The Auditor concluded that the Taxpayer provided photography sales based on her website. He conceded that simply advertising yourself as a photographer for hire is not enough to assess a taxpayer, but it is indicative that taxable sales may occur. The Auditor did not deem the Taxpayer's Representatives' assertion that no taxable sales to be credible based on the record. He told the Taxpayer's Representative that the website and pricing was significant evidence that taxable sales were occurring. Additionally, the Taxpayer's Representative stated that the Taxpayer was working and receiving donations, which would be taxable sales proceeds. If the Taxpayer was only donating her time for photography, no taxable proceeds would be received. If the Taxpayer was allowed to keep and use her photos, he believed that a barter transaction might have occurred.

B. Audit Supervisor's Testimony

The Audit Supervisor testified that he supervised the relevant audit. In his view, all documents indicate that the Taxpayer performs photography services. He ensures that all of his auditors have a legitimate basis for contacting any taxpayer. The Auditor has audited between eighty (80) and ninety (90) photography businesses and only assessed about fifty (50) or sixty (60) of them. Many photographers are able to establish a lack of sales. The Taxpayer's websites, however, are the most elaborate websites that they have ever seen. If the Taxpayer is paid for photography in Arkansas, he asserted that it would also represent taxable income. He agreed that the Taxpayer would have needed to provide written consent for the Auditor to contact any third parties due to the confidentiality requirements. He acknowledged that the summons for records discussed auto service but stated that he did not review that document prior to its issuance by the Auditor.

C. Director's Testimony

The Director testified that she is the [REDACTED]. The Taxpayer originally approached her organization and volunteered to help in 2016. Eventually, the Taxpayer suggested that they [REDACTED] to taking their photos for posting. They had a lot of fun [REDACTED] during 2016 through 2018, and the organization eventually [REDACTED]. She eventually became friends with the Taxpayer and can confirm that the Taxpayer has never been paid by her organization or anyone else for her photography. The Taxpayer has [REDACTED]. She noted that the Taxpayer's [REDACTED]. Both individuals require

the Taxpayer's constant care. Any free time (not donated to others) is spent with her family. The Taxpayer has helped her organization photograph at [REDACTED]. She is not familiar with the Taxpayer's updated website.

D. Taxpayer's Testimony

The Taxpayer testified that she has been unemployed due to the significant care required for [REDACTED]. Both individuals require her to change [REDACTED]. None of her artwork is commissioned by anyone. She believes that she has gained new insights into [REDACTED] and is trying to get a gallery to show her related artwork. In order to convince a gallery to display her works, she was informed that her website had to be updated. Most galleries are out of state. No one has purchased any of her photography services or artwork.¹⁴ [REDACTED]. She was never paid for her assistance.

The Taxpayer created the photography [REDACTED]. No sales have ever occurred and most of the photos were taken in [REDACTED]. At that time, her [REDACTED] were better than today, and she was optimistic that a photography business may be possible. Shortly after some initial inquiry into starting a business and building the website, [REDACTED]. After that incident, her [REDACTED], and the Taxpayer gave up on her business plans and forgot about the website until the audit. [REDACTED] have made it impossible for her to be employed. She is basically homebound and unable to take them anywhere.

¹⁴ The Auditor noted that the Taxpayer reported being in a photography business upon her 2019 and 2020 federal income tax returns but reported no income until after the audit period. After the audit period, the reported income was [REDACTED].

Any submissions for galleries or contests are performed online from her home. Now, she is only able to donate her time to photograph family and friends. She does not work for donations but photographs as a donation to others.¹⁵ She was able to travel to [REDACTED] one time during the audit period while [REDACTED] took care of things at home. Upon returning, [REDACTED] and she realized that she could not do that again.

Reviewing the photos on her website, she explained that the photos are only of her [REDACTED]. Several of the portraits involve an [REDACTED], and her family could not afford proper portraits to remember her. The [REDACTED] came together to donate clothing and makeup for that photo shoot. The Taxpayer then donated her photography skills to her friend. Many of the photos involved reenacting scenes from her mother's past to help her mother process certain childhood memories. Those photos depicted children of friends using borrowed property or [REDACTED]

The Taxpayer was not aware that she needed to register and file zero dollar returns (\$0) if she was never paid for any of her photography. The Taxpayer later amended the website to remove any pricing after the Taxpayer's Representative stated that the Auditor found the pricing to be concerning.

E. Department's Representative's Assertions

The Department's Representative asserted that the Taxpayer advertised herself as being a paid photographer. In the absence of records, that assessment was estimated. As a result of the estimation, he declared that the Taxpayer's self-serving statements are insufficient to rebut the assessment.

¹⁵ The Taxpayer's Representative later conceded that he misunderstood his client and thought that she photographed for donations.

F. Taxpayer's Representative's Assertions

The Taxpayer's Representative averred that the record is bereft of evidence of any sales of photos or photography services within Arkansas. The Taxpayer only donated her time, receiving no income. He noted that the Taxpayer has maintained a consistent position throughout the process. If the Taxpayer ever earned income from her activities, he stated that income will be reported to the State of Arkansas. He doubted that a taxpayer who provides services for no money are required to file a sales tax return. He characterized the Department's case as being solely based on a good website template.

After a general discussion of the burdens of proof in tax proceedings and a discussion of the applicable law, the parties' argument shall be addressed with a legal analysis and associated conclusions.

CONCLUSIONS OF FACT AND 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

All sales of tangible personal property within the State of Arkansas are generally taxable. Ark. Code Ann. § 26-52-301(1) (Repl. 2020). Further, sales of photography services of all kinds are likewise taxable. Ark. Code Ann. § 26-52-301(4) (Repl. 2020). Consequently, any sale of photography services by the Taxpayer would generally be taxable unless an applicable credit, deduction, or exemption is proven by the Taxpayer. The Taxpayer is generally liable for the collection and remittance of sales tax upon its sales of tangible personal property and taxable services. Ark. Code Ann. § 26-52-508 (Repl. 2020).

Further, it is the duty of every taxpayer to make a return of any tax due under any state tax law and to preserve suitable records to determine the amount due. Ark. Code Ann. § 26-18-506(a) (Repl. 2020). A taxpayer's records may be examined by the Department at any reasonable time, and, when a taxpayer fails to maintain adequate records, the Department may make an estimated assessment based on the information that is available. Ark. Code Ann. § 26-18-506(b) and (d) (Repl. 2020). The burden is on a taxpayer to refute an estimated assessment and self-serving testimony, standing alone, is insufficient to refute an estimated assessment. Ark. Code Ann. § 26-18-506(d) (Repl. 2020); *cf. Leathers v. A. & B. Dirt Mover, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992). Specifically, the Arkansas Supreme Court stated as follows when analyzing an estimated assessment:

Absent adequate additional documentation or testimony from the parties involved, the gross receipts tax should have been levied against the taxpayer on these transactions. The taxpayer has the burden of refuting the reasonableness of the estimated tax assessments. *Jones v. Ragland*, 293 Ark. 320, 737 S.W.2d 641 (1987). At the trial, A & B supported its documentation with testimony from Martin Presley, a customer of A & B, as well as from A & B's owner, Mr. Nabholz. Mr. Presley testified that he often used A & B to haul materials that he had previously acquired. Transactions between A & B and Mr. Presley were included on exhibit six. Since exhibit six is one of the two exhibits the Commissioner of Revenues conceded during this appeal was not subject to tax, Mr. Presley's testimony is not relevant to the transactions at issue in this appeal.

...

In short, we find Mr. Nabholz's testimony insufficient, standing alone, to meet the taxpayer's statutory burden in refuting the reasonableness of the assessment. To hold otherwise would be to permit a taxpayer to maintain scant records and after an unsatisfactory tax audit, avoid taxation by merely verbalizing his transactions unsupported by appropriate documentation made at the time of the transactions or by testimony from other parties to the transactions.

Id. at 329-30, 844 S.W.2d at 319.

Even if the Taxpayer's failure to register and non-provision of requested "sales information" (which the Taxpayer claimed did and could not exist) warranted the issuance of an estimated assessment, the record still supports a finding that the Taxpayer rebutted the estimated assessment by a preponderance of the evidence.

Here, the Taxpayer provided persuasive and emotional testimony during the administrative hearing. The Department, however, has correctly noted that, when an estimated assessment is issued, the assessment may not be rebutted by the Taxpayer's testimony, standing alone. The Taxpayer also provided [REDACTED] [REDACTED] that were published during the audit period and before initiation of the audit. [REDACTED] supported the Taxpayer's statement that she largely unable to perform photography services as a business due to [REDACTED]. [REDACTED] [REDACTED] discussed the significant health issues of [REDACTED]. Finally, [REDACTED] discussed the Taxpayer's donation of her photography services. Additionally, the Taxpayer provided testimony from the Director that also confirmed the [REDACTED] [REDACTED] the Taxpayer's inability to work, and the Taxpayer's donation of her photography services to [REDACTED]. Finally, the Auditor's testimony confirmed that no income was reported by the Taxpayer from photography activities during the audit period.

While the Department referenced various [REDACTED] discussed within the Taxpayer's website, the Taxpayer was able to convincingly explain the personal origin of each photo and the charitable intent beyond them. While the Taxpayer may have received [REDACTED], the Taxpayer and her representative convincingly noted that such activities do not necessarily imply income or sales. Though the Taxpayer does have a sophisticated website to display her artwork and listed prices for photography services upon a website during a brief moment when she hoped a for-profit photography could be performed, that evidence in favor of the assessment are more than overcome by the totality of the presented evidence.

Based on these findings and the information presented, the estimated assessment of tax has been rebutted and the tax assessment is not sustained.

Since the assessment of tax is not sustained, the amounts assessed for interest under Ark. Code Ann. § 26-18-508 (Repl. 2020) and the failure to file penalty under Ark. Code Ann. § 26-18-208(1) (Repl. 2020) are likewise overturned.

DECISION AND ORDER

The assessment (including penalty and interest) is not 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.¹⁶

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: March 18, 2021

¹⁶ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.