

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

**IN THE MATTER OF** [REDACTED]

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

**INDIVIDUAL INCOME TAX  
ASSESSMENT**

**AUDIT NO.:** [REDACTED]

**AUDIT PERIOD: DEC. 2014  
THROUGH DEC. 2019**

**LETTER ID.:** [REDACTED]

**DOCKET NOS.:** 20-280 (2014)  
20-281 (2015)  
20-282 (2016)  
20-283 (2017)  
20-284 (2018)  
20-285 (2019)

[REDACTED] 1  
[REDACTED] 2  
[REDACTED] 3  
[REDACTED] 4  
[REDACTED] 5  
[REDACTED] 6

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**TODD EVANS, ADMINISTRATIVE LAW JUDGE  
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated November 28, 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 Parker Cope, Attorney at Law, Office of Revenue Legal Counsel ("Department's Representative").

At the request of the Taxpayer, this matter was accepted under consideration of written documents. A briefing schedule was established for the parties by letter dated February 26, 2021. The Department's Representative filed

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<sup>1</sup> This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).  
<sup>2</sup> This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).  
<sup>3</sup> This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).  
<sup>4</sup> This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).  
<sup>5</sup> This amount represents [REDACTED] (tax), [REDACTED] (failure to file penalty), and [REDACTED] (interest).  
<sup>6</sup> This amount represents [REDACTED] (tax) and [REDACTED] (interest).

his Opening Brief on March 29, 2021. The Taxpayer did not file a Response Brief but his protest was received into evidence. The record was closed and the matter was submitted for a decision on May 17, 2021.

## **ISSUE**

Whether the assessment issued against the Taxpayer should be sustained?

Yes.

## **FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES**

### **Opening Brief**

Within his Opening Brief, the Department's Representative provided a rendition of facts, stating the following<sup>7</sup>:

[REDACTED] (the "Taxpayer") owns and operates [REDACTED], a not-for-profit organization in [REDACTED] that provides [REDACTED]. On May 18, 2020, Elizabeth Issac (the "Auditor")<sup>8</sup> sent a Summons for Records letter to the Taxpayer requesting bank statements for tax years 2016-2018. **Exhibit A.** Reviewing bank statements that the Taxpayer provided, the Auditor found regular deposits that the Taxpayer failed to report as taxable income. **Exhibit B.** The Taxpayer advised the Auditor that the deposits were meant for his non-profit organization, but the Auditor found no evidence that the deposits were ever transferred to the non-profit's bank account.

After a thorough review of information that the Taxpayer provided during the audit, the Auditor found the following unreported income for tax years 2014-2019:<sup>9</sup>

<b>Tax Year</b>	<b>Unreported Income<sup>10</sup></b>
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<sup>7</sup> Except as noted, all exhibits support the statements for which they are cited.

<sup>8</sup> The Auditor's name was Elizabeth Isaac.

<sup>9</sup> The Department's Representative further noted that the Taxpayer failed to file income tax returns and the audit included tax years 2014 and 2015 due to the underreporting of income by twenty-five percent (25%).

<sup>10</sup> The Department's Representative stated that the Taxpayer did not provide bank statements for tax years 2014 and 2015, so the Auditor calculated an average deposit using the other tax years and applied that average to tax years 2014 and 2015.

2014  
2015  
2016  
2017  
2018  
2019

[REDACTED]

**Exhibit C.**

On September 1, 2020<sup>11</sup>, the Auditor issued a Summary of Findings letter to the Taxpayer indicating that the Department intended to assess income tax based on the Taxpayer's unreported income. **Exhibit D.** The Auditor made the following adjustments to the Taxpayer's income tax liability:

Year	Tax	Penalty	Interest	Payment	Balance
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Exhibit D.**

In accordance with the Auditor's findings, the Department issued a Notice of Proposed Assessment on September 29, 2020 assessing the Taxpayer [REDACTED] in tax, [REDACTED] in interest, and [REDACTED] in penalties, for a total assessment of [REDACTED]. This letter included a Basis for Adjustment explaining that the Auditor adjusted the Taxpayer's income tax liability based on unreported taxable income for each year in the audit period. **Exhibit E.**

The Taxpayer filed a timely protest on November 28, 2020 stating: "Assessed income is not income." **Exhibit F.** The Taxpayer did not include any further explanation or documentation with his protest to indicate that his unreported income should not be considered income for the purpose of state income tax or that his unreported income is exempt from state income tax.

Within his opening brief, the Department's Representative asserted that the Taxpayer earned income from operation of [REDACTED] that was not reported to the Department. That income is generally taxable. While the Taxpayer has alleged that the assessed deposits were for his nonprofit, the

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<sup>11</sup> The actual date of the issuance of the Summary of Findings was September 18, 2020.

Department's Representative declared that statement has not been proven. He additionally stated that the Taxpayer failed to maintain adequate records or establish entitlement to any exemptions. He asserted that assessment of interest was appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2020) and the assessment of the failure to file penalty was correct under Ark. Code Ann. § 26-18-208(1) (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) (Supp. 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 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. It is uncontested that the Taxpayer is an Arkansas resident. The tax is levied, collected, and paid annually upon the entire net income of the individual. Ark. Code Ann. § 26-51-102(16) (Repl. 2020) defines the term “taxpayer” to include any individual, fiduciary, or corporation subject to the Arkansas income tax.

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). The taxpayer’s records may be examined by the Department at any reasonable time, and, when the Taxpayer fails to

maintain or provide 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:

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 330, 844 S.W.2d at 319.

Here, the Department issued an estimated assessment against the Taxpayer due to the Taxpayer's insufficient records, nonfiling, and failure to document various bank deposits as nonincome. While the Taxpayer asserted that certain deposits were not income, no documentation has been presented to support that contention by a preponderance of the evidence. As stated above, a taxpayer must refute an estimated assessment utilizing more than self-serving statements. The Taxpayer's objection was not supported by actual documents or other evidence. Consequently, the Taxpayer's contention is not persuasive. Additionally, the inclusion of earlier tax years was appropriate under Ark. Code Ann. § 26-18-306(e) (Repl. 2020). The assessment of tax is sustained based on the record presented at this stage in the administrative process.

## **Failure to File Penalty**

Ark. Code Ann. § 26-18-208(1) (Repl. 2020) provides as follows:

In the case of a taxpayer's failure to file any return required by any state tax law on or before the date prescribed determined with regard to any extension of time for filing the return, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate . . .

Under the above analysis, the Taxpayer was required to timely file Arkansas individual income tax returns for the 2014 through 2018 tax years but failed to timely do so. It appears to be uncontested that the Taxpayer failed to file Arkansas individual income tax returns. Additionally, lack of knowledge of publicly available statutes and rules cannot be recognized as a defense to their application. 29 Am. Jur. 2d Evidence 290; see also *Edward v. US*, 334 F.2d 360 (1964) and *Jellico Coal Min. Co. v. Commonwealth*, 96 Ky. 373, 29 S.W. 26 (Ky. App. 1895). The assessment of the Failure to File Penalty for the 2014 through 2018 tax years is sustained.

## **Interest**

Interest must be assessed upon tax deficiencies for the use of the State's tax dollars. 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 in full. 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>12</sup>

OFFICE OF HEARINGS & APPEALS



TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: May 18, 2021

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