

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

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.: [REDACTED]

**INDIVIDUAL INCOME
TAX ASSESSMENT**

**TAX YEAR 2019
(\$ [REDACTED])¹**

DOCKET NO.: 21-295

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest submitted on October 23, 2020, and signed by [REDACTED], the Taxpayer. The Taxpayer protested the assessment of Individual Income Tax resulting from an audit conducted by the Individual Income Tax Section of the Department of Finance and Administration (“Department”). The Letter ID Number is [REDACTED].

This case was submitted on written documents at the request of the Taxpayer. The Department was represented by David Scott, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). The Taxpayer represented herself. A Briefing Schedule was mailed to the parties on March 1, 2021. The Department’s Opening Brief was filed on March 3, 2021. The Taxpayer’s Response Brief was filed on March 5, 2021. The matter was submitted for a decision on April 26, 2021.

¹ The reflected amount included tax (\$ [REDACTED]) and interest (\$ [REDACTED]).

ISSUE

Whether the assessment issued by the Department against the Taxpayer (resulting from the disallowance of a claimed deduction) should be sustained?

Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Department issued a proposed assessment against the Taxpayer on October 1, 2020. The Department's Opening Brief summarized the facts and issues involved in this case (including the basis for the Taxpayer's disagreement with the assessment as reflected by a portion of the Taxpayer's typewritten protest letter) and stated, in pertinent part, as follows:

██████████ ("Taxpayer") was a resident of Arkansas for the entire tax year 2019 and filed an Arkansas AR1000F Full Year Resident Long Form. Tax Auditor Ray Mahomes conducted an audit of the Taxpayer's 2019 Arkansas income tax return during tax compliance activities. The auditor reviewed Taxpayer's return and found that Taxpayer had not submitted proof of payment of claimed medical and dental expenses in the amount of ██████████ which was reflected on line 1 of Taxpayer's AR3 Itemized Deductions.

On or about March 10, 2020, the auditor sent the Taxpayer an Individual Income Tax Inquiry letter requesting that Taxpayer provide proof of payment of the claimed medical and dental expense on line 1 of the AR3 for tax year 2019. Taxpayer did not provide the requested proof of the claimed medical and dental expense.

Accordingly, the auditor disallowed the ██████████ deduction and adjusted the Taxpayer's AR3 and AR1000F, . . .

The auditor's tax adjustments are also reflected on the Explanation of Tax Adjustment [marked as Department Exhibit 6] which was issued on September 21, 2020 and mailed to Taxpayer.

The Department issued a Notice of Proposed Assessment on December 11, 2019. The Taxpayer timely filed this protest.

In her protest, Taxpayer states:

I am disputing this balance - Due to the fact that you did not explain the adjustment.

The Department sent an Explanation of Tax Adjustment to Taxpayer on September 21, 2020.

...

The Taxpayer has failed to provide proof or payment of the claimed medical and dental expenses. Based on the records available to the auditor, the auditor properly adjusted the Taxpayer's 2019 Individual Income Tax return. The Taxpayer has not met her burden to demonstrate that she was entitled to the deduction that she claimed for the 2019 tax year. Therefore, the Department respectfully requests that the Hearing Officer sustain in full the Department's assessment.

...

The law requires the Department to assess interest at the rate of ten (10%) per annum at the same time that the Secretary assesses a tax deficiency. The Department properly charged interest at the statutory rate for use of the State's tax dollars. [Footnotes omitted, P. 1 – 5].

In response to the Department's contentions, the Taxpayer's Response

Brief set forth her position and provided as follows:

I am responding to a letter mailed on February 12, 2021. I have received letters from several different persons on this matter. Here is where I stand- You all have audited my Federal Taxes for at least the last 5 years- for various reasons. You have requested information- I have provided information-your determinations have always been against me and I have had to pay or repay my return amounts on the State level.

I have inquired as to how to report [REDACTED] since it has been [REDACTED]. After being told that it could not be counted ([REDACTED] medication in the State and you GET TAXES) I have no other avenue to pursue. You challenged my medical claims and this was a major part of that amount.

Please do as you wish to handle this issue. I do recommend in the future that you do not pass laws without the follow up as to

reporting and the ability of the population to implement the practices. [P. 1].

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).

Individual Income Tax Assessment

The State of Arkansas imposes an income tax upon “the entire income of every resident, individual, trust, or estate. The tax shall be levied, collected, and paid annually upon the entire net income as defined and computed in this chapter at the following rates . . .” See Ark. Code Ann. § 26-51-201(a) (Repl. 2020). “Net income” is the adjusted gross income of a taxpayer less allowed deductions. See Ark. Code Ann. § 26-51-403(a) (Repl. 2020). Arkansas has adopted the federal code section regarding medical expense deductions (I.R.C. § 213) as in effect on January 1, 2011. Ark. Code Ann. § 26-51-423(a)(2) (Repl. 2020).

Tax deductions and credits, like tax exemptions, exist as a matter of legislative grace. See Cook, Commissioner of Revenue v. Walters Dry Good Company, 212 Ark. 485, 206 S.W.2d 742 (1947); and Kansas City Southern Ry. Co. v. Pledger, 301 Ark. 564, 785 S.W.2d 462 (1990). A taxpayer claiming a deduction or credit bears the burden of proving that it is entitled to the deduction or credit by bringing herself or himself clearly within the terms and conditions imposed by the statute that contains the deduction or credit. See Weiss v. American Honda Finance Corp., 360 Ark. 208, 200 S.W.3d 381 (2004).

Ark. Code Ann. § 26-18-506(a) (Repl. 2020) requires the Taxpayers to maintain suitable records and states:

- (a) It is the duty of every taxpayer required to make a return of any tax due under any state tax law to keep and preserve suitable

records as are necessary to determine the amount of tax due or to prove the accuracy of any return.

The Department has statutory authority to “[a]udit and properly determine and compute the state tax payable by any taxpayer subject to taxation under any state law”² and to “employ proper and reasonable audit methods.”³ The Taxpayer did not provide documentation to the Tax Auditor during the audit (and the case file does not contain any records relating to medical or dental expenses) to substantiate the claimed deduction. The burden of proving entitlement to a deduction is upon the Taxpayer and the Taxpayer failed to present sufficient evidence to establish the deduction was improperly disallowed by the Department. Consequently, the Department correctly assessed Arkansas Individual Income Tax against the Taxpayer.

Interest

Interest was properly assessed upon the tax deficiencies for the use of the State’s tax dollars. See Ark. Code Ann. § 26-18-508 (Repl. 2020). No penalty was assessed against the Taxpayer.

Public Policy

With respect to the Taxpayer’s contentions regarding policy considerations of laws, the Arkansas Supreme Court has explained that the Arkansas General Assembly is the sole arbiter of policy decisions within Arkansas and it would be inappropriate for an administrative agency or court to refuse to enforce a state law as it reads based on a policy disagreement. Snowden v. JRE Investments, Inc., 2010 Ark. 276, 370 S.W.3d 215.

² See Ark. Code Ann. § 26-18-301(a)(2) (Repl. 2020).

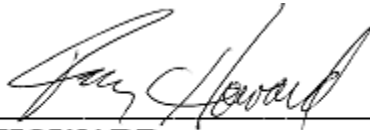
³ See Ark. Code Ann. § 26-18-305(a)(2)(A) (Repl. 2020).

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.⁴

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: April 27, 2021

⁴ See Board of Trustees of Univ. of Arkansas v. Andrews, 2018 Ark. 12.