

**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
AUDIT ID:** [REDACTED]
LETTER ID.: [REDACTED]

DOCKET NO.: 21-328 (2019)

[REDACTED]¹

**TODD EVANS, ADMINISTRATIVE LAW JUDGE
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated December 6, 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 Keith Linder, 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 March 22, 2021. The Department filed its opening brief on March 23, 2021. The Taxpayer did not file a response brief but her protest was received into evidence. On May 11, 2021, the Department’s Representative informed this Office that he did not intend to file a reply brief. The record was closed and the matter was submitted for a decision on May 11, 2021.

ISSUE

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

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

FACTUAL AND LEGAL CONTENTIONS OF THE PARTIES

Prehearing Filings

The Department's Representative provided his rendition of the relevant events within his Answers to Information Request writing as follows²:

██████████ (the "Taxpayer") filed her Arkansas income tax return claiming a deduction of ██████████ for medical and dental expenses. **Exhibit A.** The Department sent the Taxpayer a letter requesting proof of payment for the claimed deductions for medical and dental expenses. **Exhibit B.** No proof was provided.³

The Department adjusted the Taxpayer's return to disallow the unsubstantiated deductions for medical and dental expenses. **Exhibits C.**⁴ The Department allowed the standard deduction because, without the medical and dental deduction, the Taxpayer's itemized deductions were less than the standard deduction. The Department issued a Notice of Proposed Assessment for tax of ██████████, penalty of ██████████, and interest of ██████████. **Exhibit D.**

The Taxpayer protested the assessment stating:

I have filed the required information previously. It would have been nice to receive more than one request before I got a letter telling me how much I owed. The year with COVID has put a lot of things behind. As stated, medical bills from 2019 have been faxed. If I owed anything, it is not ██████████

Exhibit E.

The Department's Representative asserted that the Taxpayer bears the burden of proving entitlement to any deductions and failed to prove entitlement to the claimed deductions. He further averred that the assessment of interest was appropriate under Ark. Code Ann. § 26-18-508 (Repl. 2020) and the assessment

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

³ The Department's Representative noted that the Taxpayer has proven entitlement to a deduction of ██████████ related to medical and dental expenses after issuance of the Notice of Proposed Assessment; however, that amount is less than the standard deduction allowed by the Department.

⁴ This document indicates that the original income tax return reported adjusted gross income of ██████████.

of the negligence penalty was appropriate under Ark. Code Ann. § 26-18-208(4)(A) (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. 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. Ark. Code Ann. § 26-51-102(8) (Repl. 2020) defines the term “individual” as a natural person. 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 Taxpayer’s income tax return indicates that the Taxpayer lives within Arkansas, and the record preponderates in favor of a finding that the Taxpayer earned taxable income within the state. The Taxpayer has not contested these facts. The Department has demonstrated that the Taxpayer earned taxable

income within the State of Arkansas during the relevant tax year. That income is generally taxable unless the Taxpayers can demonstrate that a tax credit, deduction, or exemption is applicable. Consequently, the Department has borne its burden of proof in this matter.

Arkansas has adopted the federal code section discussing medical expense deductions (I.R.C. § 213) as in effect on January 1, 2011. Ark. Code Ann. § 26-51-423(a)(2) (Repl. 2020). I.R.C. § 213 provides as follows, in relevant part:

(a) Allowance of deduction.--There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 10 percent of adjusted gross income.

...

(d) Definitions.--For purposes of this section--

(1) The term “medical care” means amounts paid--

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D). [Emphasis supplied.]

Ark. Code Ann. § 26-18-313(d) (Repl. 2020) places the burden of proving entitlement to the medical expense deduction upon the Taxpayer. The record,

however, is bereft of any evidence establishing entitlement to the claimed dental and medical expense deduction.⁵ Consequently, the Taxpayer has not proven entitlement to the claimed medical expense deduction by a preponderance of the evidence (with the exception of the amount conceded by the Department), and the deduction was appropriately denied. The assessment of tax is sustained.

Negligence Penalty

Regarding the assessment of the negligence penalty, Ark. Code Ann. § 26-18-208(4) (Repl. 2020) provides as follows:

- (A) If any part of a deficiency in taxes is determined to be due to negligence or intentional disregard of rules and regulations promulgated under the authority of this subchapter or any state tax law, then the Secretary shall add a penalty of ten percent (10%) of the total amount of the deficiency in addition to any interest provided by law.
- (B) However, if any penalty is assessed under subdivisions (1)-(3) of this section, then no penalty shall be assessed under subdivision (4)(A) of this section;

Based on the above analysis, the Taxpayer claimed significant medical and dental expenses but failed to substantiate a majority of the expenses claimed upon her income tax return. Based on the presented record, the assessment of the negligence penalty was proper.

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 is sustained.

DECISION AND ORDER

⁵ While the Department agrees that the Taxpayer proved entitlement to dental and medical expenses of ██████, those records are not present within the record. That amount, however, would not exceed ten percent (10%) of the Taxpayer's reported adjusted gross income of ██████.

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.⁶

OFFICE OF HEARINGS & APPEALS



TODD EVANS
ADMINISTRATIVE LAW JUDGE

DATED: May 12, 2021

⁶ See *Board of Trustees of Univ. of Arkansas v. Andrews*, 2018 Ark. 12.