BEFORE THE STATE BOARD OF TAX APPEALS STATE OF ARIZONA 100 North 15th Avenue - Suite 140 Phoenix, Arizona 85007 602.364.1102

JAMES E. and KATHLEEN A. BACHE,

Docket No. 1888-03-I

Appellant,

NOTICE OF DECISION: FINDINGS OF FACT AND

VS.

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ARIZONA DEPARTMENT OF REVENUE,

CONCLUSIONS OF LAW

Appellee.

Appelle

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

James E. and Kathleen A. Bache ("Appellants") elected to report their minor daughter's income in the amount of \$4,180 on their 1998 federal income tax return as permitted on form 8814 so that she would not have to file a federal return. Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") determined that Appellants erroneously subtracted this income from their Arizona individual income tax return. The Department disallowed the subtraction and issued an assessment against Appellants for additional income tax and interest. After unsuccessfully protesting the assessment to the Department, Appellants now timely appeal to this Board.

¹Appellants also erroneously subtracted income attributable to interest on certain U.S obligations on their Arizona individual income tax returns. They do not appeal the disallowance of this subtraction.

DISCUSSION

The issue before the Board is whether the Department's assessment against Appellants is valid. The presumption is that an assessment of additional income tax is correct, and Appellant bears the burden of overcoming that presumption. See Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948).

The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.

Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona

Revised Statues and has granted the Department the powers and duties to enforce them. A.R.S. § 42
1004.

Pursuant to this authority, the legislature enacted A.R.S. § 43-102(A) providing that it is the intent of the legislature by the adoption of Title 43 to accomplish the following objectives:

- (1) To adopt the provisions of the federal internal revenue code relating to the measurement of adjusted gross income for individuals, to the end that adjusted gross income reported each taxable year by an individual to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in this title.
- (4) To impose on each resident of this state a tax measured by taxable income wherever derived.²

Under the statute, the adjusted gross income reported to the IRS shall be the identical sum reported to Arizona subject to certain specifically enumerated additions, subtractions, exemptions and deductions under Arizona law. A.R.S. §§ 1021, 1022 and 1023. Absent statutory authority, the right to a deduction does not exist. Arizona Dep't of Rev. v. Transamerica Title Insurance Company, 124 Ariz. 417, 604 P.2d 1128 (1979).

Although Appellants argue that they are only required to report their own income, citing several definitional provisions in A.R.S. § 43-1001referring to "individual" or "individual's," there simply is no provision allowing Appellants to subtract their daughter's income from the adjusted gross income reported

² The United States Supreme Court has found that a state has the authority to tax all the income of its residents. See Oklahoma Tax Comm'n v. Chickasaw Nation, 115 S.Ct. 2214.

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to Arizona. Perhaps there should be, as argued by the Appellants, but the provision of such a deduction is within the province of the Arizona Legislature and beyond the authority of this Board. Therefore, the Department's assessment is valid and Appellants are liable for the tax at issue. Further, because the interest imposed represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

CONCLUSIONS OF LAW

- 1. The assessment is valid, and Appellants are liable for the tax assessed. See Arizona State

 Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. § 43-102(A)
- The interest imposed represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the Department is affirmed.

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 10th day of June , 2003.

STATE BOARD OF TAX APPEALS

William L. Raby, Chairperson

WLR:ALW

CERTIFIED

Copies of the foregoing Mailed or delivered to:

James E. and Kathleen A. Bache 1320 E. Greentree Drive Tempe, Arizona 85284 Notice of Decision Docket No. 1888-03-I

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