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

J. ERNEST FRESQUES,) Docket No. 1875-02-I
Appellant,)
vs.)) NOTICE OF DECISION:) FINDINGS OF FACT AND) CONCLUSIONS OF LAW
ARIZONA DEPARTMENT OF REVENUE,	
Appellee.)
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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

Through an exchange of information agreement with the Internal Revenue Service, the Arizonal Department of Revenue (the "Department") learned that J. Ernest Fresques ("Appellant") did not file federal income tax returns for tax years 1994 and 1995. After reviewing its records, the Department determined that Appellant had not filed 1994 and 1995 Arizona income tax returns either.

Based on the federal information, the Department assessed Appellant income tax, interest and penalties for failure to file when due. Appellant timely protested the assessments. Subsequently, the Department modified the assessments to allow a deduction for mortgage interest for each year. Appellant protested the modified assessments to a Department hearing officer who upheld the assessments. Appellant then protested to the Director of the Department who affirmed the hearing officer's decision. Appellant now timely appeals to this Board.

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DISCUSSION

The issue before the Board is whether Appellant is liable for the tax assessed. The presumption is that an assessment of additional income tax is correct. See Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948).

A.R.S. § 43-102(A)(4) states that "[i]t is the intent of the legislature . . . [t]o impose on each resident of this state a tax measured by taxable income wherever derived." A.R.S. § 43-104(19)(a) provides that "resident" includes every individual who is in Arizona for other than a temporary or transitory purpose.

Appellant has not disputed the fact that he was an Arizona resident for 1994 and 1995.

Nevertheless, he argues that he is not liable for the tax assessed because the compensation he received for his services is not taxable income.

The United States Supreme Court has declared that income derived from capital, from labor, or from both combined, including profit from the sale or conversion of capital, is taxable income. See Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926). "[W]ages for personal services are income under the Internal Revenue Code" United States v. Lawson, 670 F.2d 923, 935 (10th Cir. 1082). Arizona has adopted the provisions of the Internal Revenue Code relating to the measurement of adjusted gross income for individuals. A.R.S. § 43-102(A)(1). Accordingly, Appellant's compensation for services is taxable and he is liable for the tax assessed.

Further, Appellant has not shown that his failure to timely file income tax returns for the years at issue was attributable to reasonable cause; therefore, the penalties imposed may not be abated. A.R.S. § 42-1125(A). Finally, the interest at issue is made a part of the tax by statute and represents a reasonable interest rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

CONCLUSIONS OF LAW

Appellant is liable for the income tax assessed. See Bowers v. Kerbaugh-Empire Co., 271
 U.S. 170 (1926); United States v. Lawson, 670 F.2d 923, 935 (10th Cir. 1082).

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- 2. The penalties may not be abated because Appellant has not shown that his failure to timely file income tax returns for the years at issue was attributable to reasonable cause. A.R.S. § 42-1125(A).
- 3. The interest may not be abated because it is made a part of the tax by statute and represents a reasonable interest rate on the tax due. A.R.S. § 42-1123; *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 29th day of October , 2002.

STATE BOARD OF TAX APPEALS

Jánice C. Washington, Chairperson

JCW:ALW

CERTIFIED

Copies of the foregoing Mailed or delivered to:

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