



1           The Arizona Constitution authorizes the legislature to levy and collect taxes. Ariz. Const. art. IX,  
2 § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona Revised Statutes  
3 ("A.R.S."). The Department, its Director and employees have the authority to administer and enforce  
4 Title 42 and 43 and have all the powers and duties prescribed by law for such purposes. A.R.S. § 42-  
5 104. A.R.S. § 43-1011 provides that "[t]here shall be levied, collected and paid for each taxable year  
6 upon the entire taxable income of every resident of this state taxes."

7           An additional assessment of income is generally presumed correct. See *State Tax Comm'n v.*  
8 *Kieckhefer*, 67 Ariz. 102, 105, 191 P.2d 729 (1948). Appellant asserts that he did not receive the alleged  
9 income for the tax years at issue and, therefore, the presumption of correctness does not apply and the  
10 Department bears the burden of proof. Appellant acknowledges that there are no Arizona cases  
11 addressing this issue but relies on federal case law involving the Internal Revenue Service ("I.R.S.").  
12 See, e.g., *Portillo v. Commissioner*, 932 F.2d 1128 (5th Cir., 1991).

13           The taxpayer in *Portillo* used 1099s from various companies to calculate his gross receipts  
14 amounts for income tax purposes. He did not receive a 1099 from one company. When determining his  
15 gross receipts from this company, the taxpayer used only his business ledger, which was subsequently  
16 stolen. The company ultimately filed a Form 1099 reporting payments to the taxpayer significantly in  
17 excess of the amount the taxpayer had reported receiving. The Commissioner of the I.R.S. took the  
18 position that the company's 1099 was correct and made the determination that the taxpayer was liable  
19 for tax.

20           The Court found that the determination was arbitrary because the Commissioner offered no  
21 factual basis for accepting one sworn statement, a Form 1099, while rejecting another sworn statement,  
22 the taxpayer's Form 1040. The Court held that the Commissioner could not rely solely on the naked  
23 assertion that the taxpayer received a certain amount of unreported income. *Id* at 1134.<sup>1</sup> Accordingly,  
24 the Commissioner would not be afforded the presumption of correctness until he provided the court with  
25 some indicia that the taxpayer received the unreported income.

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27 <sup>1</sup> "As the Supreme Court has held, the presumption of correctness does not apply when the government's  
28 assessment falls within a narrow but important category of a 'naked' assessment without any foundation  
whatsoever . . . ." *United States v. Janis*, 428 U.S. at 442, 96 S. Ct. at 3026; see also, *Weimerskirch v.*  
*Commissioner*, 596 F.2d 358, 360 (9th Cir. 1979).

1 Appellant argues that the evidence the Department relies on in this case, namely W-2s and  
2 1099s for the applicable years, are not admissible because these "naked forms" cannot be used as  
3 independent proof of receipt of income when properly objected to by Appellant. Appellant contends that  
4 if the Commissioner of the I.R.S. or his duly authorized delegates could not use "naked forms" without  
5 adequate verification in the *Portillo* case, then the Department cannot use such forms.

6 In *Portillo*, the Commissioner arbitrarily accepted a Form 1099 over a conflicting Form 1040.  
7 Here, the Department relies on both W-2s and 1099s that bear out the fact that Appellant received  
8 income in 1993, 1994 and 1995. Even the State income tax forms subsequently filed by Appellant on  
9 which he claimed Arizona withholding tax and tax refunds further authenticate the information relied on  
10 by the Department.

11 For the foregoing reasons, the Board presumes that the information relied on by the Department  
12 is correct and concludes that the Department properly determined Appellant's tax liability. Therefore,  
13 Appellant is liable for the tax assessed.

14 The interest at issue may not be abated because it represents a reasonable interest rate on the  
15 tax due and owing and is made part of the tax by statute. See A.R.S. § 42-1123; see also *Biles v.*  
16 *Robey*, 43 Ariz. 276, 30 P.2d 841 (1934). The penalties at issue may not be abated because Appellant  
17 has not shown that his failure to timely file the returns at issue was due to reasonable cause and not  
18 wilful neglect. A.R.S. § 42-1125(A) and (F).

19 CONCLUSIONS OF LAW

20 1. Appellant is liable for the tax assessed. A.R.S. § 43-1011: see *Portillo v. Commissioner*, 932  
21 F.2d 1128 (5th Cir., 1991).

22 2. The interest at issue may not be abated because it represents a reasonable interest rate on  
23 taxes due and owing and is made part of the tax by statute. See A.R.S. § 42-1123; see also *Biles v.*  
24 *Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

25 3. The penalties at issue may not be abated because Appellant has not shown that his failure to  
26 timely file the returns at issue was due to reasonable cause and not wilful neglect. A.R.S. § 42-1125(A)  
27 and (F).

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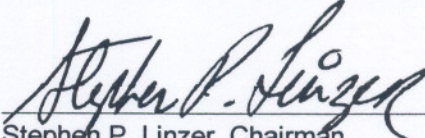
ORDER

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 19th day of September, 2000.

STATE BOARD OF TAX APPEALS

  
Stephen P. Linzer, Chairman

SPL:ALW  
CERTIFIED

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