

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
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4 DAVID LERNER,)
5 Appellant,) Docket No. 1879-02-1
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
10) CORRECTED
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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 ("IRS"), the Arizona Department of Revenue (the "Department") learned that David Lerner ("Appellant") had earned wages in Arizona in tax years 1996, 1997 and 1998 but had failed to file State income tax returns for these years.¹

Subsequently, the Department assessed Appellant Arizona income tax, interest and penalties for failure to timely file a return and negligence. After unsuccessfully protesting the assessment to the Department, Appellant now timely appeals to this Board.

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).

¹ The Department previously assessed Appellant income tax for tax years 1994 and 1995.

1 A.R.S. § 42-1004.A provides that "[i]t is the intent of the legislature . . . [t]o impose on each
2 resident of this state a tax measured by taxable income wherever derived."² The Department assessed
3 Appellant income tax based on information provided by the IRS that demonstrated that Appellant received
4 wage income in Arizona for the years at issue. The Department used the federal adjusted gross income
5 provided by the IRS as the starting point in the calculation of the tax liability, allowed Appellant a personal
6 exemption and standard deduction and classified Appellant as a resident with a single filing status.

7 At the hearing before the Board, Appellant declined to participate.³ Appellant has submitted no
8 evidence indicating that the Department's assessment is in error; therefore, he is liable for the tax
9 assessed. Further, Appellant has not shown that his failure to timely file income tax returns was due to
10 reasonable cause and not willful neglect; therefore, the penalties imposed may not be abated. A.R.S.
11 § 42-1125.A and F. Finally, the interest assessed may not be abated because it is made a part of the tax
12 by statute and represents a reasonable interest rate on the tax due. A.R.S. § 42-1123; *Biles v. Robey*, 43
13 Ariz. 276, 286, 30 P.2d 841 (1934).

14 CONCLUSIONS OF LAW

15 1. Appellant is liable for the tax assessed. See *Arizona State Tax Commission v. Kieckhefer*, 67
16 Ariz. 102, 191 P.2d 729 (1948).

17 2. Because Appellant has not shown that his failure to timely file income tax returns was due to
18 reasonable cause and not willful neglect, the penalties imposed may not be abated. A.R.S. § 42-1125.A
19 and F.

20 3. The interest assessed may not be abated because it is made a part of the tax by statute and
21 represents a reasonable interest rate on the tax due. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276,
22 286, 30 P.2d 841 (1934).

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24 ² Appellant does not dispute the fact that he is an Arizona resident.

25 ³ After being informed that Appellant's representative did not qualify to appear before the Board, Appellant declined to
participate in the proceedings and left the hearing room. See A.R.S. § 42-1253(D).

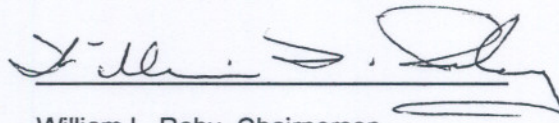
ORDER

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 18th day of February, 2003.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairperson

WLR:alw

CERTIFIED

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