BEFORE THE STATE BOARD OF TAX APPEALS STATE OF ARIZONA 101 North First Avenue - Suite 2340 Phoenix, Arizona 85003 602.528.3966

FLORENTINO MADRID,) Docket No. 1860-01-I
Appellant,)
vs. ARIZONA DEPARTMENT OF REVENUE,)) NOTICE OF DECISION:) FINDINGS OF FACT AND) CONCLUSIONS OF LAW
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

Pursuant to an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") learned that Florentino Madrid ("Appellant") did not file an Arizona income tax return for tax year 1992. Thereafter, the Department issued a deficiency assessment of tax, a failure to file penalty, and interest for 1992. The assessment was subsequently modified. Appellant protested the modified assessment to the Department's Hearing Officer who upheld the assessment. Appellant then protested to the Director of the Department who affirmed the Hearing Officer's decision. Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is liable for the tax, penalty and interest assessed for 1992. The assessment is presumed correct and Appellant bears the burden of overcoming this presumption. State Tax Comm'n v. Kieckhefer, 67 Ariz. 102, 105, 191 P.2d 729, 732 (1948).

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

Ariz. Const. art. IX, § 12.1 Pursuant to this authority, the legislature has enacted Titles 42 and 43 of the

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¹ The U.S. Supreme Court has recently reaffirmed the principle that a state has the authority to tax the income of its residents. See Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450, 463 (1995).

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Arizona Revised Statutes and has granted the Department the authority to administer and enforce these laws. A.R.S. § 42-104.

Title 43 provides that "[t]here shall be levied, collected and paid for each taxable year upon the entire taxable income of every resident of this state . . . taxes." A.R.S. § 43-1011. A "resident" of Arizonal is an "individual who is in this state for other than a temporary or transitory purpose." A.R.S. § 43-104(19)(a). An "individual" is a "natural person." A.R.S. § 43-104(12).

Appellant argues that he is not an Arizona resident subject to the jurisdiction of the State. However, he admits that he resides in Arizona. He has produced no evidence indicating he was in Arizona for a temporary or transitory purpose in tax year 1992. Therefore, the Board finds that he was a resident of Arizona and liable for the tax at issue.

Further, Appellant has not proven that his failure to file an Arizona return was due to reasonable cause; therefore, the penalty may not be abated. A.R.S. § 42-1125. The interest imposed may not be abated because it represents a reasonable rate on the tax due and owing and is made part of that tax by statute. See A.R.S. § 42-1123; see also Biles v. Robey, 43 Ariz. 276, 30 P.2d 841 (1934).

CONCLUSIONS OF LAW

- 1. Appellant is liable for the tax at issue. See A.R.S. § 43-1011; 104(19)(a) and (12). State Tax Comm'n v. Kieckhefer, 67 Ariz. 102, 105, 191 P.2d 729, 732 (1948).
- 2. Appellant has not proven that his failure to file an Arizona return was due to reasonable cause; therefore, the penalty may not be abated. A.R.S. § 42-1125.
- 3. Because the interest at issue is made a part of the tax by statute and represents a reasonable interest rate on the tax due, it may not be abated. 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.

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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 11th day of February , 2002.

STATE BOARD OF TAX APPEALS

Janice C. Washington, Chairperson

JCW:ALW

CERTIFIED

Copies of the foregoing mailed or delivered to:

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