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BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
Bank of America Tower  
101 North First Avenue - Suite 2340  
Phoenix, Arizona 85003  
(602) 528-3966

5 VIRGIL R. and NINA C. MADSEN, )  
6 Appellants, ) Docket No. 1831-00-F  
7 vs. )  
8 ARIZONA DEPARTMENT OF REVENUE, ) NOTICE OF DECISION:  
9 Appellee. ) FINDINGS OF FACT AND  
 ) CONCLUSIONS OF LAW

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

12 FINDINGS OF FACT

13 Virgil R. and Nina C. Madsen ("Appellants") filed Arizona resident income tax returns from 1987  
14 through 1992 and from 1994 through 1996.<sup>1</sup> For tax year 1993, Appellants filed a part-year Arizona  
15 income tax return listing a Texas address. The Arizona Department of Revenue (the "Department")  
16 concluded that Appellants were full-year Arizona residents for tax year 1993 and assessed them  
17 additional income tax, including a late payment penalty and interest. After unsuccessfully protesting the  
18 assessment to the Department, Appellants appealed to this Board. The Board determined that  
19 Appellants were not full-year Arizona residents in 1993 and, on February 22, 2000, issued its decision  
20 granting Appellants' appeal.

21 Thereafter, pursuant to A.R.S. § 42-2064, Appellants submitted a timely application for  
22 reimbursement of attorneys' fees and costs expended during the appeal process to the Department's  
23 Problem Resolution Officer. The Problem Resolution Officer denied the reimbursement request,  
24 claiming that the Department was substantially justified in assessing Appellants as full-year Arizona

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28 <sup>1</sup> Appellants maintain that their tax preparer erroneously filed Arizona resident returns for tax years 1994 through 1996 and they have filed amended returns for these years.

1 residents in 1993. Pursuant to A.R.S. § 42-2064(C), the decision of the Problem Resolution Officer  
2 constitutes the final order of the Department.

3 DISCUSSION

4 The issue before the Board is whether Appellants are entitled to the reimbursement requested.  
5 Appellants bear the burden as to all issues of fact. See A.A.C. R16-3-118.

6 A.R.S. § 42-2064(A) allows for the reimbursement of a taxpayer who is a prevailing party for  
7 amounts expended for reasonable fees and costs related to administrative proceedings if the  
8 Department's position was not substantially justified and if the taxpayer prevails as to the most significant  
9 issue or issues. Proceedings before the Department and the Board are administrative proceedings for  
10 purposes for which reimbursement is allowed. See A.R.S. § 42-2064(H)(1).

11 "Substantially justified" is not defined for purposes of A.R.S. § 42-2064, but the Board has  
12 previously determined that a position is substantially justified if "there is a reasonable basis both in law  
13 and in fact." *Portillo v. Commissioner*, 988 F.2d 27, 28 (5th Cir. 1993) (interpreting the federal standard  
14 for the recovery of administrative and litigation costs from the Internal Revenue Service under  
15 § 7430(c)(4)(B) of the Internal Revenue Code). This necessarily requires a case-by-case analysis of the  
16 facts and circumstances.

17 Under Arizona law, a "resident" is defined, in part, as "[e]very individual who is domiciled in this  
18 state and who is outside the state for a temporary or transitory purpose. Any individual who is a resident  
19 of this state continues to be a resident even though temporarily absent from the state." A.R.S. § 43-  
20 104(19)(b).

21 In this instance, the Department based its assessment on several factors, including Appellants'  
22 filing history before and after 1993, the fact that they owned a home in Arizona and the fact that they  
23 maintained Arizona drivers' licenses. Although the Board ultimately determined that Appellants were not  
24 Arizona full-year residents in 1993, it finds that the Department's position did have a reasonable basis in  
25 law and fact.

26 CONCLUSIONS OF LAW

27 The Department's conclusion that Appellants were full-year Arizona residents for tax year 1993  
28 had a reasonable basis in law and fact. See A.R.S. § 42-2064; see also A.A.C. R16-3-118.

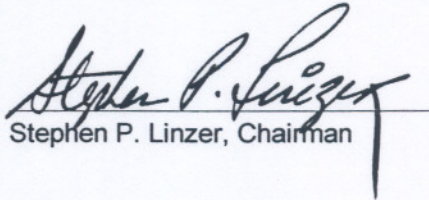
ORDER

THEREFORE, IT IS HEREBY ORDERED that Appellants' request for reimbursement of fees and costs is denied.

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 24th day of October, 2000.

STATE BOARD OF TAX APPEALS

  
Stephen P. Linzer, Chairman

SPL:ALW  
CERTIFIED

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mailed or delivered to:

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