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

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HAROLD E. and LEONA H. RESTEINER, Appellants,

Appellee.

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Docket No. 1890-03-1

NOTICE OF DECISION:

ARIZONA DEPARTMENT OF REVENUE,) FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Appellants became residents of Arizona in 1997 and were residents during the 1998 tax year. Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") determined that Harold E. and Leona H. Resteiner ("Appellants, with the singular referring to Harold E. Resteiner), erroneously subtracted \$26,453.00 and took a \$2,500 exclusion from their federal adjusted gross income for tax year 1998. Appellants subtracted and excluded pension income received by Appellant from the State of Michigan in 1998.

The Department subsequently assessed Appellants additional tax, a late payment penalty and interest for 1998. Appellants protested the assessment to an administrative hearing officer who upheld the assessment. Appellants then protested to the Department's Director who affirmed the hearing officer's decision. Appellants now timely appeal to this Board.

DISCUSSION

The issue before the Board is whether Appellants are liable for the assessment. The presumption is that an assessment of additional income tax is correct, and Appellant bears the burden of

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overcoming that presumption. See Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d

729 (1948).

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The Arizona Legislature has the authority to levy and collect taxes, including income tax, under the Arizona Constitution. Ariz. Const. art. IX, § 12. Pursuant to this authority, the legislature enacted A.R.S. § 43-102(A) providing that it is the intent of the legislature by the adoption of Title 43 to accomplish the following objectives:

(1) To adopt the provisions of the federal internal revenue code relating to the measurement of adjusted gross income for individuals, to the end that adjusted gross income reported each taxable year by an individual to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in this title.

(4) To impose on each resident of this state a tax measured by taxable income wherever derived.

A State taxpayer's Arizona adjusted gross income is the same as the taxpayer's federal adjusted gross income subject to certain specifically enumerated additions, subtractions, exemptions and deductions under Arizona law. A.R.S. §§ 1021, 1022 and 1023. Absent the statutory authority, the right to a deduction does not exist. *Arizona Dep't of Rev. v. Transamerica Title Insurance Company*, 124 Ariz. 417, 604 P.2d 1128 (1979).

As a retired State of Michigan employee, Appellant was granted a pension that under Michigan law was exempt from Michigan State income tax. As Arizona residents in 1998, Appellants properly reported their Federal adjusted gross income, including the pension income, on their 1998 Arizona income tax return. However, they then subtracted Appellant's Michigan pension income and claimed a \$2,500 exclusion of the pension income on Appellants' Arizona income tax return. Arizona residents are subject to Arizona tax on *all* income *wherever derived*. A.R.S. § 43-102(A)(2) (emphasis added).¹ There is no provision in Arizona law that would allow a resident individual to subtract pension income from Michigan. Further, under A.R.S. § 43-1022(2), the \$2,500 exclusion taken by Appellants applies

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¹ The United States Supreme Court has confirmed a state's authority to tax all the income of its residents. See Oklahoma Tax Comm'n v. Chickasaw Nation, 115 S.Ct. 2214.

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only to federal, military or Arizona State pensions. See, Individual Taxpayer Ruling, ITR 93-13. Thus, Appellant's pension income from Michigan does not qualify for the exclusion.

Appellants argue that, based on the full faith and credit provision of the United Statues Constitution, Arizona should recognize the Michigan law exempting the pension and that Arizona's treatment of the pension is discriminatory. Appellants rely on *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989).

In *Davis*, the United States Supreme Court held that Michigan's practice of taxing the retirement benefits of retired federal civil service employees while exempting those of retired state employees violated the intergovernmental tax immunity doctrine, 4 U.S.C § 111, which prohibits states from taxing federal employees in a discriminatory manner. Prior to *Davis*, Arizona fully taxed federal pension income while exempting State retirement benefits. In 1989, the State amended its statutes to comply with the *Davis* ruling. See A.R.S. § 43-1022.2. However, as previously noted by this Board, nothing in *Davis* indicates that this doctrine extends to anyone other than federal employees. *See, Edward and Lois Grodsky v. Arizona Dep't of Rev.*, Docket No. 1168-94-I (BOTA 1995) (holding that pension income includible in its entirety in federal adjusted gross income is also includible in Arizona gross income for that year.)

Having reviewed this matter, the Board finds that the Department's assessments are valid. Therefore, Appellants are liable for the tax at issue. Further, Appellants have not shown that their failure to timely pay the tax at issue was due to reasonable cause; thus, the penalties imposed may not be abated. A.R.S. § 42-1125(D). Finally, because the interest imposed represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

CONCLUSIONS OF LAW

1. The assessment is valid, and Appellants are liable for the tax assessed. See Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. § 43-102(A); see, Edward and Lois Grodsky v. Arizona Dep't of Rev., Docket No. 1168-94-I (BOTA 1995) Notice of Decision Docket No. 1890-03-I

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2. Because Appellants have not shown that their failure to timely pay the tax at issue was due to reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(D).

3. The interest imposed represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute; therefore, it may not be abated. *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 27th day of

May , 2003.

STATE BOARD OF TAX APPEALS

William L. Raby, Chairperson

WLR:ALW

CERTIFIED

Copies of the foregoing Mailed or delivered to:

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