

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

ROBERT and KATHLEEN SCHWARTZ,)	
)	
Appellants,)	Docket No. 1828-00-I
)	
vs.)	
)	
ARIZONA DEPARTMENT OF REVENUE,)	NOTICE OF DECISION:
)	FINDINGS OF FACT AND
)	<u>CONCLUSIONS OF LAW</u>
Appellee.)	

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

For tax years 1992 and 1993, Robert and Kathleen Schwartz ("Appellants") filed their federal income tax returns from an Arizona address. The Arizona Department of Revenue (the "Department") searched its records and determined that Appellants failed to file Arizona income tax returns for these years. The Department subsequently issued an assessment of tax, interest and penalties for failure to file and negligence against Appellants. Appellants protested the assessment to the Department's Hearing Officer, who denied the protest. Thereafter, the Internal Revenue Service provided the Department with additional information indicating that it increased Appellants' federal adjusted gross income on their 1992 federal return. Consequently, the Department issued a modified assessment reflecting the increased federal adjusted gross income. After unsuccessfully protesting the modified assessment to the Department, Appellants now timely appeal to this Board.

DISCUSSION

The issue before the Board is whether Appellants are liable for the tax, interest and penalties assessed. Appellants bear the burden of proof as to all issues of fact. A.A.C. R16-3-118.

A.R.S. § 43-1011 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." Nonresidents of the State are taxed on "income which is the result of activity within or derived from sources within this state." A.R.S. § 43-

1 102(A)(5). Robert Schwartz concedes his Arizona residency for tax years 1992 and 1993, but argues
2 that Appellants should not be subject to Arizona income tax on wages earned by Kathleen Schwartz in
3 California during these years.

4 Arizona is a community property state, and "[a]ll property acquired by either husband or wife
5 during the marriage, except that which is acquired by gift, devise or descent, is the community property
6 of the husband and wife." A.R.S. § 25-211. Income earned by a nonresident spouse is considered
7 community income if the nonresident spouse resides in a community property state. Income Tax Ruling
8 93-20. California is a community property state. Thus, the income Kathleen Schwartz earned in
9 California is community property. Generally, fifty percent of the total income is attributed to each
10 spouse. A.R.S. § 25-211. Therefore, Appellants were required to file Arizona income tax returns for
11 1992 and 1993 reporting one-hundred percent of Robert. Schwartz's Arizona source income and fifty
12 percent of the income earned in California by Kathleen Schwartz. A.R.S. § 43-102(A)(4), A.R.S. § 25-
13 211.

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 P2d 841 (1934). The penalties at issue may not be abated because Appellants
17 have not shown that their failure to timely file a return was due to reasonable cause and not wilful
18 neglect. A.R.S. § 42-1125(A) and (F).

19 CONCLUSIONS OF LAW

20 1. Appellants are liable for the tax assessed. See A.R.S. §§ 43-1011; 102(A)(5); 25-211.

21 2. The interest at issue may not be abated because it represents a reasonable interest rate on
22 taxes due and owing and is made part of the tax by statute. See A.R.S. § 42-1123; *see also Biles v.*
23 *Robey*, 43 Ariz. 276, 30 P2d 841 (1934).

24 3. The penalties at issue may not be abated because Appellants have not shown that their
25 failure to timely file a return was due to reasonable cause and not wilful neglect. A.R.S. § 42-1125(A)
26 and (F).

27 ...

28 ...

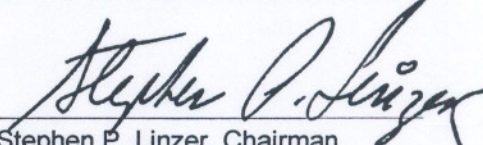
ORDER

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 July, 2000.

STATE BOARD OF TAX APPEALS


Stephen P. Linzer, Chairman

SPL:ALW
CERTIFIED

Copies of the foregoing
mailed or delivered to:

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