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

)
ALAN STANG,) Docket No. 1886-02-I
Appellant,)
VS.) NOTICE OF DECISION:
ARIZONA DEPARTMENT OF REVENUE,) FINDINGS OF FACT AND CONCLUSIONS OF LAW
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

Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") learned that Alan Stang ("Appellant"), an Arizona resident, received wages and other income in tax years 1993 to 1998. The Department determined that Appellant had failed to file Arizona individual income tax returns for these years and issued assessments of tax, interest and penalties.

After unsuccessfully protesting the assessment before the Department, Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether the Department's assessments against Appellant are valid. The presumption is that an assessment of additional income tax is correct, and Appellant bears the burden of 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 under the Arizona Constitution.

Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona

Revised Statues and has granted the Department the powers and duties to enforce them. A.R.S. § 42
1004.

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.¹

Appellant concedes that wages or compensation for services are includible in gross income as a matter of law, but argues that the Department must prove that he received such income during the years at issue. Appellant claims that he was not employed and did not receive any of the alleged income. He argues that, notwithstanding *Kieckhefer*, the Department bears the burden of proving he received the income in this case because either the Revenue Agent's Report from the IRS is inadmissible, thus, there is no evidence supporting the Department's assessment,² or, in the alternative, Appellant's assertions denying he received income sufficiently rebut the assessments.

Although Appellant argues that the IRS information is inadmissible, as previously noted by the Board in a similar case, the court of appeals has rejected this argument. See, e.g., Steve Hernandez v. Arizona Dep't of Rev., Docket No. 1880-02-1 (BOTA 2003). Additionally, other records confirm the IRS

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

² See, generally, Weimerskirch v. Commissioner, 596 F.2d 358 (9th Cir. 1979); Unites States v. Janus, 428 US 433 (1976) (holding that when an assessment has no rational foundation whatsoever, it is considered to be "naked" and is not properly subject to the usual rule of the presumption of correctness and the burden of proof in tax cases).

information including W-2 forms submitted by companies reporting wage income and records from the Arizona Department of Economic Security confirming Appellant's receipt of wages and unemployment compensation. Appellant has offered no evidence controverting this information.

Appellant next argues that the assessments for tax years 1993 through 1998 are invalid because the Director of the Department ("Director") did not properly delegate his authority to assess tax to the auditor in writing. The Department is authorized to administer and enforce Arizona tax laws. A.R.S. § 42-1004.A. The Director of the Department ("Director") is responsible for the direction, control and operation of the Department. A.R.S. § 42-1002.B. The Director has the discretion to delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operations of the Department. A.R.S. § 42-1005.A.7. The statutes do not require this delegation be in writing.

Having reviewed this matter, the Board finds that the Department's assessments are valid. Therefore, Appellant is liable for the tax at issue. Further, Appellant has not shown that his failure to timely file income tax returns was due to reasonable cause; thus, the penalties imposed may not be abated. A.R.S. § 42-1125(A). 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 Appellant is 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).
- 2. Because Appellant has not shown that his failure to timely file income tax returns was due to reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(A).
- 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.

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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 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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