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

ALICIA STENICER.

Docket No. 1985-10-I

Appellant,

NOTICE OF DECISION

vs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ARIZONA DEPARTMENT OF REVENUE,

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

The records of the Arizona Department of Revenue ("Department") confirm that, for tax year 2003, Alicia Stenicer ("Appellant") filed an Application for Filing Extension dated April 12, 2004. The extension application filed by Appellant reported an estimated income tax liability of \$630, taxes withheld of \$282 and a balance owing of \$348. The records do not show that Appellant ever actually filed her 2003 Arizona income tax return or paid the taxes that are due for that year.

Based on data obtained through an exchange of information agreement with the Internal Revenue Service, the Department issued a proposed assessment ('Assessment") against Appellant for tax year 2003 on November 15, 2007. The assessment included \$32,589 in unreported income, and allowed \$9,009 in itemized deductions and \$2,100 as a personal exemption. After crediting Appellant for \$281.65 in Arizona withholding, the Department assessed the balance of \$372.71 in tax due. The Department also assessed a penalty for failure to timely file the return as well as interest. Appellant protested the assessment to the Department's Hearing Officer who denied the protest. Appellant now timely appeals only the interest portion of the assessment to this Board.

1 2

3

4

5

6

7

8

9

10

11

12

13

15

16

17

18

19

20

21

23

24

25

DISCUSSION

The issue in this appeal is whether Appellant is liable for the interest assessed. Appellant argues that she properly filed her 2003 Arizona income tax return electronically, and, while she concedes that she is liable for the tax assessed, she argues that the interest assessed should be waived due to the amount of time it took for the Department to notify her of the tax liability. The Board disagrees.

A.R.S. § 42-1104(A) requires the Department to mail every notice of every additional tax due within four years after the report or return is required to be filed or within four years after the report or return is filed, whichever period expires later. However, if a taxpayer fails to file a return, the Department may assess the tax at any time. A.R.S. § 42-1104(B)(1)(b). Appellant has not established that she filed her 2003 Arizona income tax return.

A.R.S. § 42-1105(D) provides that taxpayers must "keep and preserve "copies of filed tax returns, including any attachments to the tax return, any signature documents used for the tax return, suitable records and other books and accounts necessary to determine the tax for which the person is liable"

While Appellant apparently argued before the Department's Hearing Officer that she filed the return at issue electronically, she waived oral hearing before this Board and provided no sworn testimony or documentation supporting her claim. Appellant, in fact, concedes that she owes the tax assessed.

A.R.S. § 42-1123(C) provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid." Interest is not a penalty but is simply compensation to the State for the lost time value of money received after the due date. Valencia Energy Co. v. Arizona Dep't of Rev., 191 Ariz. 565, 577 959 P.2d 1256, 1268 (1998). Accordingly, Appellant is liable for the interest assessed.

CONCLUSIONS OF LAW

Appellant is liable for the interest assessed. See A.R.S. § 42-1123(C).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the Department is affirmed.

Notice of Decision Docket No. 1985-10-I

1

2

3

4

5

6

7

8

9

10

11

12

13

14

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

24TL day of

MAY

, 2011.

STATE BOARD OF TAX APPEALS

James M. Susa, Chairman

JMS:ALW

CERTIFIED

Copies of the foregoing Mailed or delivered to:

Alicia Stenicer 11883 North 140th Lane Surprise, Arizona 85379

Amy C. Sparrow Assistant Attorney General Civil Division, Tax Section 1275 West Washington Street Phoenix, Arizona 85007

15

16 17

18

19

20

21

22

23

24

25