

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
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4 RICHARD BIRCH,)
5 Appellant,) Docket No. 1903-03-1
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
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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

In April 2001, the Arizona Department of Revenue (the "Department") retrieved tax information from the Arizona Department of Economic Security ("DES") reporting wage information for Richard Birch ("Appellant") for the years 1998 and 1999 ("Audit Period"). The information indicated that the amount of income earned by Appellant in each of these years required him to file Arizona income tax returns.¹ The Department reviewed its records and determined that Appellant had not filed Arizona income tax returns for the Audit Period. The Department subsequently assessed Appellant income tax, penalties for failure to timely file returns and pay tax due, and interest for the Audit Period. Thereafter, the Department requested information from the Internal Revenue Service ("IRS") pursuant to an exchange of information agreement. The IRS information confirmed the DES information supporting the assessments.

¹ An individual must file a return if his adjusted gross income for the year is \$5,500 or more or if his gross income is \$15,000 or more, regardless of the amount of taxable income. A.R.S. § 43-301. The DES information showed that Appellant earned over \$40,000 in 1998 and over \$41,000 in 1999.

1 Appellant timely protested the assessments to the Department's hearing officer who upheld the
2 assessments. Appellant then protested the hearing officer's decision to the Director of the Department
3 who affirmed the hearing officer's decision. Appellant now timely appeals to this Board.

4 DISCUSSION

5 The issue before the Board is whether the Department's assessments against Appellant are valid.
6 The presumption is that an assessment of additional income tax is correct, and Appellant bears the
7 burden of overcoming that presumption. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102,
8 191 P.2d 729 (1948).

9 The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.
10 Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona
11 Revised Statutes and has granted the Department the powers and duties to enforce them. A.R.S. § 42-
12 1004.

13 Pursuant to this authority, the legislature enacted A.R.S. § 43-102(A) providing that it is the intent
14 of the legislature by the adoption of Title 43 to accomplish the following objectives:

- 15 (1) To adopt the provisions of the federal internal revenue code relating
16 to the measurement of adjusted gross income for individuals, to the
17 end that adjusted gross income reported each taxable year by an
18 individual to the internal revenue service shall be the identical sum
19 reported to this state, subject only to modifications contained in this
20 title.
- 21 (2) To impose on each resident of this state a tax measured by taxable
22 income wherever derived.²

23 Appellant argues that the IRS information is inadmissible because it is hearsay and was
24 improperly obtained without written request. Thus, there is no evidence supporting the Department's
25 "naked" assessments.³

24 ² The United States Supreme Court has noted 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 (1995).

25 ³ See, generally, *Weimerskirch v. Commissioner*, 596 F.2d 358 (9th Cir. 1979); *United 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).

1 As noted by the Board in a similar case, the court of appeals has rejected the argument that the
2 federal information is inadmissible. See *Steve Hernandez v. Arizona Dep't of Rev.*, Docket No. 1880-02-
3 1 (BOTA 2003). The IRS information was properly obtained through an authorized written agreement. 26
4 U.S.C. §6103(d). The courts have upheld similar agreements in other states. See, e.g., *Taylor v. United*
5 *States*, 106 F.3d 833, 835-36 (8th Cir. 1997). Further, the Department received information from DES that
6 confirms the information provided by the IRS. Appellant has offered no evidence that controverts this
7 information.

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

14 CONCLUSIONS OF LAW

15 1. The assessment is valid, and Appellant is liable for the tax assessed. See *Arizona State Tax*
16 *Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. §§ 42-1004, 43-102.

17 2. Because Appellant has not shown that his failure to timely file income tax returns and pay tax
18 was due to reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(A), (D).

19 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is
20 made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30
21 P.2d 841 (1934).

22 ORDER

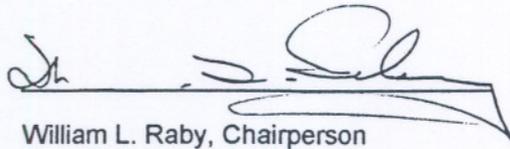
23 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
24 Department is affirmed.
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This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 20th day of October, 2003.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairperson

WLR:ALW

CERTIFIED

Copies of the foregoing
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