



1 file if your income was less than \$15,000." Appellant claims she took the tax booklet and forms but,  
2 based on the verbal information, she did not file Arizona returns in 1999 or obtain tax booklets for  
3 subsequent years.

4 The hearing officer upheld the assessment. Appellant then protested the hearing officer's  
5 decision to the Director of the Department who affirmed the hearing officer's decision. Appellant now  
6 timely appeals to this Board.

7 DISCUSSION

8 The issue before the Board is whether Appellant is liable for the tax and interest assessed. The  
9 presumption is that an assessment of additional income tax is correct, and Appellant bears the burden of  
10 overcoming that presumption. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d  
11 729 (1948).

12 A.R.S. § 43-301 provide as follows:

- 13 A. An individual whose income is taxable under this title shall file a return with  
14 the department if he has, for the taxable year:
- 15 1. An Arizona adjusted gross income of five thousand five hundred dollars or  
over, if single or married filing a separate return.
  - 16 2. An Arizona adjusted gross income of eleven thousand dollars or over if  
married filing a joint return pursuant to A.R.S. § 43-309.
  - 17 3. A gross income of fifteen thousand dollars or over, regardless of the  
18 amount of taxable income.

19 Appellant essentially argues that (A)(1) and (A)(3), which apply to her as a single person, should  
20 be read together in such a way that only taxpayers who earn \$15,000 or more "and" whose Arizona  
21 adjusted gross income is \$5,500 or more are required to file Arizona returns. Thus, taxpayers who earn  
22 less than \$15,000 are not required to file Arizona returns no matter what their Arizona adjusted gross  
23 income is. Because it is undisputed that Appellant earned less than \$15,000 during the Audit Period, she  
argues that she was not required to file Arizona returns and no tax is due.

24 The Department argues that (A)(1) and (A)(3) are separate considerations for filing. Thus,  
25 taxpayers who earn \$15,000 gross income "or" who have Arizona adjusted gross income of \$5,500 or  
more are required to file Arizona returns. Accordingly, even taxpayers who, like Appellant, earn less than

1 \$15,000 in a tax year are required to file returns if they have Arizona adjusted gross income of \$5,500 or  
2 more for that year.

3 Unfortunately, the statute is not properly punctuated, and it could conceivably be read as  
4 Appellant proposes. However, when read in context, the use of the conjunction, "and," renders the  
5 subsection meaningless,<sup>2</sup> while the use of the conjunction, "or," gives the subsection a rational meaning.  
6 Moreover, the instruction booklets that accompanied the return forms during the Audit Period, including  
7 the 1999 booklet Appellant admittedly obtained from the U.S Post Office, are clear and correctly support  
8 the long-standing requirements of the law. Therefore, the Board finds that Appellant was required to file  
9 returns during the Audit Period and is liable for the tax assessed. Further, because the interest imposed  
10 represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute, it  
11 may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

11 CONCLUSIONS OF LAW

12 1. The assessment is valid, and Appellant is liable for the tax assessed. A.R.S. § 43-301; see  
13 *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

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

17 ORDER

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

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23 ...

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<sup>2</sup> A taxpayer cannot be "single or married filing a separate return" as stated in (A)(1) and "married filing a joint return" as stated in (A)(2).

