

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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4 THOMAS A. and COLLEEN T. CATANIA

5 Appellants,

6 vs.

7 ARIZONA DEPARTMENT OF REVENUE,

8 Appellee.

)
)
) Docket No. 1992-10-1

)
) NOTICE OF DECISION
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW

9 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
10 having taken the matter under advisement, finds and concludes as follows:

11 FINDINGS OF FACT

12 Thomas A. and Colleen T. Catania ("Appellants," with the singular referring to Thomas A.
13 Catania) are Nevada residents who earned income from Arizona sources during the tax years 1994
14 through 1999. Appellant is a radiologist who works in Nevada, California and Arizona. Colleen T.
15 Catania is the owner of CMC Billing, a Nevada company that provides billing services to Appellant's
16 business locations.

17 The Arizona Department of Revenue determined that Appellants failed to file Arizona non-
18 resident personal income tax returns for the 1994 through 1999 tax years. Consequently, on October 19,
19 2001, the Department issued a demand to Appellants to file returns for these years. Appellants did not
20 file the returns, and on May 30, 2002, the Department issued proposed assessments for tax years 1994
21 through 1999.

22 Appellants protested the assessments. Over the next several years, they submitted various
23 pieces of documentation. The Department twice modified the original assessment; first allowing several
24 of the expenses Appellants claimed on their federal Schedule C, then allowing a prorated portion of the
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1 payments to CMC Billing based on the ratio of Appellant's Arizona gross income to federal adjusted gross
2 income.¹ Only deductions for medical insurance premiums and payroll taxes, and additional payments to
3 CMC Billing for tax years 1998 and 1999 remained unresolved. Appellants protested the final modified
4 assessment to the Department's hearing officer, who denied the protest. Appellants then protested to the
5 Director of the Department, who affirmed the hearing officer's decision. Appellants now timely appeal to
6 this Board.

7 DISCUSSION

8 The issue in this appeal is whether Appellants are entitled to the additional deductions claimed for
9 tax years 1998 and 1999.

10 Arizona law imposes on nonresidents a tax measured by the taxable income that is the result of
11 activity within or derived from sources within this State. A.R.S. § 43-102(A)(5). Nonresidents may only
12 deduct expenses that relate to income required to be included in Arizona income. A.R.S. § 43-961(5).
13 "The presumption is that an additional assessment of income tax is correct and the burden is on the
14 taxpayer to overcome such presumption." *Arizona State Tax Comm'n v. Kieckhefer*, 67 Ariz. 102, 105,
15 191 P.2d 729 (1948). Appellants bear the burden of proving they are entitled to a deduction or exemption
16 from tax. See *Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
17 Arizona law requires that taxpayers keep and preserve "suitable records and other books and accounts
18 necessary to determine that tax for which the person is liable for the period prescribed in § 42-1104."
19 A.R.S. § 42-1105(D).

20 Appellants contend that they are entitled to larger deductions for business expenses related to
21 payments to CMC Billings, and to deductions for payroll taxes and insurance premiums for employees.
22 However, documentation provided by Appellants fails to establish which payments to CMC Billings are
23 attributable to Arizona business only. Neither does it clarify whether payroll taxes and insurance
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¹ The Department allowed 28.24% for 1998 and 27.59% for 1999.

1 premiums are attributable to employees or independent contractors, both of which Appellants claim to
2 have used.

3 Appellants claim that too much time has passed since tax years 1998 and 1999 to be able to
4 provide suitable records to substantiate their claims. However, the Department initially contacted
5 Appellants just 2 ½ and 1 ½ years after their 1998 and 1999 tax returns should have been filed. Records
6 should have been available at that time. The records Appellants have provided do not constitute suitable
7 records and do not substantiate Appellants' claims. Accordingly, the Board finds that Appellants have
8 failed to prove that they are entitled to the deductions claimed. Therefore, they are liable for the tax
9 assessed.

10 The assessment includes interest and a penalty for the failure to timely file returns. The interest
11 is a part of the tax for Arizona purposes and, generally, may not be abated unless the tax is found not to
12 be due. A.R.S. § 42-1123(C). Further, the penalty imposed for failure to timely file returns applies unless
13 the failure is shown to be due to reasonable cause and not willful neglect. A.R.S. § 42-1125. Appellants
14 have not shown that their failure to timely file returns for tax years 1998 and 1999 was due to reasonable
15 cause. Therefore, Appellants are liable for the interest and penalty assessed.

16 CONCLUSIONS OF LAW

17 1) Appellants have not met the burden of proving that they are entitled to the deductions
18 claimed' therefore, they are liable for the tax assessed. *See Arizona State Tax Comm'n v. Kieckhefer*, 67
19 *Ariz.* 102, 105, 191 P.2d 729 (1948); *see Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 *Ariz.* 94, 99,
20 459 P.2d 719, 724 (1969); A.R.S. § 42-1105(D).

21 2) Appellants are liable for the interest assessed. . A.R.S. § 42-1123(C).

22 3) Appellants are liable for the failure to timely file penalty. A.R.S. § 42-1125.

23 ORDER

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

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,

1 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

2 DATED this 21st day of May, 2013.

3 STATE BOARD OF TAX APPEALS

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5 Amy W. Bellner, Chairperson

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8 AWF:ALW

9 CERTIFIED

10 Copies of the foregoing
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