

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

Gary S. Christensen,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

Docket No. 1956-08-1

NOTICE OF DECISION
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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"), authorized by 26 U.S.C. § 6103(d), the Arizona Department of Revenue ("Department") learned that Gary S. Christensen ("Appellant") had taxable income for tax years 1997, 1998 and 1999 ("Audit Period") and had underreported his federal adjusted gross income for the Audit Period. The Department reviewed its records and discovered that Appellant had not filed any Arizona individual income tax returns for the Audit Period. Based on the IRS information, the Department assessed Appellant income tax, interest and penalties for failure to timely file for the Audit Period. Appellant protested the assessment to the Department's hearing officer who upheld the assessment. Appellant then protested to the Director of the Department who summarily affirmed the hearing officer's decision because Appellant raised no facts or arguments that would warrant a review. See A.A.C. R15-10-131(H)(2). Appellant now timely appeals the decision of the Director to this Board.

1 Appellant is a physician, licensed to practice medicine in the State of Arizona. Since 1983,
2 Appellant has practiced medicine in Flagstaff, Arizona. Up until 1996, Appellant filed income tax returns
3 with the federal and state governments and paid individual income tax. In 1997, however, Appellant
4 testified that he came to believe that income earned by him in his medical practice was not "taxable
5 income" and therefore he had no obligation to file federal and state income tax returns or to pay any
6 individual income tax. Appellant also stated in his appeal that he was not a "taxpayer" because he was
7 not a non-resident alien, foreign corporation doing business in the United States or a withholding agent
8 for either of these. Accordingly, Appellant testified that he had not filed income tax returns in 1997, 1998
9 or 1999 (or for any year thereafter to this day).

10 During the Audit Period, Appellant earned \$385,210, \$416,855 and \$460,857 respectively from
11 his medical practice. Appellant disputed these actual amounts at hearing, but testified that they were
12 within 5% of what he believes he actually earned from his medical practice. The Board finds Appellant's
13 testimony with respect to the figures not credible and the Board accepts the Department's figures as
14 accurate.

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16 Based on these figures, the Department has assessed Appellant \$95,819.68 in tax, interest and
17 penalties for the Audit Period.

18 DISCUSSION

19 Appellant does not deny that the State of Arizona has the authority to impose an income tax upon
20 its residents. Appellant does not deny that during the Audit Period he was a resident of the State of
21 Arizona. Appellant also does not deny that during the Audit Period he received substantial sums of
22 compensation from his medical practice.
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1 Instead, Appellant relies on arguments that have been consistently rejected by all federal and
2 state courts. These arguments, whether characterized as (1) not having any "taxable income" or (2) not
3 being a "taxpayer" or (3) any other argument equating to having no tax upon wages, have been rejected
4 as frivolous by federal and state courts. See e.g. *Edwards v. Commissioner*, 680 F.2d 1268 (9th Cir.
5 1982), *Arizona Department of Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98 (App. 1986).

6 Arizona and federal law combine to tax the compensation earned by Appellant. An income tax
7 shall be "collected and paid for each taxable year upon the entire taxable income of every resident of this
8 state." A.R.S. § 43-1011. The term "taxable income" is defined as "Arizona adjusted gross income less
9 the exemptions and deductions allowed in article 4 of this chapter." A.R.S. § 43-1001(11). Further, the
10 term "Arizona adjusted gross income" means "the individual's Arizona gross income subject to
11 modifications specified in §§ 43-1021 and 43-1022." A.R.S. § 43-1001(1). Finally, the term "Arizona
12 gross income" means the individual's federal adjusted gross income for the taxable year, computed
13 pursuant to the internal revenue code." A.R.S. § 43-1001(3).

14 Federal "adjusted gross income" means "gross income" minus certain deductions. 26 U.S.C. §
15 62(a). The term "gross income" means "all income from whatever sources derived" including
16 "compensation for services." 26 U.S.C. § 61(a)(1). This analysis is well understood by the millions of
17 Arizona residents who lawfully pay their income taxes each and every year. Appellant's argument
18 relating to "taxable income" and "taxpayer" constitute an attempt by Appellant to avoid a known legal duty
19 to pay the Arizona income tax. Appellant's argument is rejected as frivolous by the Board.
20

21 Interest is a part of the tax and may not be abated unless the tax to which it relates is found not to
22 be due for whatever reason. A.R.S. § 42-1123(C). The tax in this case is due and the associated interest
23 cannot be abated.
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1 The failure to timely file penalty may only be abated upon a showing that the failure is due to
2 reasonable cause and not due to willful neglect. A.R.S. § 42-1125(A). Appellant has not demonstrated
3 that his failure to timely file was due to reasonable cause. Therefore the penalty may not be abated.

4 Based on the facts presented before the Board, the Board questions why the Department did not
5 also impose the penalty for fraud with the intent to evade tax as authorized by A.R.S. § 42-1125(G). The
6 Board notes that it is a class 5 felony for anyone to "knowingly fail to pay any tax administered pursuant to
7 this article due or believed due by the taxpayer with intent to evade the tax." A.R.S. § 42-1127(B)(1).

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9 CONCLUSIONS OF LAW

- 10 1. Appellant is liable for the tax assessed. A.R.S. § 43-102(A).
11 2. Appellant is liable for the interest assessed. A.R.S. § 42-1123(C).
12 3. Appellant is liable for the penalty assessed. A.R.S. § 42-1125(A).

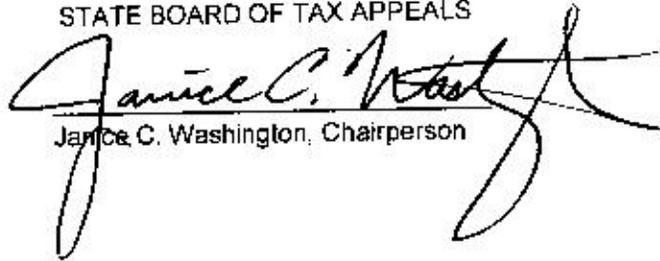
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14 ORDER

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

1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 13th day of December, 2007.

4 STATE BOARD OF TAX APPEALS

5 
6 Janice C. Washington, Chairperson

7
8 JCW:JMS

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

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