

1 BEFORE THE STATE BOARD OF TAX APPEALS
2 STATE OF ARIZONA
3 Bank of America Tower
4 101 North First Avenue - Suite 2340
5 Phoenix, Arizona 85003
6 (602) 528-3966

7 LONNIE C. JAMES, JR.,)

8 Appellant,)

9 vs.)

10 ARIZONA DEPARTMENT OF REVENUE,)

11 Appellee.)

Docket No. 1808-99-1

NOTICE OF DECISION:
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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

14 FINDINGS OF FACT

15 Pursuant to an exchange of information agreement with the Internal Revenue Service ("IRS"),
16 the Arizona Department of Revenue (the "Department") learned that Lonnie C. James, Jr. ("Appellant")
17 had filed federal income tax returns from an Arizona address for 1994 and 1995. The Department
18 searched its records and determined that Appellant did not file Arizona income tax returns for these
19 years. The Department subsequently assessed Appellant tax, interest and penalty for failure to file when
20 due for 1994 and 1995.

21 Appellant timely protested the assessments to the Department's hearing officer who denied the
22 protest. Appellant now appeals to this Board.

23 DISCUSSION

24 The issue before the Board is whether Appellant is liable for the tax assessed.

25 A.R.S. § 43-1011 provides that "[t]here shall be levied, collected and paid for each taxable year
26 upon the entire taxable income of every resident of this state taxes." Appellant states he will pay tax on
27 income earned in Arizona. However, he argues that it is unjust for Arizona to tax that portion of his
28 federal income attributable to retirement benefits because it was not earned in Arizona and was
deposited in a Nevada bank.

1 Appellant must report to Arizona the identical amount of adjusted gross income he reported to
2 the IRS. A.R.S. § 43-102(A)(1). This includes his pension income. The Arizona Legislature has clearly
3 stated its intent “[t]o impose on each resident of this state a tax measured by taxable income *wherever*
4 *derived.*” A.R.S. § 43-104(A)(4) (emphasis added). Accordingly, Appellant is liable for the tax assessed.¹

5 The interest imposed represents a reasonable interest rate on the tax due and owing and is
6 made part of the tax by statute; therefore, it may not be abated. See A.R.S. § 42-1123(B); *see also Biles*
7 *v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

8 The failure to timely file penalty may be abated only if Appellant can show that the failure was
9 due to reasonable cause and not wilful neglect. A.R.S. § 42-1125(A). Appellant has not met this burden;
10 therefore, the late filing penalty may not be abated.

11 CONCLUSIONS OF LAW

12 1. Appellant is liable for the tax assessed. See A.R.S. §§ 43-1011, 104(A)(4).

13 2. Because the interest imposed represents a reasonable interest rate on the tax due and owing
14 and is made part of the tax by statute, it shall not be abated. See A.R.S. § 42-1123(B); *see also Biles v.*
15 *Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

16 3. Appellant has not shown that his failure to file was due to reasonable cause; therefore, the late
17 filing penalty may not be abated. A.R.S. § 42-1125(A).

18 ORDER

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

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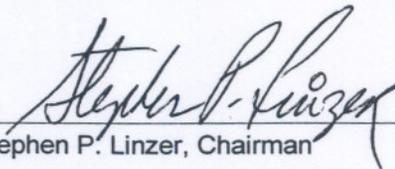
28 ¹ If Appellant produces 1099 forms for the years at issue, the Department states it will allow Appellant the \$2,500
exclusion available for pension income under A.R.S. § 43-1022(2).

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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 25th day of January, 2000.

STATE BOARD OF TAX APPEALS


Stephen P. Linzer, Chairman

SPL:AW
CERTIFIED

Copies of the foregoing
mailed or delivered to:

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