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

4 WARREN KEPPLER,)
5 Appellant,) Docket No. 1881-02-I
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
10)
11)
12)

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

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17 FINDINGS OF FACT

18 Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the
19 Arizona Department of Revenue (the "Department") learned that Warren Keppler ("Appellant") received
20 income as an Arizona resident in 1995, 1996, 1997 and 1998 but failed to file Arizona individual income
21 tax returns for these years.

22 Subsequently, the Department issued a proposed assessment of additional income tax, penalties
23 for failure to file a return and negligence, and interest for tax years 1995, 1996, 1997 and 1998. This
24 assessment was based on information provided by the IRS and verified by transaction privilege tax
25 returns filed under a license number issued to Appellant.

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

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DISCUSSION

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

6 Appellant argues that the assessment issued against him is invalid because the Department's
7 procedures violate the Arizona Administrative Procedures Act ("APA"). Specifically, Appellant contends
8 that the Department has failed to properly promulgate a rule of practice regarding assessments as
9 required under A.R.S. § 41-1003.

10 The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.
11 Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona
12 Revised Statutes and has granted the Department the powers and duties to enforce them. A.R.S. § 42-
13 1004.

14 These powers and duties include issuing deficiency assessments (A.R.S. § 42-1108), estimating
15 tax owed (A.R.S. § 42-1109) and resolving protests and holding hearings (A.R.S. § 42-1251).

16 A.R.S. § 42-1108 states, in part:

- 17 A. If a taxpayer fails to file a return required by this title or title 43, or if
18 the department is not satisfied with the return or payment of the
19 amount of tax required to be paid under either title, the department
20 may examine any return, including any books, papers, records or
21 memoranda relating to the return, to determine the correct amount of
22 tax. This examination must occur within the time periods prescribed
23 by section 42-1104 and may be accomplished through a detailed
24 review of transactions or records or by a statistically valid sampling
25 method.
- B. The department shall give the taxpayer written notice of its
determination of a deficiency by mail, and the deficiency, plus
penalties and interest, is final forty-five days from the date of mailing.
In the case of a joint income tax return, the notice may be a single
joint notice mailed to the last known address, but if either spouse
notifies the department that separate residences have been
established, the department shall mail duplicate originals of the joint
notice to each spouse.

1 A.R.S. § 41-1003 indicates that "(e)ach agency shall make rules of practice setting forth the
2 nature and requirements of all formal procedures available to the public." Emphasis added. Appellant
3 asserts that the use of the term "shall" indicates that the Department is mandated to promulgate rules
4 regarding assessments and without these rules the issuance of assessments is void. However, A.R.S.
5 § 42-1005 provides that the Director of the Department shall "[m]ake such administrative rules, as he
6 deems necessary and proper to effectively administer the department and enforce [title 42] and title 43."
7 Emphasis added.

8 In *Hamilton v. State of Arizona*, 186 Ariz. 590, 595, 925 P.2d 731 (1996), the court "reject(ed)
9 the taxpayer's contention that because DOR expressed its interpretation of 'adjusted gross income as
10 defined by the department' through Form 140-PTC rather than by a rule promulgated as required by
11 A.R.S. § 41-1003. . . . DOR's interpretation was void and could not be applied" The court indicated
12 that the plain meaning of the statute allowed the Department to define "adjusted gross income" and it was
13 not necessary to promulgate a rule to achieve the same purpose. Likewise, the statute governing
14 assessments is clear and it is not necessary to promulgate additional rules.

15 Appellant has not shown that the Department's assessment is in error; therefore, Appellant is
16 liable for the tax at issue. Further, because Appellant has not shown that his failure to timely file an
17 income tax return was due to reasonable cause and not willful neglect, the penalties imposed may not be
18 abated. A.R.S. § 42-1125(A) and (F). Finally, the interest imposed represents a reasonable interest rate
19 on the tax due and owing and is made part of the tax by statute; therefore, it may not be abated. *Biles v.*
20 *Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

21 CONCLUSIONS OF LAW

22 1. The assessment is valid, and Appellant is liable for the tax assessed. *See Arizona State Tax*
23 *Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

24 2. Because Appellant has not shown that his failure to timely file an income tax return or to timely
25 file a return on notice and demand by the Department was due to reasonable cause and not willful
neglect, the penalties imposed may not be abated. A.R.S. § 42-1125(A) and (F).

