

1 BEFORE THE STATE BOARD OF TAX APPEALS
2 STATE OF ARIZONA
3 100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

4 PAULA J. LAMFERS,)
5 Appellant,) Docket No. 1899-03-1
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
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10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the
14 Arizona Department of Revenue (the "Department") learned that Paula J. Lamfers ("Appellant"), an
15 Arizona resident, earned income including wages, dividends, interest, annuity/pensions, non-employee
16 compensation and other income in tax years 1997 and 1998 but failed to file Arizona individual income
17 tax returns for these years. Based on the federal information (specifically, Revenue Agent's Reports), the
18 Department subsequently issued proposed assessments of additional income tax, penalties for failure to
19 timely file a return, and interest for tax years 1997 and 1998.

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

23 DISCUSSION

24 The issue before the Board is whether the Department's assessments against Appellant are valid.
25 The presumption is that an assessment of additional income tax is correct, and Appellant bears the

1 burden of overcoming that presumption. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102,
2 191 P.2d 729 (1948).

3 The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.
4 Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona
5 Revised Statutes and has granted the Department the powers and duties to enforce them. A.R.S. § 42-
6 1004.

7 Pursuant to this authority, the legislature enacted A.R.S. § 43-102(A) providing that it is the intent
8 of the legislature by the adoption of Title 43 to accomplish the following objectives:

- 9 (1) To adopt the provisions of the federal internal revenue code relating
10 to the measurement of adjusted gross income for individuals, to the
11 end that adjusted gross income reported each taxable year by an
12 individual to the internal revenue service shall be the identical sum
13 reported to this state, subject only to modifications contained in this
14 title.
- 15 (2) To impose on each resident of this state a tax measured by taxable
16 income wherever derived.¹

17 Notwithstanding *Kieckhefer*, Appellant argues that the Department bears the burden of proving
18 she received the income in this case because there is no evidence supporting the Department's
19 assessments. Specifically, Appellant contends that the Revenue Agent's Reports upon which the
20 assessments are based are inadmissible because they are hearsay, were not obtained pursuant to a
21 written request and are not signed. Thus, the assessments are "naked."²

22 As noted by the Board in a similar case, the court of appeals has previously rejected the
23 argument that the federal information is inadmissible See *Steve Hernandez v. Arizona Dep't of Rev.*,
24 Docket No. 1880-02-1 (BOTA 2003). Additionally, other records substantiate the information contained in
25 the Revenue Agent's Reports including Forms W-2 and Forms 1099 submitted by companies reporting

¹ The United States Supreme Court has noted that a state has the authority to tax all the income of its residents. See *Oklahoma Tax Comm'n v. Chickasaw Nation*, 115 S.Ct. 2214 (1995).

² See, generally, *Weimerskirch v. Commissioner*, 596 F.2d 358 (9th Cir. 1979); *United States v. Janus*, 428 US 433 (1976) (holding that when an assessment has no rational foundation whatsoever, it is considered to be "naked" and is not properly subject to the usual rule of the presumption of correctness and the burden of proof in tax cases).

1 wage income, non-employee compensation, dividends and interest. Appellant has offered no evidence
2 that controverts this information.

3 Therefore, the Board finds that the Department's assessments are valid, and Appellant is liable
4 for the tax at issue. Further, Appellant has not shown that her failure to timely file income tax returns was
5 due to reasonable cause; thus, the penalties imposed may not be abated. A.R.S. § 42-1125(A). Finally,
6 because the interest imposed represents a reasonable interest rate on the tax due and owing and is
7 made part of the tax by statute, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841
(1934).

8 CONCLUSIONS OF LAW

9 1. The assessment is valid, and Appellant is liable for the tax assessed. See *Arizona State Tax*
10 *Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. §§ 42-1004, 43-102.

11 2. Because Appellant has not shown that her failure to timely file income tax returns was due to
12 reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(A).

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

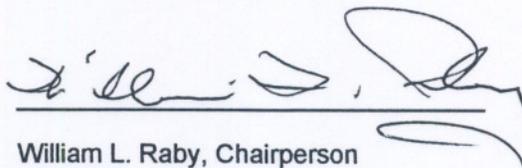
16 ORDER

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

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

21 DATED this 2nd day of September, 2003.

22 STATE BOARD OF TAX APPEALS

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24 _____
25 William L. Raby, Chairperson

WLR:ALW

1 CERTIFIED

2 Copies of the foregoing
3 Mailed or delivered to:

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