

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

TERRY I. MAJOR,

Appellant,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

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) Docket No. 1982-07-1
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) NOTICE OF DECISION
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
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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 Terry I. Major ("Appellant") had taxable income for tax year 2001. The Department reviewed its records and determined that, although Appellant was an Arizona resident, he had not filed an Arizona individual income tax return for 2001. Therefore, based on the IRS information, the Department assessed Appellant income tax, interest and penalty for failure to file for that tax year. 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. See A.A.C. R15-10-131(H)(2). Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is liable for the tax, interest and penalty assessed.

In measuring adjusted gross income, the Arizona Legislature chose to adopt the provisions of the Internal Revenue Code ("IRC"). Accordingly, an individual taxpayer computes Arizona taxable income by starting with federal adjusted gross income. See A.R.S. § 43-1001. The IRC provides that "gross income" means "all income from whatever source derived, including . . . (1) Compensation for services . . ." and "(12) Income from discharge of indebtedness . . ." 26 U.S.C. § 61(a).

Appellant does not deny that the State of Arizona has the authority to impose an income tax upon its residents. Neither does he deny that during tax year 2001 he was a resident of the State of Arizona. Instead, Appellant, noting that Arizona relies on IRS provisions to compute taxable gross income, argues that the State has no imputed jurisdiction in this case because federal jurisdiction, which has been challenged by Appellant, has yet to be established.

The fact is that the United States Tax Court has resolved Appellant's dispute in favor of the IRS. The Tax Court's decision, upholding the assessment of the IRS, was affirmed by the Ninth Circuit Court of Appeals in an unpublished decision on March 16, 2007. See General Docket, U.S. Court of Appeals for the Ninth Circuit. Docket # 06-72196. Appellant's petition for a rehearing was denied and the case was closed on June 17, 2007.

Appellant next denies that he is a "taxpayer" or that he has received any "income," "taxable gross income," or "adjusted gross income," or that he is required to file a federal or state income tax form pursuant to the IRC. These arguments have been rejected as frivolous by federal and state courts alike. See *e.g. Edwards v. Commissioner*, 680 F.2d 1268 (9th Cir. 1982), *Arizona Department of Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98 (App. 1986).

1 Records obtained by the Department indicate that Appellant received taxable income in tax year
2 2001. Appellant did not submit documentary evidence to disprove this information or the amount of
3 income determined to be taxable by the Department. Appellant chose to forfeit his opportunity to
4 disprove this information through sworn testimony when he abruptly departed the room during the hearing
5 in this matter. Therefore, Appellant is liable for the tax assessed.

6 Further, the failure to timely file penalty may be abated only upon a showing that the failure is due
7 to reasonable cause and not due to willful neglect. A.R.S. § 42-1125(A). Appellant has not demonstrated
8 that his failure to timely file was due to reasonable cause. Therefore, the penalty may not be abated.

9 Finally, for Arizona purposes, interest is a part of the tax and generally may not be abated unless
10 the tax to which it relates is found not to be due for whatever reason. A.R.S. § 42-1123(C). The tax in
11 this case is due and the associated interest cannot be abated.

12 CONCLUSIONS OF LAW

13 1. Appellant is liable for the tax assessed. A.R.S. § 43-102(A)(1) and (4).

14 2. Appellant has not demonstrated that his failure to file returns was due to reasonable cause,
15 therefore, the late payment penalty may not be abated. A.R.S. § 42-1125(A).

16 3. Appellant is liable for the interest assessed. A.R.S. § 42-1123(C).

17 ORDER

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

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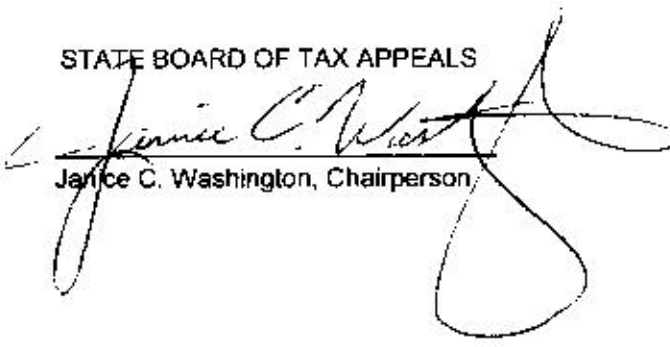
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1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 29th day of April, 2008.

4 STATE BOARD OF TAX APPEALS

5 
6 Janice C. Washington, Chairperson

7
8 JCW:ALW

9 CERTIFIED

10 Copies of the foregoing
11 Mailed or delivered to:

12 Terry I. Major
13 c/o 7614 N. 48th Avenue
14 Glendale, Arizona 85301

15 Anthony Vitigliano
16 Chief Counsel
17 Civil Division, Tax Section
18 1275 West Washington Street
19 Phoenix, Arizona 85007
20
21
22
23
24
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