

DISCUSSION

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

The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution. Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona Revised Statutes and the Department has the authority to administer and enforce these and other laws assigned to it. A.R.S. § 42-1004.

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

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

An Arizona resident's Arizona gross income is defined as "federal adjusted gross income for the taxable year, computed pursuant to the internal revenue code." A.R.S. § 43-1001(2).

The IRS information in this case shows that Appellant had \$23,072 in federal adjusted gross income for 1998, and the Department was able to confirm the \$224 tax refund income from its own records.

Appellant claims that he was not employed in tax year 1998 and did not receive any "income" for that year, as he interprets that term. Appellant's arguments relating to the definition of "income" have been consistently rejected by numerous state and federal courts. Appellant's arguments regarding the definition of income require no discussion at all and are rejected by the Board as frivolous.

¹ The United States Supreme Court has found 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.

1 Appellant also argues that the Department bears the burden of proving he received the income
2 but fails to do so because the IRS information upon which the Department relies is inadmissible to prove
3 the fact.

4 As previously noted by the Board in a similar case, the Arizona Court of Appeals has rejected the
5 argument that the IRS information is inadmissible. See, e.g., *Steve Hernandez v. Arizona Dep't of Rev.*,
6 Docket No. 1880-02-1 (BOTA 2003). Further, the burden of proof shifts to the Department only if a
7 preponderance of the evidence demonstrates that the taxpayer has asserted a reasonable dispute
8 concerning an issue of fact. A.R.S. § 42-1255. Appellant has produced no evidence that the information
9 from the IRS and the Department is inaccurate. Accordingly, Appellant is liable for the tax assessed.

10 Appellant has not shown that his failure to timely pay the tax at issue was due to reasonable
11 cause and not willful neglect; therefore, the penalty at issue may not be waived. A.R.S. § 42-1125(D).

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

14 CONCLUSIONS OF LAW

- 15 1. Appellant is liable for the tax assessed. A.R.S. § 43-102(A); A.R.S. § 43-1001(2).
- 16 2. Because Appellant has not shown that his failure to timely pay the tax at issue was due to
17 reasonable cause and not willful neglect, the penalty imposed may not be abated. A.R.S. § 42-1125(D).
- 18 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is
19 made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841
20 (1934).

21 ORDER

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

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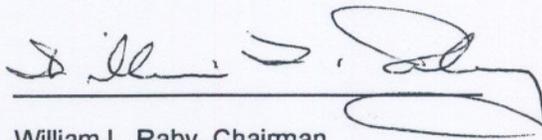
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This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 10th day of November, 2004.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairman

WLR:alw

CERTIFIED

Copies of the foregoing
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