

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

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4 LEWIS H. AND MARY M. OSTER,

5 Appellants,

6 vs.

7 ARIZONA DEPARTMENT OF REVENUE,

8 Appellee.

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)  
) Docket No. 1947-06-I  
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)  
) NOTICE OF DECISION  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)

9 The State Board of Tax Appeals, having considered all evidence and arguments presented, and  
10 having taken the matter under advisement, finds and concludes as follow:

11 FINDINGS OF FACT

12 For tax year 1999, Lewis H. and Mary M. Oster ("Appellants") filed an Arizona income tax return  
13 claiming a subtraction for trust income in the amount of \$9,723 and various itemized deductions in the  
14 amount of \$34,533, including miscellaneous itemized deductions in the amount of \$8,632. Appellants  
15 had made estimated tax payments in the amount of \$2,000 and included a \$500 payment with their  
16 return. The return indicated that Appellants were entitled to a refund of \$40.

17 The Department contacted Appellants regarding the \$500 payment because Appellants did not  
18 specify how to apply the payment. Appellants requested that the \$500 be applied as an estimated  
19 payment for the tax year 2000.

20 On April 15, 2002, Appellants filed an amended return for tax year 1999 claiming a credit for  
21 foreign taxes paid in the amount of \$171. The Department mistakenly issued a refund of not only the  
22 \$171 but also the \$500 payment from the original return plus interest in the amount of \$119.26 for a total  
23 of \$790.26. Appellants cashed the warrant in this amount.

24 On October 30, 2003, Appellants filed a second amended 1999 return under the Arizona Tax  
25 Amnesty Program adding back the \$9,723 in trust income they had subtracted on their original return.

1 This return did not reflect the two refunds Appellants received for 1999 and failed to claim the \$171 credit  
2 for foreign taxes paid from Appellants' first amended return. Although Appellants paid \$387.60 in tax and  
3 interest with the amnesty return, the Department did not process the return but inexplicably sent  
4 Appellants a refund in the total amount of \$1058.00, which apparently included the \$500 payment, the  
5 \$171 and the \$387.60. Appellants cashed the warrant. Appellants now appeal to the Board claiming they  
6 have overpaid their taxes in the amount of \$1,035.54.

7 On March 3, 2004, the Department issued an assessment disallowing the subtraction for the trust  
8 income and \$8,632 of the itemized deductions. Appellants timely protested the assessment pointing out  
9 that they had filed an amnesty return. The Department located the amnesty return and corrected the  
10 errors made by Appellants. The Department recalculated the amount owed by Appellants to reflect the  
11 refunds discussed above and the foreign tax credit claimed on the first amended return. No adjustments  
12 were made by the Department in regard to the itemized deductions. After Appellants paid the  
13 recalculated amount of \$1,035.54, the Department processed the corrected amnesty return.

14 On September 17, 2004, the Department made another error and issued Appellants a refund  
15 check in the amount of \$568.31. Apparently, the second amnesty payment was processed before the  
16 corrected amnesty return was processed. As a result, the amnesty payment was applied to the  
17 assessment instead of the corrected amnesty return. The Department corrected the error and notified  
18 Appellants, who did not cash the check.

19 On November 17, 2004, the Department issued a modified assessment to reflect that amnesty  
20 had been granted as to the trust income subtraction. The modified assessment also allowed additional  
21 charitable deductions and abated the late payment penalty. Appellants made one final payment under  
22 protest to cover the amount shown as due on the modified assessment. The \$419.14 payment included  
23 \$316.55 of tax and \$102.59 in interest.

24 After unsuccessfully protesting to the Department, Appellants timely appeal to this Board.  
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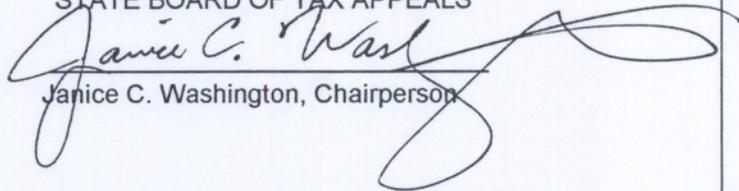


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This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 16th day of November, 2006.

STATE BOARD OF TAX APPEALS



Janice C. Washington, Chairperson

JCW:ALW

CERTIFIED

Copies of the foregoing  
Mailed or delivered to:

Lewis H. and Mary M. Oster  
14431 Summerstar Drive  
Sun City, Arizona 85375

Kimberly Cygan  
Assistant Attorney General  
Civil Division, Tax Section  
1275 West Washington Street  
Phoenix, Arizona 85007