

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

3 The Arizona Legislature has the authority to levy and collect taxes, including income tax, under
4 the Arizona Constitution. Ariz. Const. art. IX, § 12. Pursuant to this authority, the legislature enacted
5 A.R.S. § 43-102(A) providing that it is the intent of the legislature by the adoption of Title 43 to accomplish
6 the following objectives:

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

16 A State taxpayer's Arizona adjusted gross income is the same as the taxpayer's federal adjusted
17 gross income subject to certain specifically enumerated additions, subtractions, exemptions and
18 deductions under Arizona law. A.R.S. §§ 1021, 1022 and 1023. Absent the statutory authority, the right
19 to a deduction does not exist. *Arizona Dep't of Rev. v. Transamerica Title Insurance Company*, 124 Ariz.
20 417, 604 P.2d 1128 (1979).

21 As a retired State of Michigan employee, Appellant was granted a pension that under Michigan
22 law was exempt from Michigan State income tax. As Arizona residents in 1998, Appellants properly
23 reported their Federal adjusted gross income, including the pension income, on their 1998 Arizona
24 income tax return. However, they then subtracted Appellant's Michigan pension income and claimed a
25 \$2,500 exclusion of the pension income on Appellants' Arizona income tax return. Arizona residents are
subject to Arizona tax on *all income wherever derived*. A.R.S. § 43-102(A)(2) (emphasis added).¹
There is no provision in Arizona law that would allow a resident individual to subtract pension income
from Michigan. Further, under A.R.S. § 43-1022(2), the \$2,500 exclusion taken by Appellants applies

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

1 only to federal, military or Arizona State pensions. See, Individual Taxpayer Ruling, ITR 93-13. Thus,
2 Appellant's pension income from Michigan does not qualify for the exclusion.

3 Appellants argue that, based on the full faith and credit provision of the United States
4 Constitution, Arizona should recognize the Michigan law exempting the pension and that Arizona's
5 treatment of the pension is discriminatory. Appellants rely on *Davis v. Michigan Department of Treasury*,
6 489 U.S. 803 (1989).

7 In *Davis*, the United States Supreme Court held that Michigan's practice of taxing the retirement
8 benefits of retired federal civil service employees while exempting those of retired state employees
9 violated the intergovernmental tax immunity doctrine, 4 U.S.C § 111, which prohibits states from taxing
10 federal employees in a discriminatory manner. Prior to *Davis*, Arizona fully taxed federal pension income
11 while exempting State retirement benefits. In 1989, the State amended its statutes to comply with the
12 *Davis* ruling. See A.R.S. § 43-1022.2. However, as previously noted by this Board, nothing in *Davis*
13 indicates that this doctrine extends to anyone other than federal employees. See, *Edward and Lois*
14 *Grodsky v. Arizona Dep't of Rev.*, Docket No. 1168-94-1 (BOTA 1995) (holding that pension income
15 includible in its entirety in federal adjusted gross income is also includible in Arizona gross income for that
16 year.)

17 Having reviewed this matter, the Board finds that the Department's assessments are valid.
18 Therefore, Appellants are liable for the tax at issue. Further, Appellants have not shown that their failure
19 to timely pay the tax at issue was due to reasonable cause; thus, the penalties imposed may not be
20 abated. A.R.S. § 42-1125(D). Finally, because the interest imposed represents a reasonable interest
21 rate on the tax due and owing and is made part of the tax by statute, it may not be abated. *Biles v.*
22 *Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

23 CONCLUSIONS OF LAW

24 1. The assessment is valid, and Appellants are liable for the tax assessed. See *Arizona State*
25 *Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. § 43-102(A); see, *Edward and*
Lois Grodsky v. Arizona Dep't of Rev., Docket No. 1168-94-1 (BOTA 1995)

