



1 Appellant timely protested the assessment to the Department's hearing officer who upheld the  
2 assessment. Appellant then protested the hearing officer's decision to the Director of the Department  
3 who summarily affirmed the hearing officer's decision. Appellant now timely appeals to this Board.

4 DISCUSSION

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

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

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

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

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

23 Appellant argues that the Department bears the burden of proving he received the income during  
24 the Audit Period but fails to do so because the IRS information upon which the Department relies is  
25 inadmissible to prove the fact.

As previously noted by the Board in a similar case, the Arizona Court of Appeals has rejected the  
argument that the IRS information is inadmissible. *See, e.g., Steve Hernandez v. Arizona Dep't of Rev.*,  
Docket No. 1880-02-1 (BOTA 2003). Further, the burden of proof shifts to the Department only if a

<sup>1</sup> 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 preponderance of the evidence demonstrates that the taxpayer has asserted a reasonable dispute  
2 concerning an issue of fact. A.R.S. § 42-1255. Appellant has produced no evidence that the information  
3 from the IRS, DES or the Department is inaccurate. Accordingly, Appellant is liable for the tax assessed.  
4 Further, Appellant has not shown that his failure to file tax returns on demand, file returns when due and  
5 negligence was due to reasonable cause and not willful neglect; therefore, the penalties at issue may not  
6 be waived. A.R.S. § 42-1125(A), (B), and (E).<sup>2</sup> Finally, because the interest imposed represents a  
7 reasonable interest rate on the tax due and owing and is made part of the tax by statute, it may not be  
8 abated. *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

9 CONCLUSIONS OF LAW

- 10 1. Appellant is liable for the tax assessed. A.R.S. § 43-102(A); A.R.S. § 43-1001(2).
- 11 2. Because Appellant has not shown that his failure to file tax returns on demand, file returns  
12 when due and negligence was due to reasonable cause and not willful neglect, the penalties at issue may  
13 not be waived. A.R.S. § 42-1125.
- 14 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is  
15 made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841  
16 (1934).

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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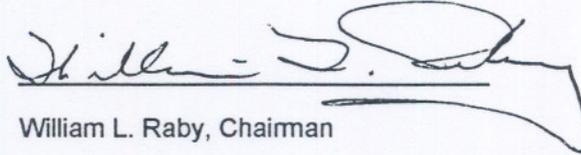
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<sup>2</sup> A.R.S. § 42-1125 was amended for tax year 2001, thus, penalties for this year were assessed under subsections (A), (B), and (F).

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 7<sup>th</sup> day of December, 2004.

4 STATE BOARD OF TAX APPEALS

5  
6   
7 William L. Raby, Chairman

8 WLR:alw

9 CERTIFIED

10 Copies of the foregoing  
Mailed or delivered to:

11 Robert Rodriguez  
12 3344 W. Paradise Dr.  
Phoenix, Arizona 85029

13 Lisa A. Neuville  
14 Assistant Attorney General  
15 Civil Division, Tax Section  
1275 West Washington Street  
Phoenix, Arizona 85007