

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

ORVILLE and IRENE BIEL, )  
Appellants, ) Docket No. 1876-02-I  
vs. )  
ARIZONA DEPARTMENT OF REVENUE, ) NOTICE OF DECISION:  
Appellee. ) FINDINGS OF FACT AND  
 ) CONCLUSIONS OF LAW  
 )

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, the Arizona Department of Revenue (the "Department") learned that Orville and Irene Biel ("Appellants") had filed federal income tax returns with an Arizona address for 1996 and 1997 but had not filed Arizona income tax returns for these years.

Subsequently, the Department assessed Appellants Arizona income tax, penalties for failing to timely file returns and interest. Appellants protested the assessment to the Department's Hearing Officer who upheld the assessment. Appellants then protested to the Director of the Department who affirmed the Hearing Officer's decision. Appellants now timely appeal to this Board.

DISCUSSION

The issue before the Board is whether Appellants are liable for the tax assessed. The presumption is that an assessment of additional income tax is correct. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

1 A.R.S. § 43-102.A states that “[i]t is the intent of the legislature . . . [t]o impose on each resident  
2 of this state a tax measured by taxable income wherever derived.” “[R]esident” is defined to include  
3 every individual who is in Arizona for other than a temporary or transitory purpose. A.R.S. § 43-  
4 104.19(a). The term also includes every individual domiciled in Arizona who is outside Arizona for a  
5 temporary or transitory purpose. *Id.* This section further provides that “[a]ny individual who is a resident  
6 of this state continues to be a resident even though temporarily absent from this state.”

7 Residency is a question of fact. Appellants maintain that they were not Arizona residents in 1996  
8 and 1997 but lived in Nevada in a home they had previously transferred to their son. The evidence,  
9 however, shows that Appellants owned a house in Arizona, held Arizona drivers licenses, were treated by  
10 Arizona doctors, purchased vehicles in Arizona, wrote checks to cover their son's expenses from an  
11 Arizona bank account, and listed an Arizona address on their federal income tax returns for the years at  
12 issue. Conversely, Appellants have submitted no evidence to the Board substantiating their claim that  
13 they were Nevada residents for these years. Therefore, the Board concludes that Appellants were  
14 Arizona residents for tax years 1996 and 1997 and are liable for the tax assessed.

15 Further, because Appellants have failed to show that their failure to timely file Arizona income tax  
16 returns was due to reasonable cause and not willful neglect, the penalty must be upheld. A.R.S. § 42-  
17 1125.A. Finally, the interest at issue is made a part of the tax by statute and represents a reasonable  
18 interest rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz.  
19 276, 286, 30 P.2d 841 (1934).

20 CONCLUSIONS OF LAW

- 21 1. Appellants are liable for the tax assessed. A.R.S. §§ 43-102.A, 43-104.19(a).
- 22 2. Because Appellants have failed to show that their failure to timely file an Arizona income tax  
23 return was due to reasonable cause and not willful neglect, the penalty must be upheld. A.R.S. § 42-  
24 1125.A.

