

1 Docket Number 1830-00-1 (BOTA Sept. 19, 2000). Ultimately, the Arizona Court of Appeals upheld the
2 assessments.

3 DISCUSSION

4 The issue before the Board is whether the Department's assessments against Appellant are valid.
5 The presumption is that an assessment of additional income tax is correct, and Appellant bears the
6 burden of overcoming that presumption. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102,
7 191 P.2d 729 (1948).

8 The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.
9 Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona
10 Revised Statutes and has granted the Department the powers and duties to enforce them. A.R.S. § 42-
11 1004.¹

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

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

22 Appellant claims that he was not employed and did not receive any of the income alleged in the
23 assessments at issue. Appellant argues that, notwithstanding *Kieckhefer*, the Department bears the
24 burden of proving he received the income in this case either because there is no evidence supporting the

25 ¹ Appellant argues that Arizona's income tax laws violate the Arizona Constitution because they incorporate by
reference the Internal Revenue Code. This argument was rejected by the court of appeals in connection with
Appellant's previous audit, and Appellant is bound by that determination.

² 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 Department's assessment, or, in the alternative, Appellant's assertions denying the received income
2 sufficiently rebut the assessments.

3 Various government records substantiate Appellant's income during the years at issue. The IRS
4 audited Appellant for tax years 1996 and 1997 and sent the Department the information from his W-2
5 forms. This information includes the name and address of the employer and employee and the amounts
6 reported for wages, withholding, etc. Records from the Arizona Department of Economic Security confirm
7 the wage information. Appellant has offered no evidence controverting this information.³

8 Appellant next argues that the assessments for tax years 1996 and 1997 are void because the
9 Director of the Department ("Director") did not delegate his authority to assess tax to the auditor in writing.

10 The Department is authorized to administer and enforce Arizona tax laws. A.R.S. § 42-1004.A.
11 The Director of the Department ("Director") is responsible for the direction, control and operation of the
12 Department. A.R.S. § 42-1002.B. The Director has the discretion to delegate such administrative
13 functions, duties or powers as he deems necessary to carry out the efficient operations of the
14 Department. A.R.S. § 42-1005.A.7. The statutes do not require this delegation be in writing.

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

21 CONCLUSIONS OF LAW

22 1. The assessment is valid, and Appellant is liable for the tax assessed. *See Arizona State Tax*
23 *Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. §§ 42-1004, 43-102.

24 2. Because Appellant has not shown that his failure to timely file income tax returns was due to
25 reasonable cause, the penalties imposed may not be abated. A.R.S. § 42-1125(A).

³ Although Appellant challenges the admissibility of the IRS information, the court of appeals previously rejected Appellant's argument.

