1 BEFORE THE STATE BOARD OF TAX APPEALS STATE OF ARIZONA 100 North 15th Avenue - Suite 140 2 Phoenix, Arizona 85007 602.364.1102 3 4 STEVE HERNANDEZ. Docket No. 1880-02-I 5 Appellant, 6 VS. NOTICE OF DECISION: FINDINGS OF FACT AND 7 ARIZONA DEPARTMENT OF REVENUE, **CONCLUSIONS OF LAW** Appellee. 8 9 10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and 11 having taken the matter under advisement, finds and concludes as follows: 12 FINDINGS OF FACT 13 Through an exchange of information agreement with the Internal Revenue Service ("IRS"), the 14 Arizona Department of Revenue (the "Department") learned that Steve Hernandez ("Appellant"), an 15 Arizona resident, earned income in 1996 and 1997 but failed to file an Arizona individual income tax 16 returns for these years. 17 Subsequently, based on the federal information, the Department issued proposed assessments 18 of additional income tax, penalties for failure to timely file a return, and interest for tax years 1996 and 19 1997. This assessment was based on Appellant's federal adjusted gross income as reported by the IRS. 20 Appellant timely protested the assessments to the Department's hearing officer who upheld the 21 assessments. Appellant then protested the hearing officer's decision to the Director of the Department 22 who affirmed the hearing officer's decision. Appellant now timely appeals to this Board. 23 The Department previously assessed Appellant for tax years 1993, 1994 and 1995. Appellant 24 appealed the assessments to this Board, which denied the appeal. Hernandez v. Arizona Dep't of Rev.,

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24 25 Docket Number 1830-00-I (BOTA Sept. 19, 2000). Ultimately, the Arizona Court of Appeals upheld the assessments.

DISCUSSION

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

The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.

Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona Revised Statues and has granted the Department the powers and duties to enforce them. A.R.S. § 42-1004.

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

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

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

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.

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.

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

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

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

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

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

CONCLUSIONS OF LAW

- 1. The assessment is valid, and Appellant is liable for the tax assessed. See Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. §§ 42-1004, 43-102.
- 2. Because Appellant has not shown that his failure to timely file income tax returns was due to 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.

Notice of Decision Docket No. 1880-02-I 1 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is made part of the tax by statute; therefore, it may not be abated. Biles v. Robey, 43 Ariz. 276, 286, 30 2 P.2d 841 (1934). 3 **ORDER** 4 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the 5 Department is affirmed. 6 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, 7 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254. 8 lltiı February day of DATED this , 2003. 9 STATE BOARD OF TAX APPEALS 10 11 12 William L. Raby, Chairperson 13 WLR:ALW 14 **CERTIFIED** 15 Copies of the foregoing Mailed or delivered to: 16 Steve Hernandez 17 1628 E. Southern Ave. # 9246 Tempe, Arizona 85282 18 Lisa Neuville 19 Assistant Attorney General Civil Division, Tax Section 1275 West Washington Street 20 Phoenix, Arizona 85007 21 22

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