

1   BEFORE THE STATE BOARD OF TAX APPEALS  
2   STATE OF ARIZONA  
3   100 North 15<sup>th</sup> Avenue - Suite 140  
  Phoenix, Arizona 85007  
  602.364.1102

4	ROBERT LEE, JR.,	)	Docket No. 1913-03-I
5	Appellant,	)	
6	vs.	)	
7	ARIZONA DEPARTMENT OF REVENUE,	)	NOTICE OF DECISION:
8	Appellee.	)	FINDINGS OF FACT AND
9		)	<u>CONCLUSIONS OF LAW</u>
		)	
		)	
		)	

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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 Robert Lee, Jr. ("Appellant"), an Arizona  
15 resident, received wages and other income in tax years 1995 through 2000. The Department determined  
16 that Appellant had failed to file Arizona individual income tax returns for these years and issued  
17 assessments of tax, interest and penalties.

18                   After unsuccessfully protesting the assessment before the Department, Appellant now timely  
19 appeals to this Board.

20   DISCUSSION

21                   The issue before the Board is whether the Department's assessments against Appellant are valid.  
22 The presumption is that an assessment of additional income tax is correct, and Appellant bears the  
23 burden of overcoming that presumption. See *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102,  
24 191 P.2d 729 (1948).

1 The Arizona Legislature has the authority to levy and collect taxes under the Arizona Constitution.  
2 Ariz. Const. art. IX, § 12. Accordingly, the legislature has enacted Titles 42 and 43 of the Arizona  
3 Revised Statutes and has granted the Department the powers and duties to enforce them. A.R.S. § 42-  
4 1004.

5 Pursuant to this authority, the legislature enacted A.R.S. § 43-102(A) providing that it is the intent  
6 of the legislature by the adoption of Title 43 to accomplish 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.<sup>1</sup>

16 Appellant concedes that wages or compensation for services are includible in gross income as a  
17 matter of law, but argues that the Department must prove that he received such income during the years  
18 at issue. Appellant claims that he was not employed and did not receive any of the alleged income.  
19 He argues that, notwithstanding *Kieckhefer*, the Department bears the burden of proving he received the  
20 income in this case because either the IRS information is inadmissible, thus, there is no evidence  
21 supporting the Department's assessment,<sup>2</sup> or, in the alternative, Appellant's assertions denying he  
22 received income sufficiently rebut the assessments.

23 Although Appellant argues that the IRS information is inadmissible, as previously noted by the  
24 Board in a similar case, the court of appeals has rejected this argument. See, e.g., *Steve Hernandez v.*  
25 *Arizona Dep't of Rev.*, Docket No. 1880-02-1 (BOTA 2003). Additionally, other records confirm the IRS

<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 (1995).

<sup>2</sup> See, generally, *Weimerskirch v. Commissioner*, 596 F.2d 358 (9<sup>th</sup> Cir. 1979); *United States v. Janus*, 428 US 433 (1976) (holding that when an assessment has no rational foundation whatsoever, it is considered to be "naked" and is not properly subject to the usual rule of the presumption of correctness and the burden of proof in tax cases).

1 information. These records include W-2 forms and documents from the Arizona Department of Economic  
2 Security confirming Appellant's receipt of wages and pension income. Appellant has offered no evidence  
3 controverting this information.

4 Appellant next argues that the assessments for tax years 1995 through 2000 are invalid because  
5 the Director of the Department ("Director") did not properly delegate his authority to assess tax to the  
6 auditor in writing. The Department is authorized to administer and enforce Arizona tax laws. A.R.S. § 42-  
7 1004.A. The Director of the Department ("Director") is responsible for the direction, control and operation  
8 of the Department. A.R.S. § 42-1002.B. The Director has the discretion to delegate such administrative  
9 functions, duties or powers as he deems necessary to carry out the efficient operations of the  
10 Department. A.R.S. § 42-1005.A.7. The statutes do not require this delegation be in writing.

11 Having reviewed this matter, the Board finds that the Department's assessments are valid.  
12 Therefore, Appellant is liable for the tax at issue. Further, Appellant has not shown that his failure to  
13 timely file income tax returns was due to reasonable cause; thus, the penalties imposed may not be  
14 abated. A.R.S. § 42-1125(A). Finally, because the interest imposed represents a reasonable interest  
15 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).

#### 16 CONCLUSIONS OF LAW

17 1. The assessments are 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. § 43-102(A).

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

20 3. The interest imposed represents a reasonable interest rate on the tax due and owing and is  
21 made part of the tax by statute; therefore, it may not be abated. *Biles v. Robey*, 43 Ariz. 276, 286, 30  
22 P.2d 841 (1934).

#### 23 ORDER

24 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the  
25 Department is affirmed.

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 27th day of January, 2004.

4 STATE BOARD OF TAX APPEALS

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6   
7 William L. Raby, Chairperson

8 WLR:ALW

9 CERTIFIED

10 Copies of the foregoing  
11 Mailed or delivered to:

11 Robert Lee, Jr.  
12 703 E. Carmen Street  
13 Tempe, Arizona 85281

13 Elizabeth S. Hill  
14 Assistant Attorney General  
15 Civil Division, Tax Section  
16 1275 West Washington Street  
17 Phoenix, Arizona 85007  
18  
19  
20  
21  
22  
23  
24  
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