

BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
Bank of America Tower  
101 North First Avenue - Suite 2340  
Phoenix, Arizona 85003  
(602) 528-3966

JOHN A. and LANAI E. MOORE )

Appellants, )

vs. )

ARIZONA DEPARTMENT OF REVENUE, )

Appellee. )

Docket No. 1746-98-1

**NOTICE OF DECISION:  
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

Based on information received from an exchange of information agreement with the Internal Revenue Service ("IRS"), the Arizona Department of Revenue (the "Department") learned that John A. and Lanai E. Moore ("Appellants") failed to file Arizona individual income tax returns for tax years 1985, 1986 and 1987. The Department subsequently issued assessments, including tax, interest and penalties for failure to file and negligence, for the 1985, 1986 and 1987 tax years. After unsuccessfully protesting the assessments to the Department's Hearing Officer and Director, Appellants now timely appeal to this Board.

DISCUSSION

The issue before the Board is whether Appellants are liable for the assessment for tax years 1985, 1986 and 1987. "The presumption is that an additional assessment of income tax is correct and the burden is on the taxpayer to overcome such presumption." *State Tax Comm'n v. Kieckhefer*, 67 Ariz. 102, 105, 191 P.2d 729, 732 (1948); see also A.A.C. R16-3-118 ("The burden of proof will be upon the appellant as to all issues of fact.").

Appellants argue that their tax liability for the years at issue were discharged in a 1993 bankruptcy. The Board has previously determined that it is within the jurisdiction of the Bankruptcy Court to decide whether a tax liability has been discharged. See, e.g., *King v. Arizona Dep't of Rev.*, No. 1137-

1 94-I (BTA 1995), *Yarbrough v. Arizona Dep't of Rev.*, No. 1430-95-I (BTA 1996). This Board's subject  
2 matter jurisdiction is limited to deciding appeals from decisions of the Department. A.R.S. § 42-1252(A)  
3 (formerly A.R.S. §. 42-171(A)). If Appellants contend that the specific questions now before this Board  
4 have been adjudicated on their merits by a bankruptcy court, they have failed to provide any evidence  
5 thereof.

6 Next, Appellants argue that the Department improperly denied net operating losses ("NOLs") that  
7 were incurred prior to the tax years at issue. A.R.S. § 43-961(5) provides that in computing taxable  
8 income no deduction shall be allowed in respect of "[a]ny amount, not otherwise provided for by this  
9 section, that would otherwise be allowable as a deduction . . . which is allocable to . . . income . . . that is  
10 not required to be included in a person's Arizona adjusted gross income or Arizona taxable income." The  
11 NOL carry-forward amounts were incurred in 1977 and 1978. Appellants became Arizona residents in  
12 1983. Appellants were not residents of Arizona during the tax years the NOLs were incurred and their  
13 income for that period was not subject to Arizona income tax.<sup>1</sup> Therefore, the Department properly  
14 disallowed the taxpayers' NOL carry forward of losses incurred prior to their establishing Arizona  
15 residency. A.R.S. § 43-961(5).

16 Finally, the Appellants argue that their constitutional rights to equal protection have been  
17 violated. In order to establish their claim of denial of equal protection, Appellants must first show that the  
18 Department systematically and deliberately discriminated against them. *Duhamé v. State Tax*  
19 *Commission*, 65 Ariz. 268, 282, 179 P.2d 252, 261 (1947). Appellants have not produced evidence  
20 showing systematic and deliberate discrimination.

21 For the foregoing reasons, Appellants are liable for the tax assessed. Further, because  
22 Appellants have not shown that the failure to timely pay the tax was due to reasonable cause and not  
23 willful neglect, the penalties may not be abated. See A.R.S. § 42-1125(D) and (F) (formerly A.R.S. § 42-  
24 136(D) and (E)). Finally, the interest imposed represents a reasonable interest rate on the tax due and  
25 owing and is made part of the tax by statute, therefore, it may not be abated. See A.R.S. §

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28 <sup>1</sup> The Board has previously addressed the issue of taxpayers who were not residents of Arizona during the tax year  
NOLs were incurred in *Danielson v. Arizona Dep't of Rev.*, No. 1151-94-I (BTA 1995) and *Sharp v. Arizona Dep't of*  
*Rev.*, No. 1256-94-I (BTA 1995).

1 42-1123(B) (formerly A.R.S. § 42-134(B)); see also *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

2 CONCLUSIONS OF LAW

3 1. It is not within the jurisdiction of this Board to decide whether a tax liability has been  
4 discharged in bankruptcy proceedings. See A.R.S. § 42-1252(A) (formerly A.R.S. §. 42-171(A)); see  
5 also, eg., *King v. Arizona Dep't of Rev.*, No. 1137-94-I (BTA 1995), *Yarbrough v. Arizona Dep't of Rev.*,  
6 No. 1430-95-I (BTA 1996).

7 2. The Department properly disallowed the taxpayers' NOL carry forward of losses incurred prior  
8 to their establishing Arizona residency. See A.R.S. § 43-961(5); see also *Danielson v. Arizona Dep't of*  
9 *Rev.*, No. 1151-94-I (BTA 1995), *Sharp v. Arizona Dep't of Rev.*, No. 1256-94-I (BTA 1995).

10 3. Appellants have not produced evidence showing systematic and deliberate discrimination.  
11 *Duhame v. State Tax Commission*, 65 Ariz. 268, 282, 179 P.2d 252, 261 (1947).

12 4. Because Appellants have not shown that the failure to timely pay the tax was due to  
13 reasonable cause and not willful neglect, the penalties may not be abated. See A.R.S. § 42-1125(D) and  
14 (F) (formerly A.R.S. § 42-136(D) and (E)).

15 5. The interest imposed represents a reasonable interest rate on the tax due and owing and is  
16 made part of the tax by statute, therefore, it may not be abated. See A.R.S. § 42-1123(B) (formerly  
17 A.R.S. § 42-134(B)); see also *Biles v. Robey*, 43 Ariz. 276, 30 P.2d 841 (1934).

18 ORDER

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

21 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
22 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254  
23 (formerly A.R.S. § 42-124).

24 DATED this 9th day of February, 1999.

25 STATE BOARD OF TAX APPEALS

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28 Stephen P. Linzer, Chairman

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CERTIFIED

Copies of the foregoing  
mailed or delivered to:

Robert C. Rowland  
Attorney at Law  
335 North Wilmot, Suite - 330  
Tucson, Arizona 85711

Patrick Irvine  
Chief Counsel  
Civil Division, Tax Section  
1275 West Washington Street  
Phoenix, Arizona 85007