

STATE OF ARIZONA

Department of Revenue
Office of the Director
(602) 716-6090



Janet Napolitano
Governor

Gale Garriott
Director

CERTIFIED MAIL [REDACTED]

**The Director's Review of the Decision
of the Hearing Officer Regarding:**)
)
)
[REDACTED])
)
UTI No. [REDACTED])
_____)

O R D E R

Case No. 200500215-I

On January 26, 2006 the Hearing Officer issued a decision regarding the protest of [REDACTED] ("Taxpayers"). Taxpayers timely filed an appeal of the Hearing Officer's decision to the Director of the Department of Revenue ("Director"). Because the appeal was timely, the Director of the Department of Revenue ("Director") issued a notice of intent to review the decision.

In accordance with the notice given the parties, the Director has reviewed the Hearing Officer's decision and now issues this order.

Statement of Case

The Individual Income Tax Audit Section of the Division ("Division") issued a deficiency assessment to Taxpayers for tax year 1999. Taxpayers protested the assessment, and the Hearing Officer denied the protest. On appeal, Taxpayers argue that they filed their Arizona tax return and have paid their tax liability. The Division argues they did not file and that the modified proposed assessment is proper.

Findings of Fact

The Director adopts and incorporates into this order the findings of fact set forth in the decision of the Hearing Officer and additional findings as follows:

1. While Taxpayer filed a federal income tax return for 1999, Taxpayers failed to file their 1999 Arizona income tax return.

[REDACTED]

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2. The Department has no record of payment for Taxpayers' 1999 tax liability.
3. During 1999 Taxpayers received income totaling \$[REDACTED].
4. On their federal income tax return, Taxpayers took a subtraction of \$[REDACTED] for an IRA contribution.
5. Based on Taxpayers' federal income tax return information, the Division allowed Taxpayers personal exemptions (\$6300.00), a standard deduction (\$7200.00) and one dependant exemption (\$2300.00).
6. The Division allowed Taxpayer estimated withholding tax of \$[REDACTED].

Conclusions of Law

The Director adopts conclusions of law from the decision of the Hearing Officer and additional conclusions as follows:

1. An individual taxpayer computes Arizona taxable income by starting with federal adjusted gross income. See A.R.S. § 43-1001.
2. In 1999, Taxpayers' federal adjusted gross income was \$[REDACTED].
3. The Division properly allowed Taxpayers the personal exemptions, a standard deduction and a dependant deduction. *Former* A.R.S. §§ 43-1023, 43-1041 and 43-1043
4. The Division's modified proposed assessment properly calculates Taxpayers' Arizona tax liability for 1999 as \$[REDACTED], leaving tax due of \$[REDACTED] after the allowed withholding of \$[REDACTED].
5. The Division properly imposed interest and late file penalty. A.R.S. §§ 42-1123.C and 42-1125. A.
6. Taxpayers provided no evidence of reasonable cause to abate late file penalties.
7. The Division properly issued the modified proposed assessment.

Discussion

Through the exchange of information program with the Internal Revenue Service, the Department learned that Taxpayers earned or received income that would require

them to file an Arizona tax return for 1999. However, no return was found to have been filed. Taxpayers were sent a letter inquiring about their failure to file a return. They responded with a statement that they did file and were enclosing a copy of the 1999 Arizona tax return. The return provided at that time was a copy of the 2000 tax return, which Taxpayers had timely filed in 2001. Taxpayers owed an additional \$[REDACTED] and paid that amount with the return.

The Division issued a notice of proposed assessment to each Taxpayer as if they filed married separate. The Department received timely protests and subsequently abated the audit under [REDACTED] identification number and modified [REDACTED] proposed assessment to change the filing status to married joint and tax all of the income of both Taxpayers.

According to the federal information received by the Department, Taxpayers received income during 1999 from the following sources:

Interest	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]
TOTAL	\$ [REDACTED]

After subtracting \$[REDACTED] for an IRA contribution, Taxpayers' federal adjusted gross income was \$[REDACTED].

An individual taxpayer computes Arizona taxable income by starting with federal adjusted gross income. A.R.S. § 43-1001. The modified proposed assessment uses this income amount and allows Taxpayers a deduction for one dependent and the personal exemption and standard deduction for the married joint filing status. Further, in the modified assessment Taxpayers are allowed a credit for estimated withholding of \$[REDACTED]. Taxpayers have provided no additional information to allow further exemptions, subtractions or credits. The Section properly calculated the tax liability of the Taxpayers.

In their appeal, Taxpayers state they used Turbo Tax to prepare their return, that they have sent copies of the 1999 returns to the Department and that they only owed

\$(REDACTED), which was paid. The Department has no record of Taxpayers filing the 1999 return or the payment of any taxes for 1999. The Department also has no record of receiving a copy of Taxpayers' 1999 return as referenced in their Appeal to the Director. Despite being asked several times by the Division for a copy of the 1999 return, Taxpayers have failed to provide it. Taxpayers have not shown they filed their 1999 Arizona tax return.

Pursuant to A.R.S. § 42-1125.A, a penalty is imposed for failure to timely file. This penalty may be abated only if the failure to timely file is due to reasonable cause and not due to wilful neglect. "Reasonable cause" is generally defined to mean the exercise of "ordinary business care and prudence." *Daley v. United States*, 480 F. Supp. 808 (D.N.D. 1979). No evidence has been provided to establish reasonable cause; therefore, the imposition of the late file penalty must be upheld.

As to the interest portion of the assessment, A.R.S. § 42-1123.C provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid. For Arizona purposes, therefore, interest is a part of the tax and generally may not be abated unless the tax to which it relates is found not to be due for whatever reason. The tax was due in this case and the associated interest cannot be abated.

The Division's modified proposed assessment is proper.

Taxpayers further state they do not have the funds to pay the assessment. While Taxpayers' statements that they cannot pay the assessment is not relevant to determining whether the amount of the assessment is correct, if Taxpayers' finances would prevent repayment Taxpayers may qualify for an offer and compromise as provided by A.R.S. § 42-1004.B. If interested in pursuing this course of action, Taxpayers should contact the Collections Division at (602) 716-7787.

ORDER

The Hearing Officer's decision is affirmed.

[REDACTED]

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This decision is the final order of the Department of Revenue. Taxpayers may contest the final order of the Department in one of two manners. Within 60 days of the receipt of the final order, Taxpayers may file an appeal to the State Board of Tax Appeals, 100 North 15th Avenue, Suite 140 Phoenix, AZ 85007 or, if the amount in dispute is greater than five thousand dollars, Taxpayers may bring an action in Tax Court (125 West Washington, Phoenix, Arizona 85003). For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102. For information from the Tax Court, call (602) 506-3763.

Dated this 3rd day of November, 2006.

ARIZONA DEPARTMENT OF REVENUE

Gale Garriott
Director

Certified original of the foregoing
mailed by certified mail to:

[REDACTED]

GG:st

cc: Individual Income Appeals
Income Protest Unit
Audit Division