

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
)	HEARING OFFICER
[REDACTED])	
)	Case No. 200900006-I
UTI # [REDACTED])	
_____)	

A hearing was held on February 12, 2009 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2003. Taxpayer was notified of the date, time and place of the hearing by notice dated January 12, 2009. The notice was sent to Taxpayer's last known address and it was not returned. It is therefore assumed that the notice was delivered. Taxpayer did not appear at the hearing and did not notify the Hearing Office or the Section that he would be unable to attend. The hearing was therefore conducted in Taxpayer's absence.^[1]

FINDINGS OF FACT

Based upon evidence presented at the hearing, the Hearing Officer finds as follows. Taxpayer timely filed his 2003 Arizona resident income tax return. After filing his 2003 return, Taxpayer submitted an Offer-In-Compromise to the Department for various tax years including the 2003 tax year. On or about December 3, 2004, the Department accepted Taxpayer's Offer-In-Compromise.

Through an exchange of information agreement with the Internal Revenue Service (IRS) under I.R.C. § 6103(d)(1)), the

[¹ Pursuant to Arizona Administrative Code Rule R15-10-115(C)(1).]

Section learned that on or about February 22, 2005, the IRS made adjustments to Taxpayer's 2003 federal return. Specifically, the IRS increased Taxpayer's adjusted gross income to include wages and interest not reported by Taxpayer on his 2003 return. The IRS' assessment became final on or about September 19, 2005. Taxpayer did not report the IRS' changes to Arizona or file an Arizona amended tax return for 2003.

Using the information obtained from the IRS, on April 23, 2008, the Section issued a proposed assessment of tax for the 2003 tax year. The assessment increased Taxpayer's adjusted gross income by \$[REDACTED] based upon the following unreported income: \$[REDACTED] in wages from [REDACTED EMPLOYER 1]; \$[REDACTED] in wages from [REDACTED EMPLOYER 2]; and \$[REDACTED] of interest from [REDACTED FINANCIAL INSTITUTION]. These amounts were based upon W-2s and a 1099-INT reported to the IRS. As a result of these changes, the Section's proposed assessment sought additional tax due in the amount of \$[REDACTED] and interest in the amount of \$[REDACTED] (accrued through May 7, 2008).

Taxpayer timely protested the assessment asserting that he was offered an "offer of compromise to pay back taxes" for the year at issue and that the amount shown for [REDACTED EMPLOYER] was wrong. Taxpayer also requested a formal hearing on the matter.

The Section sent Taxpayer a letter on July 25, 2008 explaining that although the Offer-In-Compromise included the 2003 tax year, the Section's proposed assessment was based upon changes made to Taxpayer's income by the IRS after the Offer-In-Compromise

was agreed upon. The letter also requested that Taxpayer advise whether he wished to withdraw the protest and enclose payment or wished to request a formal hearing. Taxpayer responded by requesting a formal hearing. The matter was subsequently transferred to the Hearing Office and a formal hearing was scheduled for February 12, 2009. However, as stated above, Taxpayer did not appear for the hearing. At issue is the propriety of the Section's proposed assessment for tax year 2003.

CONCLUSIONS OF LAW

The Taxpayer's prior Offer-In-Compromise does not negate the Section's proposed assessment. As a part of submitting an Offer-In-Compromise, a taxpayer signs a document agreeing that he/she "understand[s] and agree[s] to the terms and conditions on the reverse side of this form." The Terms and Conditions of an Offer-In-Compromise include, in part, as follows:

This offer-in-compromise applies only to the tax liabilities that exist at the time of the receipt of the proposed offer-in-compromise. In the event that an additional tax liability for the same or different period(s) or type(s) is ascertained by the department in any manner including audits, amended returns, etc., this offer shall neither serve as a waiver or admission by the department nor preclude the department from taking any actions necessary to collect that liability.

The Offer-In-Compromise was dated on or about December 3, 2004 and was based upon the amount due in Taxpayer's originally filed return for tax year 2003. However, as stated above, the IRS subsequently increased Taxpayer's adjusted gross income to include wages and interest not reported by Taxpayer on his 2003 return. The IRS' assessment became final in September of 2005. Based upon

the IRS' adjustment, the Section issued a proposed assessment of additional tax due. As stated in the Terms and Conditions above, the Offer-In-Compromise does not preclude the Department from taking action on a subsequently discovered additional tax liability.

With respect to the assessment itself, A.R.S. § 43-102(A)(1) provides that it is the intent of the Arizona legislature to adopt the provisions of the federal Internal Revenue Code relating to the measurement of adjusted gross income for individuals so that adjusted gross income reported to the IRS shall be the identical sum reported to Arizona, subject only to modifications set forth in Title 43 of the Arizona Revised Statutes. An individual taxpayer computes Arizona taxable income by starting with federal adjusted gross income. See A.R.S. § 43-1001. Based upon documentation received by the IRS, the IRS determined that Taxpayer's federal adjusted gross income was \$[REDACTED] more than the amount reported on Taxpayer's 2003 return.

Pursuant to A.R.S. § 43-327, Taxpayer was required to report to the Department the increased income as modified in the IRS' notice of deficiency. However, Taxpayer did not do so. A.R.S. § 42-1104(B)(5) provides that where a taxpayer does not report such changes made by the IRS, the Section may assess deficiencies resulting from such changes within four years after the IRS' changes have become final.

Based upon the IRS' changes, the Section's proposed assessment increased Taxpayer's adjusted gross income by \$[REDACTED] and assessed corresponding tax deficiencies. The

Section's assessment was issued within the four-year limitations period set forth in A.R.S. § 42-1104(B)(5). Taxpayer has produced no evidence to establish that the Section's proposed assessment is incorrect. There being no evidence to the contrary, the Section's assessment must be upheld as being correct.

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.

Based on the foregoing, the Section's proposed assessment is affirmed.

DATED this 17th day of February, 2009.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section