

5. Taxpayer did not file a return for any of the years.
6. The Section issued Taxpayer proposed assessments dated July 18, 2012 for tax years 2004 through 2008 based on Taxpayer's income shown in the IRS information.
7. The proposed assessments allowed Taxpayer a standard deduction and a personal exemption.
8. The proposed assessments included tax on the income, corresponding interest at the statutory rate and penalties for failure to file when due, failure to file on demand and failure to furnish information requested in writing by the Department.
9. Taxpayer timely protested the assessments asserting that Taxpayer has not earned income and the I.R.C. had not been enacted into positive law and therefore the I.R.C. cannot be inconsistent with the United States Statutes at Large.
10. Taxpayer has not identified any inconsistency between the I.R.C. codified in Title 26 of the United States Code (U.S.C.) and the United States Statutes at Large.
11. Taxpayer presented no evidence that [REDACTED] did not receive the wages and other amounts included in the proposed assessments.

CONCLUSIONS OF LAW

1. The presumption is that an assessment of additional income tax is correct and the burden is on the taxpayer to overcome such presumption. *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
2. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin*, 948 F.2d 1188 (10th Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3rd Cir.,1986).
3. A general denial of liability is not sufficient to overcome the presumption of correctness. *Avco Delta Corp. Canada Ltd. v. U.S.*, 540 F.2d 258 (7th Cir., 1976).

4. Arizona Revised Statutes (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.
5. The State of Arizona's power to tax is independent of the Constitution of the United States. *Department of Revenue v. Arthur*, 153 Ariz. 1, 734 P.2d 98 (App. 1986).
6. Article 9, § 12 of the Arizona Constitution extends to the Arizona Legislature the authority to levy and collect taxes, including income taxes. Pursuant to that authority, the Arizona Legislature enacted the Arizona Income Tax Act of 1978, effective as of January 1, 1979.
7. A state may tax all the income of its residents. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 463 (1995) (quoting *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 312-313 (1937)).
8. Taxpayer was a resident of the state of Arizona for the tax years at issue and received wages and other income subject to the Arizona individual income tax.
9. Wages are income for purposes of Arizona's personal income tax. *Department of Revenue v. Arthur, supra*.
10. Arizona gross income means the person's FAGI for the taxable year computed pursuant to the I.R.C. A.R.S. § 43-1001(2).
11. Taxpayer was required to file an Arizona individual income tax return for the tax years at issue. A.R.S. § 43-301.
12. Taxpayer was subject to Arizona income tax on the wages and other income included in the proposed assessments.
13. Taxpayer was required to include the amount of [REDACTED] FAGI in [REDACTED] Arizona gross income.

14. The fact that the I.R.C. had not been enacted into positive law did not mean that tax laws had no effect on state residents. See, *Richey v. Indiana Dep't of State Revenue*, 634 N.E. 2d 1375 (Ind.Tax Ct. 1994); *Eibeck v. Indiana Dep't of State Revenue*, 799 N.E.2d 1212 (Ind.Tax Ct. 2003).
15. The fact that the I.R.C. was not positive law only meant that one must go to the appropriate volume of the United States Statutes at Large to be certain of the content of any given statute codified within the I.R.C.
16. The failure to enact a title into positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable. *Ryan v. Bilby*, 764 F.2d 1325 (9 Cir. (Ariz.) 1985).
17. The I.R.C., codified in 26 U.S.C., is *prima facie* evidence of the law. 1 U.S.C.A. § 204(a).
18. Taxpayer has identified no inconsistency between the I.R.C. and the United States Statutes at Large to rebut the *prima facie* evidence.
19. The Section properly based the assessments on Taxpayer's FAGI as calculated under the I.R.C.
20. 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.
21. A.R.S. § 42-1125(A) imposes a penalty for a taxpayer's failure to file an Arizona income tax return when due.
22. A.R.S. § 42-1125(B) imposes a penalty if a taxpayer fails to file an Arizona income tax return on notice and demand by the Department.
23. A.R.S. § 42-1125(C) imposes a penalty if a taxpayer fails to furnish any information requested in writing by the Department.

24. The Section's May 25, 2012 letter did not constitute a request to furnish information within the meaning of A.R.S. § 42-1125(C). The penalty for failure to furnish information is therefore abated.
25. The late filing and failure to file on demand penalties may be abated only if it is shown that the failure to timely comply "is due to reasonable cause and not due to wilful neglect." A.R.S. § 42-1125, subsections (A) and (B).
26. Taxpayer has provided no evidence to show that [REDACTED] failure to file a return was due to reasonable cause and not due to wilful neglect.
27. The Section's proposed assessments for tax years 2004, 2005, 2006, 2007 and 2008 are upheld with the exception of the penalty for failure to furnish information.

DISCUSSION

Taxpayer did not file Arizona state income tax returns for the years at issue. The Section learned that Taxpayer was audited by the IRS for the W-2 wages and other amounts received by Taxpayer. Based on that information, the section issued proposed assessments to Taxpayer. Taxpayer timely protested.

Taxpayer's primary assertion is that [REDACTED] owes no Arizona income tax because [REDACTED] received no income. The assessed Arizona tax liability is based primarily upon wages Taxpayer received. Taxpayer presented no evidence that [REDACTED] did not receive the wages and other amounts included in the proposed assessments.

The State of Arizona has independent authority to impose an income tax. The state's independence to tax includes the ability to determine how the tax is to be calculated. The references to the Internal Revenue Code are limited to the method used to determine "gross income." The Arizona Court of Appeals has upheld the state's ability to impose an income tax on wages earned by a taxpayer. *Department of Revenue v. Arthur, supra*. The Section's proposed assessments of tax are therefore upheld.

While Arizona's income tax is independent of the federal income tax, it must also be pointed out that the arguments Taxpayer presented here have been held by courts to be without merit, patently absurd and frivolous. See e.g., *Ficalora v. Commissioner*, 751 F.2d 85 (2d Cir.1984), *cert. denied*, 471 U.S. 1005, 105 S.Ct. 1869, 85 L.Ed.2d 162 (1985) and *In re Becraft*, 885 F.2d 547 (9th Cir.1989).

Taxpayer also appears to argue that since Title 26, U.S.C., has not been enacted into positive law, the tax laws have no affect on [REDACTED]. The fact that a provision is not enacted into positive law simply means one must go to the appropriate volume of the United States Statutes at Large to be certain of the content of any given statute. The statutes in the volumes of the United States Code, the United States Code Service, and the United States Code Annotated are meant to contain the same language as the United States Statutes at Large, but unless Congress takes affirmative steps, the language in the various Codes is only *prima facie* evidence of the law.

If there is an inconsistency between the statute in the U.S.C. and the Statutes at Large, the Statutes at Large will govern. Taxpayer has not shown that the same language is not contained in the I.R.C. and the Statutes at Large. Therefore, the fact that the I.R.C. has not been enacted as positive law has no bearing on the validity of the proposed assessments here.

An assessment of additional income tax is presumed correct. See *Arizona State Tax Commission v. Kieckhefer*, *supra*. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence establishing that the assessment was erroneous. Taxpayer has produced no such evidence. Mere denials are not enough.

The proposed assessments included interest. 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 proposed assessments included penalties for failure to file when due and failure to file on demand. Those penalties are authorized by A.R.S. § 42-1125, subsections (A) and (B) and were properly imposed. The penalties may not be abated unless Taxpayer shows that the failure to file was due to reasonable cause and not wilful neglect. Taxpayer's arguments, considered frivolous by courts, do not constitute reasonable cause. The late filing and failure to file on demand penalties are therefore upheld.

The proposed assessments also included penalties for failure to furnish information requested in writing by the Department. The Department had not sent a letter to Taxpayer requesting information. The May 25, 2012 letter demanded Taxpayer to file returns and stated that failure to comply would result in a 25% failure to file on demand penalty. No information was requested in that letter. Therefore, the penalty for failure to furnish information is abated for each year at issue.

Based on the foregoing, the Section's proposed assessments for tax years 2004, 2005, 2006, 2007 and 2008 are upheld except for the failure to furnish information penalty.

DATED this 27th day of November, 2013.

ARIZONA DEPARTMENT OF REVENUE
APPEALS SECTION

[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