

STATE OF ARIZONA

Department of Revenue
Office of the Director
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Janice K. Brewer
Governor

David Raber
Director

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

ORDER

Case No. 201400027-I

On August 5, 2014, 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”). As the appeal was timely, the Director reviewed the Taxpayers’ appeal to determine whether a review of the Hearing Officer’s decision was warranted.

The Individual Income Tax Section of the Audit Division (“Division”) issued a deficiency assessment to Taxpayers for tax year 2009. The assessment added back \$2,400 in unemployment compensation that Taxpayers had excluded from federal adjusted gross income. On appeal Taxpayers make the same arguments they presented to the Hearing Officer.

As the Hearing Officer Decision clearly states, when Taxpayers filed their 2009 tax return, Arizona law did not permit a deduction for unemployment compensation on state returns for tax year 2009. Taxpayers quote A.R.S. § 43-1001, which defined Arizona Gross Income to mean federal adjusted gross income computed pursuant to the internal revenue code. Although cited by the Hearing Officer, Taxpayers ignore the definition of “internal revenue code” in A.R.S. § 43-105 that is tied to a specific point in time and may be different than the then current version of the internal revenue code. As the Decision states, the version of A.R.S. § 43-105 that existed when Taxpayers filed their return stated, “‘internal revenue code’ means the United States internal revenue code of 1986, as amended, **in effect on January 1, 2009, . . . but EXCLUDING any change to the code enacted after January 1, 2009.** A.R.S. § 43-105.A. (as passed by the Arizona Legislature in 2009) (emphasis added). Congress enacted the American Recovery and Reinvestment Act of 2009 on February 17, 2009. That is the Act that created the federal exclusion set forth in Section 85(c) of the Internal Revenue Code for up to \$2,400 for unemployment compensation. Therefore, Arizona law

in effect when Taxpayers filed their return did not include the unemployment compensation deduction created by the American Recovery and Reinvestment Act of 2009 because it was enacted after January 1, 2009.

In April, 2010, the Arizona Legislature retroactively amended A.R.S. § 43-105 to state that the term “internal revenue code” also meant, “those provisions of the American recovery and reinvestment act of 2009.” House Bill 2156 (as signed into law on April 28, 2010). In that same bill, the Arizona Legislature amended A.R.S. § 43-1021 to state, “[i]n computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income....[t]he amount of **unemployment compensation** that is excluded from federal adjusted gross income pursuant to section 85(c) of the internal revenue code as added by **section 1007 of the american recovery and reinvestment act of 2009.**” A.R.S. § 43-1021(32) (as passed by the Arizona Legislature in 2010) (emphasis added). While the April 2010 Arizona amendments applied retroactively, that did not impact the taxability of unemployment compensation in Arizona. When Taxpayers filed their return there was no deduction because the definition of internal revenue code did not include federal provisions enacted after January 1, 2009. After the Arizona Legislature enacted its annual conformity bill the statutes expressly required that taxpayers add back the unemployment compensation deducted on the federal return. Even if House Bill 2156 was not made retroactive, Taxpayers would not have been correct in taking a deduction for unemployment compensation on their 2009 Arizona return under Arizona law.

Taxpayers argue that the Legislature’s actions in enacting House Bill 2156 were unreasonable, capricious and reckless. As Taxpayers state in their appeal, the Legislature heard public comment on the Bill before it was passed. The Legislature responded to a budget crisis by not granting a new tax exemption. In addition, as the Hearing Officer’s Decision explains, the Legislature enacted A.R.S. § 43-107, which gives Taxpayers until the deadline to file the next year’s tax return to amend returns based on non-conformity and avoid penalty and interest. While Taxpayers may not agree with the Legislature’s actions, they have not demonstrated that the Legislature acted unreasonably, capriciously, or recklessly.

A.A.C. R15-10-131.H.2 provides that the Director may issue a decision that summarily affirms the decision of the Hearing Officer. In this case, the Hearing Officer correctly determined that Taxpayers may not claim a deduction for unemployment compensation that is not permitted

under Arizona law. Because the Hearing Officer's decision is correct, the Director finds that the decision of the Hearing Officer should be summarily affirmed.

ORDER

The Hearing Officer's decision is affirmed.

This decision is the final order of the Department of Revenue. Taxpayer may contest the final order of the Department by, within 60 days of the receipt of the final order, filing an appeal to the State Board of Tax Appeals, 100 North 15th Avenue, Suite 140 Phoenix, AZ 85007. For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102.

Dated this ____ day of September, 2014.

ARIZONA DEPARTMENT OF REVENUE

David Raber
Director

Certified original of the foregoing
mailed by certified mail to:

[REDACTED]

cc: Individual Income Appeals
Individual Income Audit