

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

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|------------------|---|----------------------|
| In the Matter of |) | DECISION OF |
| [REDACTED] |) | HEARING OFFICER |
| UTI # [REDACTED] |) | Case No. 201100056-I |
| _____ |) | |

A hearing was held on June 2, 2011 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax, interest and penalty by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2004.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayer filed a full-year Arizona resident state income tax return with the Department for tax year 2005.
2. Taxpayer had filed full-year Arizona resident state income tax returns for years 2000 through 2003 and 2005 forward.
3. Based on information received from the Internal Revenue Service (IRS) through an exchange of information agreement with the IRS (I.R.C. § 6103(d)(1)), the Section learned that Taxpayer had filed a federal income tax return but had not filed an Arizona state income tax return for tax year 2004.
4. Taxpayer's 2004 federal income tax return showed an Arizona address.
5. Taxpayer had an Arizona driver's license issued in 1999.
6. Taxpayer had an Arizona bank account and a storage unit in Arizona in 2004.
7. Taxpayer received in excess of \$15,000.00 of federal gross income during tax year 2004.

8. The Section issued a proposed assessment dated [REDACTED] for tax year 2004 based on Taxpayer's federal adjusted gross income (FAGI) reported to the Internal Revenue Service for tax year 2004.
9. The proposed assessment allowed Taxpayer a standard deduction in the amount of \$4,050 and a personal exemption in the amount of \$2,100.
10. The proposed assessment also included statutory interest and a penalty for failure to file when due.
11. Taxpayer timely protested the assessment stating that she did not live or work in Arizona during 2004. Taxpayer worked on a cruise ship from January through October of 2004 and did not work in November or December.
12. Taxpayer testified at the hearing that she did not have an address in Arizona during 2004. Her W-2 forms were mailed to [REDACTED].
13. Taxpayer had used her parents' mailing address in [REDACTED].
14. Taxpayer further testified she did not intend to return to Arizona during 2004.
15. Taxpayer decided to work on a cruise ship because she enjoyed travelling and she could pay off debts because her expenses would be minimal.
16. Taxpayer did not present evidence showing that she abandoned Arizona residency during 2004.

CONCLUSIONS OF LAW

1. The Section timely issued the assessment for tax year 2004 to Taxpayer pursuant to Arizona Revised Statutes (A.R.S.) § 42-1108.
2. The presumption is that an assessment of additional income tax is correct. *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
3. For tax years 2000 through 2003 Taxpayer was an Arizona resident and had her domicile in Arizona.

4. Once a domicile is established it is presumed to continue until a change in domicile has been shown. *Jizmejjan v. Jizmejjan*, 16 Ariz.App. 270, 492 P.2d 1208 (1972).
5. A person cannot have more than one domicile at a time. *Clark v. Clark*, 71 Ariz. 194, 225 P.2d 486 (1950).
6. A new residence or domicile is acquired only by the concurrence of an intention to establish a new domicile and acts evidencing that intention. *Kauzlarich v. Board of Trustees*, 78 Ariz. 267, 278 P.2d 888 (1955).
7. A change of domicile requires an intent to abandon the former domicile and remain at the new. *DeWitt v. McFarland*, 112 Ariz. 33, 537 P.2d 20 (1975).
8. A person is never without a domicile somewhere. *DeWitt v. McFarland*, *supra*.
9. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan*, *supra*.
10. A question of residency for state income tax purposes cannot be answered by a general rule but depends largely on the circumstances of each case, considering all relevant facts. ITP 92-1.
11. Taxpayer did not present any evidence showing that she abandoned Arizona residency or domicile during 2004 and established a new domicile elsewhere.
12. Taxpayer was an Arizona resident for the 2004 tax year for Arizona income tax purposes.
13. A.R.S. § 43-301 requires individuals whose income is taxable under Title 43 to file a return with the department if the person has gross income of fifteen thousand dollars or more for the taxable year.
14. For purposes of A.R.S. § 43-301, "gross income" means gross income as defined in the internal revenue code minus income included in gross income but excluded from taxation under Title 43.
15. Taxpayer was required to file an Arizona income tax return for tax year 2004.

16. A resident of Arizona is subject to income tax on all of his or her taxable income wherever derived. A.R.S. § 43-102(A)(4).
17. Taxpayer was required to include all income, wherever derived, in her Arizona income tax return for tax year 2004.
18. 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.
19. The Section’s assessment of tax and interest in this case was proper.
20. A.R.S. § 42-1125(A) imposes a penalty for failure to file an Arizona income tax return when due.
21. The failure to file when due penalty may be abated only if the failure to file “is due to reasonable cause and not due to wilful neglect.” A.R.S. § 42-1125(A).
22. Taxpayer has presented no evidence to show that her failure to file when due was due to reasonable cause and not due to wilful neglect.

DISCUSSION

The issue in this protest is whether Taxpayer was an Arizona resident during tax year 2004 and therefore subject to Arizona income tax on all her income, wherever derived. Taxpayer maintains she was not an Arizona resident in 2004 because she lived and worked on a cruise ship outside of Arizona. Therefore, income she earned during 2004 was not subject to Arizona income tax.

Taxpayer was an Arizona resident domiciled in Arizona and filed Arizona resident income tax returns for tax years prior to 2004. The question is whether Taxpayer demonstrated that she abandoned her Arizona residency at the beginning of tax year 2004 and established a new domicile elsewhere.

There is substantial authority in Arizona concerning the determination of residency status. Once a domicile is established, it is presumed to continue until a

change in domicile has been shown. *Jizmejjan v. Jizmejjan, supra*. A person is never without a domicile somewhere. *DeWitt v. McFarland, supra*. A person cannot have more than one domicile at a time. *Clark v. Clark, supra*. A new residence or domicile is acquired only by the concurrence of an intention to abandon the former domicile and establish a new domicile where the person will remain for an indefinite period of time and acts evidencing that intention. *Kauzlarich v. Board of Trustees, supra; DeWitt v. McFarland, supra*. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan, supra*. Here, Taxpayer did not demonstrate that she abandoned her Arizona residency in 2004 and established a new domicile or residence in another state.

A.R.S. § 43-301 requires individuals whose income is taxable under Title 43 to file a return with the department if the person has gross income of fifteen thousand dollars or more for the taxable year. Taxpayer had gross income in excess of fifteen thousand dollars during tax year 2004. Taxpayer was therefore required to file an Arizona income tax return reporting her income. The assessment by the Section was proper.

The proposed assessment also 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 imposition of interest in this case was proper.

The proposed assessment also included a penalty for failure to file when due. A.R.S. § 42-1125(A) provides in part:

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, then, unless it is shown that the failure is due to

reasonable cause and not due to wilful neglect, four and one-half per cent of the tax required to be shown on such return shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five per cent of the tax found to be remaining due. . . .

Taxpayer failed to timely file a return for tax year 2004. The failure to file when due penalty may be abated only if the failure to file "is due to reasonable cause and not due to wilful neglect." A.R.S. § 42-1125(A). "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). Taxpayer has not established reasonable cause. Therefore, the imposition of the failure to file when due penalty must be upheld.

Based on the foregoing, the Section's proposed assessment dated [REDACTED] is affirmed.

DATED this 17th day of June, 2011.

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