

# STATE OF ARIZONA

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



Janice K. Brewer  
Governor

John A. Greene  
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**

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) **Case No. 201200114-I**

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On August 9, 2012 the Hearing Officer issued a decision regarding the protest of [Redacted] (“Taxpayer”). On September 5, 2012 Taxpayer 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 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

Taxpayer did not file a 2005 Arizona income tax return. Based on information obtained from the Internal Revenue Service (“IRS”), the Individual Income Tax Audit Section of the Audit Division (“Division”) issued a proposed assessment to Taxpayer. Taxpayer protested the assessment on the grounds that he had no Arizona source income in 2005.

On appeal Taxpayer asserts that he paid tax to California on his income stemming from his 2002 sale of his [redacted] company located in California. He argues that Arizona may not tax the same income. The Division argues that Taxpayer was an Arizona resident in 2005 and was subject to Arizona income tax on all of his taxable income wherever derived. California allows a credit for tax paid to another State. Arizona does not allow a credit for tax paid to California.

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### **Findings of Fact**

The Director adopts from the Hearing Officer's findings of fact and makes additional findings as follows:

1. Taxpayer sold his California business in 2002.
2. Taxpayer obtained an Arizona driver's license in April 2004.
3. Taxpayer purchased a [redacted] lot in Maricopa County, Arizona in 2004.
4. Taxpayer purchased a house in Arizona in June of 2005.
5. Taxpayer filed an Arizona resident income tax return for tax year 2004.
6. Taxpayer filed a California non-resident income tax return for tax year 2005. On that return he indicated that he was an Arizona resident and listed his Arizona address as his official address.
7. Taxpayer's 2005 California non-resident return indicates that he had federal adjusted gross income in the amount of \$72,669 of which \$24,006 was from a California source. The California taxable income was based only on the California source income.
8. Taxpayer did not file an Arizona income tax return for tax year 2005.
9. Taxpayer did not file a resident return with any other State for tax year 2005.
10. The Division received information regarding Taxpayer's income from the IRS through an exchange of information agreement with the IRS (I.R.C. § 6103(d)(1)).
11. Taxpayer reported Federal Adjusted Gross Income ("FAGI") on his 2005 federal income tax return in the amount of \$94,439.
12. The IRS adjusted Taxpayer's reported dividend income, which increased his FAGI by \$796.
13. The Division sent Taxpayer a letter dated August 3, 2010 in which it notified Taxpayer of the IRS information. The letter asked Taxpayer to check the

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- appropriate box to indicate that he was a nonresident military member, a Native American, a nonresident with no Arizona source income, or “other” and provide a reason why the income was not taxable.
14. Taxpayer checked the box marked “other” and attached a statement in which he claimed that he had no earned income in Arizona for the year 2005 and should not owe any money to Arizona for that year. He also indicated that he filed a California tax return and paid California tax on his income from the sale of his California business.
  15. The Division issued a Notice of Proposed Assessment in February 2011 assessing tax, penalty and interest against Taxpayer for tax year 2005.
  16. Taxpayer timely protested the assessment. The protest states “I had no earned income subject to Arizona taxes.”
  17. The Hearing Officer issued a decision dated August 9, 2012 denying Taxpayer’s protest.
  18. Taxpayer filed a timely notice of appeal. The appeal merely states that Taxpayer thought that a CPA was going to represent him at the Hearing.
  19. In a letter dated September 18, 2012, the Director gave Taxpayer 30 days to identify any portion of the Hearing Officer’s decision with which he disagreed and to provide documents and his position with respect to the dispute.
  20. Taxpayer supplemented his appeal in a letter dated October 16, 2012. Taxpayer asserts that he was told by the California Franchise Tax Board and several local CPAs that he owed California tax on the sale of his business in California. Taxpayer did not provide any additional documents or identify any portion of the Hearing Officer’s decision with which he disagreed.
  21. The Division submitted a Response Memorandum on November 19, 2012.

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22. Taxpayer was given an opportunity to file a Reply Memorandum, but did not submit anything to the Director.

### **Conclusions of Law**

The Director adopts conclusions of law from the Hearing Officer's Decision and makes additional conclusions as follows:

1. Taxpayer was an Arizona resident for the 2005 tax year for Arizona income tax purposes.
2. Arizona Revised Statutes (A.R.S.) § 43-102(A)(1) provides that it is the Legislature's intent to adopt the provisions of the federal Internal Revenue Code relating to the measurement of adjusted gross income for individuals so that FAGI 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.
3. The statute also states that the Legislature intended to impose tax on residents measured by taxable income wherever derived. A.R.S. § 43-102(A)(4).
4. The starting point of Arizona gross income is FAGI for the taxable year. A.R.S. § 43-1001.2
5. California allows a credit on a non-resident return for tax paid on California source income to another State. The credit is calculated on California Schedule S and then reported on the non-resident return.
6. Arizona residents cannot claim a credit on a resident return for tax paid to California or other states that allow a non-resident to take credit for tax paid to Arizona. A.R.S. § 42-1071(A)(2).

### **Discussion**

Taxpayer filed a 2004 Arizona resident income tax return. He did not file a 2005 Arizona income tax return. Based on information obtained from the Internal Revenue

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Service through the Department's exchange of information agreement pursuant to Internal Revenue Code § 6103(d)(1), the Individual Income Tax Audit Section of the Audit Division ("Division") issued a proposed assessment to Taxpayer. Taxpayer protested the assessment on the grounds that he had no Arizona source income in 2005. In his decision, the Hearing Officer concluded that Taxpayer was an Arizona resident in 2005 and was subject to Arizona income tax on all of his taxable income wherever derived.

On appeal Taxpayer presents no new evidence or arguments to support his assertion that he had no income subject to Arizona income tax in 2005. As an Arizona resident, Taxpayer was subject to tax on all of his taxable income wherever derived. A.R.S. § 43-102(A)(4). Taxpayer asserts that he was told that he had to file a California return and pay tax to California on his California source income. The requirement to file a California non-resident return does not conflict with Taxpayer's need to also file an Arizona resident return. Taxpayer should have reported all of his FAGI to Arizona and report the California source income to California. Moreover, under California law he could claim a credit on his non-resident California return for tax paid to Arizona. This would prevent two states from taxing the same income.

Given that no new evidence was presented on appeal and that the Hearing Officer was correct in his analysis of the facts and law, the Director finds that the decision of the Hearing Officer should be 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 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 15<sup>th</sup> Avenue, Suite 140 Phoenix, AZ 85007 or, if the amount in dispute is greater than five thousand dollars, Taxpayer may bring an action in Tax Court

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(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) 506-8297.

Dated this 9<sup>th</sup> day of January, 2013.

ARIZONA DEPARTMENT OF REVENUE

John A. Greene  
Director

Certified original of the foregoing  
mailed by certified mail to:

[Redacted]

JAG:

cc: Individual Income Appeals  
Income Audit Section  
Audit Division