

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)
)
[REDACTED])
)
UTI # [REDACTED])
)
)
)
)
)

DECISION OF
HEARING OFFICER
Case No. 200700003-I

A hearing was held on February 21, 2007 in the matter of the protest of [REDACTED] (Taxpayers) 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 2002.

FINDINGS OF FACT

On their 2002 Arizona resident income tax return, Taxpayers subtracted \$19,968 for Social Security retirement benefits. [NEXT SENTENCE REDACTED]. The Section accordingly increased Taxpayers' income by the difference, \$9,854, and issued a proposed assessment for 2002 that included tax and interest.

Taxpayers timely protested the assessment and attached a letter from Mr. [REDACTED] to the Department dated November 7, 2006. That letter states in pertinent part:

Your letter of October 16, 2006 requests an explanation of the difference in amounts taken on our Federal tax return and on our Arizona individual tax return.

The \$19,968 is the amount of Social Security received. This was entered on our Federal tax return as income on line 20a. The \$10,114 is the taxable portion of the \$19,968 and was entered on our Federal tax return at line 20b. Your form 140 at line 21c asks for "U.S. Social Security Or

Railroad Retirement Act benefits included as income on your federal." Since the \$19,968 is the Social Security income reported on our federal return, it was also reported on our state Return.

We believe that we properly reported and that no assessment is in order.

At the hearing, Mr. [REDACTED] stated that Taxpayers complied with what the State of Arizona requires. The issue is the propriety of the Section's proposed assessment.

CONCLUSIONS OF LAW

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). Taxpayers have produced insufficient evidence to prove that the Section's proposed assessment is incorrect.

A.R.S. § 43-1022.18 provides that in computing Arizona adjusted gross income, the "amount included in federal adjusted gross income pursuant to § 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits" shall be subtracted from Arizona gross income. With regard to Social Security benefits, the instructions to Line C21 of the 2002 Arizona Form 140 accordingly direct a taxpayer to "[e]nter only the amount that you had to include as income on your federal return." Only \$10,114 of Taxpayers' Social Security benefits was included in Taxpayers' 2002 federal adjusted gross income. Therefore, Taxpayers' subtraction on Line C21 of their 2002 Arizona Form 140 was limited to \$10,114.

A.R.S. § 43-102.A.1 provides that it is the intent of the 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, then makes certain additions and subtractions pursuant to A.R.S. §§ 43-1021 and 43-1022 and is then allowed certain exemptions and deductions. See A.R.S. § 43-1001. There is no provision in the Arizona statutes that would allow Taxpayers to subtract Social Security benefits in an amount greater than the amount included in their federal adjusted gross income. The right to a deduction or subtraction does not exist in the absence of statutory authority. *Arizona Department of Revenue v. Transamerica Title Insurance Company*, 124 Ariz. 417, 604 P.2d 1128 (1979). Based on the foregoing, the Section properly determined that Taxpayers may subtract on their 2002 Arizona income tax return only \$10,114 of their Social Security benefits.

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 26th day of February, 2007.

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