



- amount of \$8,100, personal exemptions in the amount of \$4,200 and estimated Arizona income tax withholding in the amount of \$[REDACTED].
6. The proposed assessment calculated the tax due at \$[REDACTED], interest of \$[REDACTED] and a penalty for failure to file of \$[REDACTED].
  7. Taxpayer [REDACTED] timely protested the proposed assessment stating that she is not married to [REDACTED], the debt is not her responsibility and to contact [REDACTED].
  8. Taxpayer [REDACTED] requested a formal hearing.
  9. No separate protest was filed by [REDACTED].
  10. At the hearing the Section testified that after reviewing Taxpayers' 2000 tax year return, the Section determined that Taxpayers are entitled to withholding in the amount of \$224.00.
  11. The Section further testified that allowing the withholding in the amount of \$224.00 would reduce the tax due to \$[REDACTED], the penalty for failure to file to \$[REDACTED] and interest would be recalculated on the revised amounts.
  12. Taxpayers were married during tax year 2001.
  13. Taxpayers were divorced in December 2007.

#### CONCLUSIONS OF LAW

1. 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).
2. 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.

3. The Section properly based its proposed assessment on the FAGI reported by Taxpayers on their federal income tax return for tax year 2001.
4. All property acquired by either husband or wife during marriage is community property, except that which is acquired by gift or by inheritance. A.R.S. § 25-211.
5. Taxpayers' income received during tax year 2001 was community property.
6. The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on such income is liable for the payment of the income taxes imposed on such income. A.R.S. § 43-562; Arizona Individual Income Tax Ruling (ITR) 97-2.
7. Based on the record, Taxpayers are jointly and severally liable for the taxes that were assessed for tax year 2001.
8. 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.
9. A.R.S. § 42-1125(A) imposes a penalty for failure to file an Arizona income tax return when due.
10. 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).
11. Taxpayers have presented no evidence to show that their failure to file when due was due to reasonable cause and not due to wilful neglect.
12. The proposed assessment issued by the Section for tax year 2001 was proper except that the Section shall allow Taxpayers withholding in the amount of \$224.00.

#### DISCUSSION

Taxpayers did not file a resident Arizona individual income tax return for tax year 2001. Based on information the Section received from the IRS, the Section issued a proposed assessment to Taxpayers. Taxpayer [REDACTED] timely protested the

assessment stating that she was not married to Taxpayer [REDACTED] and was therefore not liable for the amounts assessed.

The Section learned that Taxpayers filed a joint federal income tax return for tax year 2001 from an Arizona address. Taxpayers had previously filed a joint Arizona income tax return for tax year 2000. The starting point for Arizona's individual income tax is FAGI. The Section therefore issued Taxpayers an assessment for tax year 2001 based on the amount of FAGI Taxpayers reported to the IRS.

Taxpayers were married during tax year 2001 and their income consisted of wages received.<sup>1</sup> The income was community property. The Section therefore issued the assessment to Taxpayers jointly. Taxpayers have not shown that the provisions of A.R.S. § 43-562 are not applicable. Taxpayers are therefore jointly and severally liable for the Arizona income taxes on their income received during tax year 2001. Taxpayers did not submit a written memorandum and have not submitted any additional documentation that would support any additional changes to the proposed assessment issued by the Section.

"The presumption is that an additional assessment of income tax is correct and the burden is on the taxpayer to overcome such presumption." *Arizona State Tax Commission v. Kieckhefer, supra*. Taxpayers have presented no evidence showing that the proposed assessment at issue was not correct. Taxpayers have therefore not overcome the presumption of correctness.

The proposed assessment 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.

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<sup>1</sup> Taxpayers were not divorced until December 2007.

A.R.S. § 42-1125(A) provides in part as follows:

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 . . . .

Taxpayers failed to timely file a return for tax year 2001. 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). Reasonable cause has not been established. Therefore, the imposition of the failure to file when due penalty must be upheld.

Based on the foregoing, the Section's proposed assessment dated September 10, 2009 is affirmed except that the Section shall allow Taxpayers withholding in the amount of \$224.00.

DATED this 30th day of June, 2011.

ARIZONA DEPARTMENT OF REVENUE  
HEARING OFFICE

[REDACTED]  
Hearing Officer

Originals of the foregoing sent by certified mail to:

[REDACTED]

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue  
Individual Income Tax Audit Section