

# STATE OF ARIZONA

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



Douglas Ducey  
Governor

David Raber  
Director

## CERTIFIED MAIL

The Director's Review of the Decision )  
of the Hearing Officer Regarding: )  
 )  
[Redacted] )  
 )  
TID # [Redacted] )  
\_\_\_\_\_ )

## ORDER

Case No. 201500045-I

On May 21, 2015 the Hearing Officer issued a decision regarding the protest of [Redacted] (“Taxpayers”). Taxpayers appealed this decision. Because the appeal was timely, the Director of the Department of Revenue (“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

Taxpayers filed their 2006 Arizona income tax return. The Individual Income Tax Audit Section of the Audit Division (“Division”) issued a proposed assessment to Taxpayers disallowing Taxpayers’ solar energy credit and miscellaneous itemized deductions. Taxpayers protested the assessment. The Division issued a modified proposed assessment disallowing the solar energy credit but allowing the miscellaneous deductions.

On appeal Taxpayers do not dispute the Hearing Officer’s conclusion that Taxpayers were not entitled to a solar energy credit on their 2006 Arizona return. Taxpayers assert, however, that the tax and interest should be abated due to unreasonable delay by the Division.

### Findings of Fact

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

1. Taxpayers claimed a solar energy credit in the amount of \$1,000 on their 2005 Arizona tax return.

2. Taxpayers claimed a solar energy credit in the amount of \$915 on their 2006 Arizona tax return for the same residence as 2005.
3. The Division issued a Notice of Proposed Assessment for 2006, dated October 6, 2010, disallowing the solar energy credit and miscellaneous itemized deductions.
4. Taxpayers filed a protest in which they stated that they were in the process of having an accountant review their 2006 Arizona return. Taxpayers asked the Division to contact them to schedule a conference. The protest was dated December 29, 2010 and received by the Division on January 5, 2011.
5. The Division asked Taxpayers to provide documentation to substantiate their miscellaneous itemized deductions in a letter dated February 28, 2011.
6. Taxpayers provided additional documents in March 2011.
7. The auditor handling this matter retired in 2011.
8. Instead of issuing a modified assessment, the matter was transferred to the Collection Division.
9. Taxpayers contacted the Division and the matter was reassigned to a new auditor.
10. The Division issued the modified proposed assessment on January 7, 2015.
11. Taxpayers requested a formal hearing on February 2, 2015. Taxpayers did not identify why they disagreed with the modified assessment.
12. The Hearing Office scheduled a hearing for March 24, 2015.
13. At taxpayer's request, the hearing was rescheduled for May 13, 2015.
14. Taxpayers did not attend the hearing and did not notify the Hearing Office or the Division that they would not attend.

### **Conclusions of Law**

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

1. Arizona statutes allow a solar energy credit for individuals that is capped at \$1,000 per residence. A.R.S. § 42-1083. This maximum limit is clearly stated in the Arizona Department of Revenue Publication 543, the publication that explains the residential solar energy credit.
2. Taxpayers were not entitled to a solar energy credit on their 2006 Arizona tax return because they had claimed the maximum amount allowed for the credit on their prior year's tax return.
3. The Director, in his discretion, may abate all or part of any assessment if additional interest has accrued due to any unreasonable error by an officer or employee of the Department of Revenue. A.R.S. 42-2065.
4. The time it takes a taxpayer to respond to requests for information from an auditor does not constitute unreasonable delay. *See* Arizona General Tax Procedure ("GTP") 02-1. The time it takes to reassign a new auditor to a matter may constitute unreasonable delay. *Id.*
5. Interest should be abated for the period April 2011 through December 2014.

### **Discussion**

The only issue on appeal is whether Taxpayers are entitled to abate of any portion of the modified proposed assessment pursuant to A.R.S. § 42-2065 based on unreasonable delay by the Division.

The original proposed assessment was issued properly. The Division promptly requested documents to verify Taxpayers' miscellaneous itemized deductions. After the Taxpayers provided the requested information, however, there was an unreasonable delay. Therefore, it is appropriate to abate interest for the 45 month period from after March 2011 when Taxpayers provided the documents, until January 2015 when the Division issued the modified proposed assessment. Interest before that period is due to the fact that Taxpayers improperly claimed a solar credit on their 2006 return. The interest after that period is due to Taxpayers' lack of communication with the Division, including their failure to attend a hearing that had been continued at their request.

Taxpayers also request that the tax itself be abated, but provide no justification for such relief. The statute clearly set forth the maximum amounts allowed for the credit. The Department issued a publication to provide further guidance. Moreover, once the Division issued the original proposed assessment, Taxpayers should have realized their error and pay the tax. The amount of tax due equaled the amount of the credit claimed, so there should have been no difficulty in calculating the tax due. Taxpayers have not asserted any facts to suggest that the Division's delay had an impact on Taxpayers' ability to pay the tax.

Based on the foregoing, the Hearing Officer's Decision and the Division's proposed assessment for tax year 2006 are affirmed except that interest is abated for the 45 month period April 2011 through December 2014.

### **ORDER**

The Hearing Officer's decision is affirmed.

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

Dated this \_\_\_\_ day of August, 2015.

ARIZONA DEPARTMENT OF REVENUE

David Raber  
Director

Certified original of the foregoing  
mailed to:

[Redacted]

cc: Individual Income Tax Appeals Section  
Individual Income Tax Audit Section  
Audit Division