



6. The proposed assessment included Arizona withholding tax of \$[REDACTED], penalties of \$[REDACTED] and statutory interest.
7. Taxpayer protested the proposed assessment and stated that he would discuss the matter with his accountant.
8. The Section sent Taxpayer a letter dated October 16, 2018 stating that there was no record of Taxpayer filing Arizona withholding returns or remitting any withholding payments with the Department. It further stated that no information was filed with the Department of Economic Security for the first quarter of 2012 and therefore wages were estimated based on the average of the remaining three quarters of the year. The withholding was estimated using 2.7% of wages. The letter gave Taxpayer the choice of one of three available options to resolve the matter and stated that failure to respond by November 15, 2018 would result in the matter being transferred to the Hearing Office for resolution. No response was received and the matter was forwarded to the Hearing Office.
9. On December 5, 2018, the Hearing Office sent a preference hearing letter to Taxpayer with the choice of one of three available options for hearing. The letter stated that failure to respond by January 7, 2019 would result in a written decision being rendered by the Hearing Office based on factual information currently available. The U.S. Postal Service did not return the letter as undeliverable. Therefore, it is presumed that the letter was delivered.
10. As of this date, Taxpayer has not responded or provided additional information. Therefore, this matter is ready for a written determination by the Hearing Office.

#### CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 43-401 requires employers to withhold Arizona income tax from employee wages and to remit amounts withheld to the Department at prescribed times.

2. A.R.S. § 43-401(C) requires employers to reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the Department. On or before April 30, July 31, October 31 and January 31 each year, the employer shall reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the Department, except that if the full amount collected and payable is paid timely to the Department under this subsection, the employer may reconcile the amounts on or before May 10, August 10, November 10 and February 10 each year.
3. A.R.S. § 43-412(A) requires “[e]very employer at the time of filing a reconciliation pursuant to section 43-401, subsection C shall deliver to the department a return in the form prescribed by the department showing the total amount of wages, salaries, bonuses or other emoluments paid to employees, the amount deducted pursuant to this chapter and such other information as the department may require. The employer shall advise the employee of the amount of monies withheld, in accordance with such rules as the department may prescribe, using printed forms furnished by the department for such purposes or, when requested by the employer, on forms approved by the department.”
4. A.R.S. § 42-1125(A) states that “[i]f 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, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, four and one-half percent 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.”
5. A.R.S. § 42-1125(D) states that “[i]f a person fails to pay the amount shown as tax on any return within the time prescribed, a penalty of one-half of one percent, not to exceed a total of ten percent, shall be added to the amount shown as tax

for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect . . . . If the taxpayer is also subject to a penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five percent.”

6. A.R.S. § 42-1125(C) provides a penalty for failure to furnish information. A.R.S. § 42-1125(C) states that “[i]f a taxpayer fails or refuses to furnish any information requested in writing by the department, the department may add a penalty of twenty-five percent of the amount of any deficiency tax assessed by the department concerning the assessment of which the information was required, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.”
7. Taxpayer failed to file Arizona withholding returns or remit any withholding payments to the Department for the tax period January 1, 2012 through March 31, 2015.
8. The late filing and late payment penalties may be abated only if it is shown that the failure to timely comply is due to reasonable cause and not due to wilful neglect. A.R.S. §§ 42-1125(A) and 42-1125(D).
9. The failure to furnish information penalty may be abated only if it is shown that the failure to timely comply is due to reasonable cause and not due to wilful neglect. A.R.S. § 42-1125(C).
10. “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).
11. Taxpayer has provided no evidence to establish reasonable cause to abate the penalties imposed.

12. A.R.S. § 43-414 provides that “[t]he employer shall be liable to the department for the payment of the tax required to be deducted and withheld under this chapter . . . . For the purpose of making penalty sections of this title applicable, any amount deducted or required to be deducted and remitted to the department under this chapter shall be considered the tax of the employer and with respect to such amounts he shall be considered as a taxpayer.”
13. A.R.S. § 43-435 states that “[a]ny person required to collect, truthfully account for and pay over any tax imposed by this title who fails to do so is, in addition to other penalties provided by law, personally liable for the total amount of the tax not collected or accounted for and paid over.”
14. 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” from the date prescribed for its payment until it is paid.
15. The proposed assessment issued by the Section for January 1, 2012 through March 31, 2015 was proper.

#### DISCUSSION

A.R.S. § 43-401 requires employers to withhold Arizona income tax from employee wages and to remit amounts withheld to the Department at prescribed times. Department records indicate that individuals filed returns reporting W-2 Forms issued by [REDACTED] (“Taxpayer”) and claimed Arizona withholding. However, there is no record of Taxpayer filing Arizona withholding returns or remitting any withholding payments to the Department. The Section issued a proposed assessment for the tax period January 1, 2012 through March 31, 2015 based on the information available. Taxpayer protested the assessment but failed to submit any information or documentation in support of the protest.

Arizona income tax withholding is a percentage of gross taxable wages. “Gross taxable wages” is the amount that meets the definition of “wages.” Employees elect the

percentage of their gross taxable wages they wish to be withheld. If an employee fails to make such an election, the employer must withhold 2.7% of the employee's wages.

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, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, four and one-half percent 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 . . . .

Similarly, the penalties imposed under A.R.S. § 42-1125(C) and A.R.S. § 42-1125(D) may be abated if the failure is due to reasonable cause and not due to wilful neglect. "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 penalties must be upheld.

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. Interest was properly imposed.

Based on the foregoing, the Section's proposed assessment for the tax period January 1, 2012 through March 31, 2015 is affirmed.

DATED this 19<sup>th</sup> day of February, 2019.

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  
Withholding Tax Audit Section