

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
UTI # [REDACTED])	Case No. 201100156-I
_____)	

A hearing was held on August 16, 2011 in the matter of the protest of [REDACTED] (Taxpayers) to a denial of claims for refund of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax years 2000, 2001, 2002 and 2003.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayers filed Arizona resident state income tax returns for tax years 2000, 2001, 2002 and 2003.
2. Taxpayers had taken credits for taxes paid to other states on their returns.
3. The Section reviewed Taxpayers' 2000, 2001, 2002 and 2003 returns and issued notices of proposed deficiency assessment recalculating Taxpayers' credits for taxes paid to other states.
4. Taxpayers timely protested the Section's notices of proposed assessment.
5. Taxpayers' protest was heard by the Hearing Office at a hearing on August 19, 2009.
6. Taxpayers presented additional documentation at the hearing.
7. The Section reviewed the documentation presented by Taxpayers at the August 19th hearing and sent Taxpayers a letter dated September 29, 2009 regarding the protested assessments for 2000-2003.

8. The September 29, 2009 letter indicated that the Department calculated the remaining balance due as of August 31, 2009 to be \$[REDACTED].
9. The last two paragraphs of the September 29, 2009 letter stated:

The Department is willing to accept an additional payment of \$[REDACTED] in full satisfaction of the assessment. The payment must be received by the Department no later than October 21, 2009.

Please let me know how you wish to accept this settlement. You may call me at (602) 716-[REDACTED] if you have questions or would like to discuss this further.
10. The Section's September 29, 2009 letter was signed by [REDACTED], [REDACTED] of the Department.
11. Taxpayers responded to the Section's September 29, 2009 letter by letter dated October 14, 2009.
12. The first three paragraphs of Taxpayers' October 14, 2009 letter stated:

[REDACTED] and I met over the weekend to discuss the above referenced assessments. As a result of our conversation we have concluded that we no longer want to incur the time or cost associated with advocating this matter.

Accordingly, we have decided to accept the Department's settlement offer. Enclosed please find two checks which total the \$[REDACTED] additional payment in full satisfaction of the assessment as stated in the Department's settlement correspondence dated September 29, 2009.

Please forward to our attention receipt or documentation that the assessments for 2000-2003 are fully satisfied and resolved as a result of the enclosed payment.
13. Taxpayers' October 14, 2009 letter was signed by both Taxpayers.
14. The Section prepared and submitted to the Hearing Office a Notice of Settlement dated October 28, 2009 notifying the Hearing Office that the Department had reached an agreement with Taxpayers to settle the matter and that the Department had agreed to accept a payment of \$[REDACTED] in full satisfaction

of the assessments against Taxpayers for individual income tax due for tax years 2000 through 2003.

15. The Section's Notice of Settlement also stated that Taxpayers agreed to withdraw their protest to the assessments for that period.
16. A copy of the Notice of Settlement was sent to Taxpayers.
17. The Hearing Office issued a Final Order dated November 4, 2009 closing the case at the Hearing Office because the matter had been settled by the parties.
18. The Final Order was sent by certified mail to Taxpayers. The Final Order was delivered to [REDACTED] on November 7, 2009 and to [REDACTED] on November 5, 2009.
19. Taxpayers did not contact the Hearing Office disputing that the matter had been settled.
20. By letter dated April 1, 2010 Taxpayers filed a claim for refund of the taxes Taxpayers had paid with their October 14, 2009 letter for tax years 2000 through 2002.
21. By letter dated May 10, 2010 the Section denied Taxpayers' claim for refund.
22. Taxpayers submitted a letter dated June 7, 2010 stating that Taxpayers had intended to also claim a refund of the taxes that were paid for tax year 2003.
23. Taxpayers protested the Section's denial of Taxpayers' claim for refund by letter dated June 30, 2010.
24. A hearing was held on August 16, 2011 on Taxpayers' protest of the Section's denial of their claim for refund.

CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 42-1004(A)(3) authorizes the department to make contracts and incur obligations within the general scope of its activities and operations subject to the availability of its funds.

2. A.R.S. § 42-1113 authorizes the department to enter into a written agreement with a taxpayer relating to the tax liability of the taxpayer for any taxable period.
3. An agreement approved by the department is final and conclusive, except on a showing of fraud, malfeasance or misrepresentation of a material fact. A.R.S. § 42-1113.
4. The case agreed to may not be reopened as to the matters agreed on or the agreement modified by any officer, employee or agent of this state. In any suit, action or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund or credit made pursuant to the agreement, shall not be annulled, modified, set aside or disregarded. A.R.S. § 42-1113.
5. An agreement is a manifestation of mutual assent on the part of two or more persons as to the substance of a contract. Black's Law Dictionary, Sixth Edition.
6. Although the term agreement is often used as a synonym with contract, agreement is a broader term. Black's Law Dictionary, Sixth Edition.
7. An enforceable contract requires an offer, an acceptance, consideration, and sufficient specification of terms so that obligations involved can be ascertained. *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 677 P.2d 1317 (App. 1983).
8. The Section's letter to Taxpayers dated September 29, 2009 and Taxpayers' acceptance letter to the Section dated October 14, 2009 together constituted an enforceable contract or agreement.
9. A.R.S. § 42-1113 does not require that an agreement be contained in one document.
10. Taxpayers are precluded from reopening or questioning their Arizona state individual income tax liability for tax years 2000 through 2003 or their payment of the agreed to settlement amount.

11. The Section's denial of Taxpayers' claim for refund for tax years 2000 through 2003 was proper.

DISCUSSION

Taxpayers were audited by the Department and notices of proposed assessment were issued. Taxpayers protested the notices of proposed assessment. During the course of the administrative proceedings Taxpayers and the Section agreed to resolve the proposed assessments by Taxpayers paying an amount less than what the Section contended was owed.

The parties' agreement to resolve the proposed assessments took the form of two letters. The first letter stated in part that the Department was willing to accept an additional payment of \$[REDACTED] in full satisfaction of the assessments. The second letter from Taxpayers stated that Taxpayers had decided to accept the Department's settlement offer and Taxpayers enclosed two checks totaling \$[REDACTED] in full satisfaction of the assessments. The two letters formed the offer and acceptance of a binding agreement or contract. Taxpayers have pointed to no authority holding that a binding contract must be contained in one document.

Taxpayers argue that the two letters could not be a closing agreement under A.R.S. § 42-1113 and therefore even if an agreement were reached, it did not preclude Taxpayers from later filing a claim for refund. Taxpayers argue that A.R.S. § 42-1113 requires a particular form of agreement in order to be binding.

A.R.S. § 42-1113 states in relevant part:

The department . . . may enter into a written agreement with a taxpayer relating to the liability of the taxpayer If an agreement is approved by the department . . . or later agreed to, it is final and conclusive The case shall not be reopened as to the matters agreed on

A.R.S. § 42-1113 requires an agreement in writing relating to the liability of the taxpayer. The two letters constitute an agreement in writing relating to Taxpayers' liability under the assessments. The agreement was agreed to by the Department in making the offer and submitting the Notice of Settlement acknowledging the agreement to the Hearing Office. All of the necessary elements of A.R.S. § 42-1113 were met.

The Department's administrative rules also do not dictate the form of the agreement. Unlike a closing agreement for the IRS which have to be executed on forms prescribed by the Internal Revenue Service (See, Treas. Reg. § 301.7121-1.(d)(1)), Arizona Administrative Code (A.A.C.) R15-10-201.C. simply states that a closing agreement is not effective until it is signed by the taxpayer or an authorized representative of the taxpayer and by an authorized representative of the Department. Here the relevant documents forming the agreement were signed by Taxpayers and the Department. The agreement is binding and Taxpayers cannot reopen their agreed to liability for tax years 2000 through 2003.

Because Taxpayers are precluded from reopening their tax liability for tax years 2000 through 2003 under A.R.S. § 42-1113, it is not necessary to address the other arguments raised by the parties.

Based on the foregoing, the Section's denial of Taxpayers' claim for refund for tax years 2000 through 2003 is upheld.

DATED this 29th day of September, 2011.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Originals of the foregoing sent by certified mail to:

[REDACTED]

[REDACTED]

Copy of foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section