

THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN THE ARIZONA TAX COURT

TX 2016-000105

11/18/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

STATE OF ARIZONA DEPARTMENT OF  
REVENUE

SHYLA R FREESTONE

v.

DAVID A HEGNAUER

KYLE GARY CRAMER

MINUTE ENTRY

The Court has considered the Department's Motion for Summary Judgment, filed September 16, 2016, Defendant's Response and Opposition to Plaintiff's Motion for Summary Judgment, filed October 14, 2016, and Plaintiff's Reply in Support of Motion for Summary Judgment, filed November 2, 2016.

A.R.S. § 42-1108 makes the determination of an income tax deficiency final ninety days after the date of mailing, unless by that time an appeal has been filed. The Department claims to have mailed the notices of deficiency in August 2013; naturally, Defendant has no knowledge to the contrary. The remedy for Defendant is to pay the tax and file suit for a refund; *see Morse v. Internal Revenue Service*, 635 F.2d 701, 703 (8<sup>th</sup> Cir. 1980) (where taxpayer lacks notice, right to sue for refund satisfies due process clause). The Court expects that, once Defendant has submitted his W-2 forms to the Department, he will be credited with whatever they show to have been timely paid.

IT IS ORDERED granting the Plaintiff's Motion for Summary Judgment, filed September 16, 2016.