



9. A letter dated August 28, 2008 from Taxpayer [REDACTED] stated that “[a]ll the science experiments and materials were purchased by us and were donated to the school.”
10. Taxpayers did not provide a receipt they received at the time of making the contribution from the school.

#### 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 law requires that taxpayers *keep and preserve* “suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in § 42-1104.” Arizona Revised Statutes (A.R.S.) § 42-1105(D).
3. The burden is on the taxpayer to show he is entitled to a deduction or credit from tax. *See Ebasco Servs., Inc. v. Ariz. State Tax Comm’n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
4. A.R.S. § 43-1089.01 allows a credit for fees or cash contributions made by a taxpayer to a public school located in this state for the support of extracurricular activities or character education programs of the public school.
5. A.R.S. § 43-1089.01(G)(2) provides that extracurricular activities means school sponsored activities that require enrolled students to pay a fee in order to participate.
6. Conducting scientific experiments in the classroom do not qualify as character education programs within the meaning of A.R.S. §§ 15-719 and 43-1089.01.
7. Preschools are not public schools for purposes of the credit. A.R.S. §§ 15-101(20) and 43-1089.01.
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.

## DISCUSSION

Taxpayers took a credit pursuant to A.R.S. § 43-1089.01 for contributions to a public school for the support of extracurricular activities or character education programs of the school. The question in this case is whether contributions used to purchase supplies for science experiments conducted in the classroom qualify for the credit. For the reasons stated below, Taxpayers have not met their burden of showing that they are entitled to the credit.

A.R.S. § 43-1089.01 requires that the money be used for the support of extracurricular activities or character education programs of the public school. Extracurricular activities are those that require enrolled students to pay a fee in order to participate. There was no evidence presented that the preschool students were required to pay any fee to participate in the classroom science experiments.

Pursuant to A.R.S. § 15-719, a character education program must include instruction in the definition and application of at least six of the following character traits: truthfulness, responsibility, compassion, diligence, sincerity, trustworthiness, respect, attentiveness, obedience, orderliness, forgiveness, virtue, fairness, caring, citizenship and integrity. Classroom science experiments do not qualify as a character education program.

Finally, a preschool is not a public school for purposes of the credit allowed by A.R.S. § 43-1089.01. A.R.S. § 15-101(20) defines school as "... any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve." There was no evidence presented that the Integrated School was a preschool for children with disabilities.

The proposed assessment included interest and a penalty for failure to file when due. 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.

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 the return for tax year 2003. 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 April 9, 2008 is affirmed.

DATED this 17th day of February, 2010.

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  
Individual Income Tax Audit Section