

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of	)	DECISION OF
[REDACTED]	)	HEARING OFFICER
UTI # [REDACTED]	)	Case No. 201000195-I
_____	)	

A hearing was held on November 2, 2010 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2004.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayer timely filed her Arizona income tax return for tax year 2004.
2. The Section reviewed Taxpayer's return and issued a proposed assessment dated December 10, 2008 disallowing Taxpayer's Schedule C expenses, Schedule A itemized deductions for charitable contributions, a subtraction for selling an energy efficient residence and included a state income tax refund not reported by Taxpayer.
3. Taxpayer timely protested the assessment and provided additional information.
4. Based on the additional information and documentation provided by Taxpayer, the Section issued a modified proposed assessment dated May 6, 2009.
5. Taxpayer continued to protest the disallowance of a deduction for charitable contributions made to the [REDACTED].
6. Taxpayer had made contributions to the [REDACTED] in varying amounts ranging from \$100.00 to \$1,500.00.

7. The Section disallowed the contributions of \$250.00 or more because Taxpayer had failed to substantiate those contributions by a written contemporaneous acknowledgement from the donee organization.
8. The Section allowed deductions for contributions that were less than \$250.00.
9. The total amount of contributions disallowed and in dispute is \$[REDACTED].
10. The sole issue presented at the hearing was whether the Section's disallowance of the itemized deduction for charitable contributions of \$250.00 or more was proper.
11. Taxpayer presented two letters from the donee organization.
12. The letters did not state whether any goods or services were provided in return for Taxpayer's contributions and their value if any, or that only intangible benefits were received.
13. One letter was undated and the second letter was dated December 15, 2008.
14. Taxpayer testified she received the undated letter in January 2005.
15. Taxpayer testified that she received no goods or services in return for her contribution.
16. The assessment included interest but no penalties.
17. Taxpayer has paid the full amount of the modified proposed assessment.

#### CONCLUSIONS OF LAW

1. 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).
2. The burden is on the taxpayer to show he is entitled to a deduction or exemption from tax. See *Ebasco Servs., Inc. v. Ariz. State Tax Comm'n*, 105 Ariz. 94, 99, 459 P.2d 719, 724 (1969).
3. Arizona taxpayers may deduct on their Arizona income tax return itemized deductions calculated under the Internal Revenue Code (I.R.C.). A.R.S. § 43-1042.

4. I.R.C. § 170(a) allows a deduction for charitable contributions made to qualifying charities during the taxable year.
5. To be entitled to deduct a contribution made to a qualifying charitable organization, the charitable contribution must be verified under regulations prescribed by the Secretary.
6. No deduction may be allowed for any charitable contribution of \$250.00 or more unless the taxpayer substantiates the charitable contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that includes, among other requirements, a statement whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution. IRC § 170(f)(8)(B)(ii).
7. Taxpayer's charitable contributions of \$250.00 or more were not verified as required by I.R.C. § 170(f)(8) and no deduction may be allowed for them.
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. The modified proposed assessment issued by the Section for 2004 was proper.
10. Because Taxpayer paid the tax and interest protested, this matter is treated as a protest of a denial of a claim for refund. A.R.S. § 42-1118(l).
11. Taxpayer is not entitled to a refund of her payment of the modified proposed assessment.

#### DISCUSSION

Arizona taxpayers may deduct itemized deductions allowed under the Internal Revenue Code on their Arizona income tax return. Taxpayer sought to take a deduction for charitable contributions made to the [REDACTED]. The Section disallowed the deduction because contributions of \$250 or more were not properly substantiated as required by the Internal Revenue Code.

The burden is on the taxpayer to show she is entitled to a deduction. The Internal Revenue Code allows a deduction for contributions or gifts made to or for the use of a qualifying charitable organization provided the contribution is properly substantiated. Proper substantiation for contributions of \$250.00 or more under the Internal Revenue Code consists of a contemporaneous written acknowledgment of the contribution by the donee organization that includes a statement whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution.

Without such substantiation, a contribution cannot be allowed under the Internal Revenue Code. I.R.C. § 170(f)(8). The language of the code is clear. We do not question that Taxpayer made the contributions. But the letter from the [REDACTED] did not include a statement whether goods or services were provided by the donee. Because the contributions were not substantiated as required by I.R.C. § 170(f)(8), the Section was precluded from allowing any deductions for contributions of \$250.00 or more. The Section did allow individual contributions that were less than \$250.00.

The proposed assessment also 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.

Based on the foregoing, the Section's modified proposed assessment dated May 6, 2009 is affirmed.

DATED this 4th day of January, 2011.

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