



8. The proposed assessment also disallowed a credit for increased excise taxes because Taxpayers' income was greater than the threshold amount to take the credit. Taxpayers did not address this adjustment in their protest and it will not be discussed further herein.
9. The assessment included interest at the statutory rate. No penalties were assessed.
10. Taxpayers timely protested the assessment stating that they did not understand why the adjustments were made. Taxpayers also submitted some documentation in support of their deductions.
11. Based on the information submitted by Taxpayers, the Section issued a modified proposed assessment dated May 4, 2011 allowing Taxpayers a portion of their charitable contributions by other than cash or check and a portion of their gambling losses.
12. The Section's modification allowed \$1,095 of Taxpayers' claimed contribution of \$[REDACTED], \$1,036 of Taxpayers' claimed contribution of \$[REDACTED] and \$1,664 of Taxpayers' claimed gambling losses of \$[REDACTED].
13. The modified proposed assessment continued to disallow charitable contributions in the total amount of \$[REDACTED] and gambling losses in the amount of \$[REDACTED].
14. Taxpayers continued to protest the modified proposed assessment.
15. Taxpayers have not provided information regarding their claimed contributions by cash or check.
16. The primary issue is the valuation of Taxpayers' non-cash charitable contributions.
17. Taxpayers used a program from H & R Block called Deduction Pro to value the property items donated. The program listed the item and the approximate value of the property donated.

18. The items of property were donated to Goodwill.
19. Taxpayers submitted a receipt from Goodwill. The receipt was not dated and did not list the items that were donated.
20. Taxpayers stated at the hearing that the items donated by Taxpayers were high end.
21. Taxpayers have not provided records or additional documentation to the Department to substantiate gambling losses.

#### 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. Taxpayers may not deduct a cash contribution of any amount to a qualified organization unless the taxpayer:
  - a. keeps a bank record, such as a cancelled check, showing the name of the organization and the date and amount of the contribution, or

- b. a receipt or other written document from the organization showing the name of the organization and the date and amount of the contribution, or
  - c. a payroll deduction record. I.R.C. § 170(f)(17); Internal Revenue Service (I.R.S.) Pub. 526, p. 18.
7. Taxpayers did not provide any records substantiating their entitlement to a deduction for their cash contribution in the amount of \$[REDACTED].
  8. The Section's disallowance of Taxpayers' cash contribution in the amount of \$[REDACTED] was proper.
  9. The records a taxpayer is required to keep for non-cash charitable contributions depends on the amount of the contributions. I.R.S. Pub. 526, p. 18.
  10. In determining whether a taxpayer's deductions are \$500 or more, the claimed deductions for all similar items of property donated to one charitable organization are to be combined. I.R.S. Pub. 526, p. 18.
  11. Taxpayers' combined claimed deductions of household items and men's and women's clothing exceeded \$500.
  12. Taxpayers' combined claimed deductions of electronic items did not exceed \$500 and the individual items did not exceed \$250 each.
  13. For deductions of less than \$250 a taxpayer is required to obtain and keep a receipt from the charitable organization showing the name of the organization, the date and location of the contribution and a reasonably detailed description of the property. I.R.S. Pub. 526, p. 19.
  14. In addition, the taxpayer is required to maintain reliable written records showing the name and address of the organization, the date and location of the contribution, a description of the property in reasonable detail, the fair market value of the property and how the taxpayer arrived at the value and the amount claimed as a deduction. I.R.S. Pub. 526, p. 19.

15. The Section had allowed Taxpayers a deduction for part of their charitable contributions.
16. Taxpayers adequately substantiated contributions for electronic items that did not individually exceed \$250 and did not aggregate to \$500 or more.
17. Taxpayers were entitled to a deduction in the amount of \$[REDACTED] for their contribution of the color TV (\$[REDACTED]), LaserJet Printer (\$[REDACTED]), answering machine (\$[REDACTED]) and telephone (\$[REDACTED]).
18. In its modified proposed assessment the Section allowed Taxpayers a deduction in the amount of \$[REDACTED] for the color TV, LaserJet Printer, answering machine and telephone. The Section shall allow Taxpayers an additional deduction of \$178.81 for those items.
19. For deductions of items aggregating \$500 or more but less than \$5,000, taxpayer's records must include how the taxpayer got the property, the approximate date the taxpayer got the property and the cost or other basis of the property. I.R.S. Pub. 526, p. 19.
20. If a taxpayer is not able to provide information on either the date the taxpayer got the property or the cost basis of the property and the taxpayer has a reasonable basis for not being able to provide the information, the taxpayer may attach a statement of explanation to his tax return. I.R.S. Pub. 526, p. 19.
21. Taxpayers did not provide this additional information for their contributions of household items and men's and women's clothing that aggregated to \$500 or more.
22. Without information regarding the original cost of the items and their age, it is not possible to determine whether the Section's estimate of value was inadequate.
23. Taxpayers did not meet their burden to show their entitlement to a deduction for their contribution of the household items and men's and women's clothing in

excess of the amounts allowed by the Section in its modified proposed assessment.

24. The deduction of gambling losses is limited to gambling income. *Roger John Torpie Jr. v. Commissioner*, TC Memo 2000-168 (2000).
25. Taxpayers have substantiated gambling losses of \$1,664.
26. Taxpayers have not produced evidence to support a claimed deduction for gambling losses in addition to the amount allowed by the Section.
27. Taxpayers are not entitled to a gambling loss deduction in excess of the amount allowed by the Section.
28. 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.
29. The modified proposed assessment issued by the Section dated May 4, 2011 for tax year 2006 was proper except the Section shall allow Taxpayers an additional deduction for charitable contributions in the amount of \$178.81.

## DISCUSSION

Taxpayers filed a 2006 resident Arizona individual income tax return and claimed deductions for charitable contributions and gambling losses. The Section audited Taxpayers’ return and disallowed the deductions for their charitable contributions and gambling losses.

Taxpayers protested the Section’s assessment which denied their charitable contributions and gambling losses and provided additional information in support of their deductions. Based on the additional information the Section issued a modified proposed assessment. Taxpayers continued to protest the modified proposed assessment and requested a hearing.

The issue involved is Taxpayers’ entitlement to deductions in excess of the amounts allowed in the modified proposed assessment. 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.” The burden is on the Taxpayers to show they are entitled to a deduction. Without the required documentation, a deduction may not be allowed.

### **Charitable Contributions.**

Taxpayers claimed total charitable contributions in the amount of \$[REDACTED]. The deduction for charitable contributions was comprised of \$[REDACTED] for gifts by cash or check and \$[REDACTED] for gifts other than by cash or check. Arizona taxpayers may deduct on their Arizona income tax return itemized deductions calculated under the I.R.C. The I.R.S. has specific requirements regarding charitable contributions depending on the nature and amount of the contribution.

For contributions by cash or check, Taxpayers are required to keep a bank record, such as a cancelled check, showing the name of the organization and the date and amount of the contribution, or a receipt or other written document from the organization showing the name of the organization and the date and amount of the contribution. Taxpayers did not provide records substantiating their entitlement to a deduction for their cash contribution in the amount of \$[REDACTED]. The Section’s disallowance of Taxpayers’ cash contribution in the amount of \$[REDACTED] was proper.

The issue regarding the contribution of non-cash items is the value to be assigned to the items donated. The contribution was comprised of clothing, household and a small amount of electronic items. The records a taxpayer is required to keep for non-cash charitable contributions depends on the amount of the contributions.

### **Contribution of Electronic Items.**

Taxpayers’ combined claimed deductions of electronic items did not exceed \$500 and the individual items did not exceed \$250 each. For deductions of less than \$250 a taxpayer is required to obtain and keep a receipt from the charitable organization

showing the name of the organization, the date and location of the contribution and a reasonably detailed description of the property.<sup>1</sup> In addition, the taxpayer is required to maintain reliable written records showing the name and address of the organization, the date and location of the contribution, a description of the property in reasonable detail, the fair market value of the property and how the taxpayer arrived at the value and the amount claimed as a deduction.

The Section had allowed Taxpayers a deduction for part of their charitable contributions. Based on the record, Taxpayers adequately substantiated contributions for electronic items that did not individually exceed \$250 and did not aggregate to \$500 or more.

#### **Contributions of Clothing and Household Items.**

The I.R.S. requires additional documentation for contributions of \$500 or more. In determining whether a taxpayer's contributions are \$500 or more, the claimed contributions for all similar items of property donated to one charitable organization are to be combined. Here, Taxpayers' combined claimed deductions of household items and men's and women's clothing to Goodwill exceeded \$500.

For deductions of items aggregating \$500 or more but less than \$5,000, a taxpayer's records must include how the taxpayer got the property, the approximate date the taxpayer got the property and the cost or other basis of the property. If a taxpayer is not able to provide information on either the date the taxpayer got the property or the cost basis of the property and the taxpayer has a reasonable basis for not being able to provide the information, the taxpayer may attach a statement of explanation to his tax return.

Taxpayers did not provide this additional information for their contributions of household items and men's and women's clothing that aggregated to \$500 or more.

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<sup>1</sup> Because the Section allowed a deduction for a portion of Taxpayers' contributions to Goodwill, the adequacy of the receipt from Goodwill will not be addressed in this decision.



Without information regarding the original cost of the items and their age, it is not possible to determine whether the Section's estimate of value was inadequate. Taxpayers therefore did not meet their burden to show their entitlement to a deduction for their contribution of the household items and men's and women's clothing in excess of the amounts allowed by the Section in its modified proposed assessment.

**Gambling Losses.**

The deduction of gambling losses is limited to gambling income. The gambling losses must be substantiated. Taxpayers have substantiated gambling losses of \$1,664. Taxpayers have not produced evidence showing the amount of additional gambling losses. Taxpayers are therefore not entitled to a gambling loss deduction in excess of the amount allowed by the Section.

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.

Based on the foregoing, the Section's modified proposed assessment dated May 4, 2011 for tax year 2006 is affirmed except the Section shall allow Taxpayers an additional deduction of \$178.81 for the color TV, LaserJet Printer, answering machine and telephone.

DATED this 27th day of March, 2012.

ARIZONA DEPARTMENT OF REVENUE  
HEARING OFFICE

Frank Migray  
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