

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of	)	DECISION OF
	)	HEARING OFFICER
[REDACTED]	)	
	)	Case No. 200700154-I
UTI # [REDACTED]	)	
_____	)	

A hearing was held on December 10, 2007 in the matter of the protest of [REDACTED] (Taxpayers) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for the tax year 2002.

FINDINGS OF FACT

Taxpayers filed a 2002 Arizona individual income tax return, and subtracted \$[REDACTED] from their income on line C26 for the construction of an energy efficient residence. Based on information obtained from the Internal Revenue Service (IRS) through the Department's exchange of information agreement with the IRS (I.R.C. § 6103(d)(1)), the Section audited Taxpayers' 2002 Arizona resident income tax return and assessed additional taxes and interest. The assessment stemmed from additional income assessed resulting from the previous year's state tax refund and the disallowance of the Taxpayers' subtraction for an energy efficient home.

Taxpayers timely protested the assessment on two grounds. First, they claimed that the state refund from the previous year was not taxable because Taxpayers utilized the standard

deduction in computing their taxes. Next, Taxpayers asserted that the construction of their home qualified for the subtraction for an energy efficient home and provided copies of various documents to substantiate their assertion. However, Taxpayers acknowledged via letter dated March 7, 2007 that they did not obtain "a certificate from an approved rating service," because the cost of obtaining such certificate was "not justified by the tax savings."

Based upon the information received from the Taxpayers, the Section modified the assessment on May 23, 2007. In this modified assessment, the Section withdrew the addition to income for the previous year's state tax refund. However, the modified assessment still disallowed Taxpayers' claimed subtraction for an energy efficient home. The issue is the propriety of the modified assessment dated May 23, 2007.

#### CONCLUSIONS OF LAW

An assessment of additional income tax is presumed correct. *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948). Taxpayers have provided insufficient evidence to prove that the Section's modified assessment is incorrect. The Section's modified assessment dated May 23, 2007 must therefore be upheld as being correct.

With regard to the subtraction for an energy efficient home, the Arizona Revised Statutes provide at A.R.S. § 43-1031.A in part as follows:

. . . in computing Arizona adjusted gross income a taxpayer may subtract five per cent of the sales price, excluding commissions, taxes, interest, points and other brokerage, finance and escrow charges, of one or more new single family residences, condominiums or town houses that are sold by the taxpayer and that exceed the 1995 model energy code by fifty per cent or more as determined by an approved rating program. Rating programs shall meet the United States department of energy's home energy rating system guidelines or other guidelines approved by the department of commerce energy office. The amount of the subtraction shall not exceed five thousand dollars with respect to each new single family residence, condominium or town house.

A.R.S. § 43-1031.A (emphasis added). Although this deduction seems to have been designed for sellers of real estate, subsection C of the statute allows a seller to transfer the credit as follows:

The taxpayer may elect to transfer a subtraction under this section to the purchaser of the residence or to the financial institution that secures a mortgage or deed of trust on the residence. If the taxpayer transfers the subtraction, the taxpayer shall deliver to the purchaser or financial institution a written statement that the taxpayer has elected not to claim the subtraction and that the purchaser or financial institution may claim the subtraction, subject to the conditions and limitations prescribed by this section

A.R.S. § 43-1031.C.

While Taxpayers did provide the Section with a written statement, presumably from the seller/contractor, stating that the seller/contractor had elected to transfer the subtraction to the Taxpayers (as the purchasers), the Taxpayers did not meet

the other "conditions and limitations prescribed by this section." A.R.S. § 43-1031.C. Specifically, as set forth in A.R.S. § 43-1031.A, in order to qualify, a taxpayer must establish that the residence "exceed[s] the 1995 model energy code by fifty per cent or more as determined by an approved rating program." A.R.S. § 43-1031.A (emphasis added). Despite Taxpayers sincere assertion that their home is energy efficient, they have not established that it qualifies as an energy efficient home "as determined by an approved rating program."

It is well settled that statutes are to be given, whenever possible, such an effect that no clause, word or sentence is rendered superfluous, contradictory, void or insignificant. *State v. Deddens*, 112 Ariz. 425, 542 P.2d 1124 (1975). Therefore, the clause "as determined by an approved rating program" is a requirement in the statute that must be met in order to qualify for the energy efficient home subtraction.

At the hearing, Taxpayers asserted that the 2002 Arizona income tax forms do not make it clear that any type of certification is necessary to qualify a home as an energy efficient home. However, line C26 on the 2002 Arizona income tax return directs taxpayers to "See instructions" to Arizona Form 140 for guidance. The instructions pertaining to line C26 of Arizona Form 140 direct taxpayers to Arizona Individual Income Tax Procedure 02-1 (ITP 02-1). See Instructions to Arizona Form 140, p. 10. With respect to approved rating programs, ITP 02-1 refers to A.R.S. § 43-1031 and also provides in pertinent part as follows:

Rating programs must meet the U.S. Department of Energy's home energy rating system guidelines or other guidelines approved by the Arizona Department of Commerce Energy Office. Under these guidelines, a home that meets these requirements must have a numerical score of 90 or more using the National Association of State Energy Officials (NASEO) National Home Energy Rating Technical Guidelines as published on June 9, 2000.

ITP 02-1. This further establishes the need for a taxpayer to obtain an approved rating determination in order to qualify for the credit. Taxpayer acknowledged via letter and at the hearing that they did not obtain such a rating or any certification that their residence met the statutory guidelines. Unfortunately, without this certification, the Department was unable to determine whether Taxpayers' home was an "energy efficient residence" as defined in the statute. Therefore, the Section properly disallowed Taxpayers' subtraction of income.

As to the interest portion of the assessment, 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. The tax was due in this case and the associated interest cannot be abated.

Based on the foregoing, the Section's modified assessment dated May 23, 2007 is affirmed.

DATED this 14th day of December, 2007.

ARIZONA DEPARTMENT OF REVENUE  
APPEALS SECTION

[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