

6. At the January 9, 2014 hearing the parties agreed that the only issue remaining was the deductibility of Taxpayers' claimed casualty loss of \$[REDACTED] for damage to their home's roof caused by a storm.
7. Taxpayers submitted a letter form [REDACTED] dated June 3, 2013 that they were insured with [REDACTED] from May 4, 1989 through June 3, 2013, the date of the letter.
8. Taxpayers also submitted a summary of their home insurance from [REDACTED] for the period May 4, 2013 through May 4, 2014.
9. Taxpayers' claim for the casualty loss was based on the cost to repair the roof.
10. Taxpayers did not file an insurance claim for the roof damage believing the claim would be denied.
11. The record before the Hearing Office does not have a copy of Taxpayers' home insurance policy in effect during 2007.

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. Once the presumption of correctness attaches, the taxpayer must present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. *U.S. v. McMullin*, 948 F.2d 1188 (10th Cir.,1991); *Anastasato v. C.I.R.*, 794 F.2d 884 (3rd Cir.,1986).
3. Arizona taxpayers may deduct on their Arizona income tax return itemized deductions calculated under the Internal Revenue Code (I.R.C.) Arizona Revised Statutes (A.R.S.) § 43-1042.
4. 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).

5. I.R.C. § 165(a) allows an itemized deduction for a non-compensated casualty loss measured by the value of the property before the casualty less the fair market value of the property after the casualty.
6. I.R.C. § 165(h) provides that a claim for casualty loss cannot be made for damage to insured property unless a timely insurance claim is filed.
7. Taxpayers have not presented evidence to show their property was not insured at the time of the casualty in 2007.
8. Taxpayers did not file a timely insurance claim with respect to their roof damage.
9. Because Taxpayers did not file a timely insurance claim, they are not entitled to claim a casualty loss for 2007. I.R.C. § 165(h).
10. 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.
11. The Section’s modified proposed assessment dated August 22, 2012 for tax year 2007 is upheld.

DISCUSSION

Taxpayers timely filed their 2007 Arizona income tax return. The Section audited Taxpayers and made numerous adjustments, including the disallowance of a claimed casualty loss of \$[REDACTED] for storm damage to their home’s roof. Taxpayers timely protested and based on additional information the Section issued a modified proposed assessment. The only issue left to be decided is whether Taxpayers are entitled to claim a casualty loss deduction for the damage to their roof.

Arizona taxpayers may deduct itemized deductions allowed under the Internal Revenue Code. I.R.C. § 165(a) allows a deduction for a non-compensated casualty loss. However, under I.R.C. § 165(h) a claim for casualty loss cannot be made for damage to insured property unless a timely insurance claim is filed. Taxpayers

submitted a letter form [REDACTED] that they were insured with [REDACTED] from May 4, 1989 through June 3, 2013 and a home insurance summary from [REDACTED] for the period starting May 4, 2013. While Taxpayers' home was insured, they did not file a claim with their insurance company. Taxpayers have presented no evidence to show that their home was not in fact insured during 2007. The Section's disallowance of Taxpayers' claimed casualty loss deduction was therefore proper.

The modified 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. The interest included in the proposed assessment was proper.

Based on the foregoing, the Section's modified proposed assessment dated August 22, 2012 is upheld.

DATED this 28th day of March, 2014.

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