

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
TID # [REDACTED])	Case No. 201600226-I
_____)	

Pursuant to Taxpayer's request, it was ordered that the protest of [REDACTED] (Taxpayer) to an assessment of income tax, interest and penalty by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2011 be resolved through the submission of written memoranda.

Taxpayer and the Section filed their Opening and Response Memoranda. Taxpayer did not file a Reply Memorandum. This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayer filed his 2011 Arizona income tax return on September 26, 2012.
2. On September 14, 2015, the Section sent Taxpayer a letter stating that his 2011 income tax return had been selected for audit and requested Taxpayer to provide a copy of his federal income tax return and documentation to substantiate his miscellaneous itemized deductions.
3. Taxpayer did not respond.
4. On December 31, 2015 the Section issued a proposed assessment of additional income tax for the tax year 2011. The proposed assessment disallowed Taxpayer's itemized deductions of \$[REDACTED] and allowed instead a standard deduction of \$4,703.
5. The proposed assessment included statutory interest and a penalty for failure to file a return when due.
6. Taxpayer timely protested the proposed assessment stating that he was a

- trucker assigned to a sleeper truck out of state and claimed the per diem rate.
7. Taxpayer provided a letter dated April 13, 2016 from [REDACTED] that Taxpayer was on an assignment in [REDACTED] from February 2011 to April 2011 and in [REDACTED] from April 2011 to December 2011.
 8. On May 19, 2016, the Section sent Taxpayer a letter that in order to take a per diem rate, Taxpayer would still have to substantiate the days Taxpayer was away from home, and even if Taxpayer were away every day during February through December 2011, the total deduction would be \$[REDACTED], not the \$[REDACTED] Taxpayer claimed on his return.
 9. Taxpayer stated he no longer had driver logs from the period at issue.

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. A general denial of liability is not sufficient to overcome the presumption that the assessment is correct. *Avco Delta Corp. Canada Ltd. v. U.S.*, 540 F.2d 258 (7th Cir., 1976).
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. 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 at least four years after the return is due or filed, whichever is later. Arizona Revised Statutes (A.R.S.) §§ 42-1104 and 42-1105(D).

6. Taxpayer was required to keep his records, including driver logs, until at least September 26, 2016, four years after Taxpayer filed his return.
7. A taxpayer may use a standard meal allowance method, as an alternative to the actual cost method, to calculate the cost of deductible daily meals and incidental expenses. IRS Pub 463 (2011) p. 5.
8. A taxpayer using the standard meal allowance (per diem) method does not have to keep records of actual costs. The taxpayer must still establish the time, place and business purpose of the travel. IRS Pub. 463 (2011), pg. 5.
9. A taxpayer is entitled to deduct only one-half of the per diem allowed for meals and incidental expenses. IRS Pub. 463 (2011) p. 5.
10. Taxpayer has not provided documentation to establish the days he was away from his home and the places of his travel.
11. The Section properly disallowed Taxpayer's claimed itemized deductions.
12. Arizona Revised Statutes (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.
13. The due date for Taxpayer's return for tax year 2011 was April 17, 2012. A.R.S. §§ 43-241 and 43-325.
14. Taxpayer's 2011 return filed September 26, 2012 was not timely filed.
15. A.R.S. § 42-1125(A) imposes a penalty for failure to file an Arizona income tax return when due.
16. 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).
17. Taxpayer has presented no evidence to show that his failure to file when due was due to reasonable cause and not due to wilful neglect.
18. The Section's proposed assessment dated December 31, 2015 for tax year 2011 is upheld.

DISCUSSION

Taxpayer filed a resident Arizona individual income tax return for tax year 2011 and claimed itemized deductions of \$[REDACTED]. After Taxpayer did not provide requested documentation, the Section issued a proposed assessment disallowing Taxpayer's itemized deductions allowing instead the standard deduction. Taxpayer timely protested stating that he was a trucker assigned to a sleeper truck out of state and claimed the per diem rate.

Taxpayers are allowed to deduct ordinary and necessary unreimbursed expenses of being an employee. See, IRS Pub. 529 (2011) pg. 3. It is the taxpayer's burden to show he is entitled to a deduction. Even if a taxpayer is claiming a per diem rate, the taxpayer must still substantiate the days he was away from his home and the places of his travel. Taxpayer has provided no evidence regarding the days he was away from his home and the places of his travel. Taxpayer has therefore not established that he was entitled to his claimed itemized deductions.

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. Interest was properly included in the proposed assessment.

The proposed assessment also included a penalty for failure to file a return when due. A.R.S. § 42-1125(A) provides in part:

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. . . .

Taxpayer failed to timely file a return for tax year 2011. 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). Taxpayer has not established reasonable cause. Therefore, the imposition of the failure to file when due penalty must be upheld.

Based on the foregoing, the Section's proposed assessment dated December 31, 2015 for tax year 2011 is upheld

DATED this 29th day of November, 2016.

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