

7. Taxpayer's Schedule A for tax year 2008 claimed deductions for:

Medical Expenses	[REDACTED] ¹
General Sales Tax	[REDACTED]
Other Taxes	[REDACTED]
Charitable Gifts by Cash	[REDACTED]
Charitable Gifts, Non-Cash	[REDACTED]
Unreimbursed Employee Exp.	[REDACTED]
Tax Preparation Fees	[REDACTED]

8. The unreimbursed employee expenses consisted of:

Union Dues	[REDACTED]
Uniforms	[REDACTED]
Maintenance of Uniforms	[REDACTED]
Cell Phone	[REDACTED]
Equipment	[REDACTED]
Safety Equipment	[REDACTED]
Supplies	[REDACTED]
Range Fees	[REDACTED]
Alteration	[REDACTED]
Fax	[REDACTED]
Camera	[REDACTED]
Lawenforcement Internet	[REDACTED]
PT Required by Employer	[REDACTED]
Monitor	[REDACTED]
Vehicle Expense (Mileage)	[REDACTED]

9. Taxpayer's vehicle mileage was for travelling between her home and the police station where she was employed.

10. Taxpayer testified she was considered to be on duty as soon as she left her house to drive to the police station and would be expected to handle any emergencies that arose during her drive.

11. The record before the Hearing Office does not contain substantiation for Taxpayer's Schedule A deductions.

12. The Section testified that it had substantiated medical expenses of \$[REDACTED].

¹ The medical deduction amount is before application of the 7.5% federal medical expense limitation that is not applicable to the state.

13. Taxpayer has not provided additional substantiation for her claimed Schedule A deductions.

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. Taxpayers are required to keep records to verify deductions. Taxpayers should keep records of expenses such as receipts, cancelled checks, financial account statements and other documentary evidence and proof of payment. See, Internal Revenue Service (IRS) Publication 552, (Now Pub. 17).
6. There are additional record keeping requirements for deductions of charitable contributions (I.R.C. § 170) and deductions with respect to listed property (including passenger automobiles) (I.R.C. § 274(d)).
7. While the Section testified that Taxpayer had provided a mileage log, no evidence substantiating Taxpayer's itemized deductions were submitted into the record.
8. Taxpayer has not substantiated her entitlement to the itemized deductions.

9. I.R.C. § 262(a) provides that except as otherwise expressly provided, no deduction will be allowed for personal, living, or family expenses.
10. A taxpayer's costs of commuting to his place of employment are personal expenses and do not qualify as deductible expenses. Treas. Reg. § 1.262-1(b)(5); Internal Revenue Service's Revenue Ruling 99-7.
11. Exceptions to the general rule that commuting expenses are not deductible may exist if:
 - a. A taxpayer travels between his home and a work location outside the metropolitan area where taxpayer lives and normally works.
 - b. A taxpayer has one or more regular work locations away from the taxpayer's residence, the taxpayer may deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location in the same trade or business, regardless of the distance.
 - c. A taxpayer's residence is the taxpayer's principal place of business within the meaning of § 280A(c)(1)(A), the taxpayer may deduct daily transportation expenses incurred in going between the residence and another work location in the same trade or business. See, Revenue Ruling 99-7.
12. Taxpayer has not shown that any of the exceptions stated in Revenue Ruling 99-7 are applicable here.
13. Taxpayer cited A.R.S. § 23-1021.01(A) in support of her argument that the commuting expenses are deductible. A.R.S. § 23-1021.01(A) states that for a peace officer, traveling to or from work is considered in the course and scope of employment.
14. A.R.S. § 23-1021.01(A) provides that it is "solely for the purposes of eligibility for workers' compensation benefits."

15. The general rule that the expenses of commuting are not deductible is not changed by A.R.S. § 23-1021.01.A.
16. Taxpayer's commuting expenses between her home and place of employment are not deductible.
17. The Section properly disallowed Taxpayer's Schedule A deductions.
18. 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.
19. The Section's proposed assessment dated March 27, 2013 for tax year 2008 is upheld.

DISCUSSION

Taxpayer filed her 2008 tax year personal income tax return and claimed itemized deductions of \$[REDACTED] and a \$2,500 exclusion for government pensions. The Section issued a proposed assessment disallowing Taxpayer's pension exclusion and her Schedule A deductions and allowing instead a \$9,042 standard deduction. Taxpayer protested the disallowance of her itemized deductions. Taxpayer has agreed to the disallowance of the \$2,500 government pension exclusion and that is not in issue.

Two issues are presented:

1. Whether Taxpayer substantiated the itemized deductions, and
2. Whether Taxpayer's commuting auto expenses may be deducted.

Substantiation

The presumption is that an assessment of additional income tax is correct and the burden is on the taxpayer to present substantial credible and relevant evidence sufficient to establish that the assessment was erroneous. In addition, while Arizona law allows taxpayers to deduct itemized deductions allowed by the Internal Revenue Code, the burden is on the taxpayer to show he is entitled to the deduction.

Taxpayers are required to keep records to verify deductions. Taxpayers should at the minimum keep records of expenses such as receipts, cancelled checks, financial account statements and other documentary evidence and proof of payment. There are additional record keeping requirements for deductions of charitable contributions (I.R.C. § 170) and deductions with respect to listed property (including passenger automobiles) (I.R.C. § 274(d)). Taxpayer has not submitted into the record evidence substantiating itemized deductions in excess of the standard deduction allowed in the proposed assessment.

Commuting Expense

The cost of travel between a taxpayer's home and his regular place of employment is generally considered a non-deductible personal expense. Taxpayer cites A.R.S. § 23-1021.01(A) in support of her argument that the commuting expenses are deductible. A.R.S. § 23-1021.01(A) states that for a peace officer, traveling to or from work is considered in the course and scope of employment "solely for the purposes of eligibility for workers' compensation benefits."

A.R.S. § 23-1021.01(A) is limited to eligibility of police officers for workers' compensation benefits. A.R.S. § 23-1021.01(A) therefore does not apply to the Arizona income tax law. Arizona itemized deductions continue to be the same as allowed under the Internal Revenue Code, as modified by A.R.S. § 43-1042. That section makes no exception for commuting expenses for police officers. Commuting expenses are still not deductible under the Internal Revenue Code are thus not deductible for Arizona income tax.

Taxpayer also cited *Pollei v. Com.*, 89-1 USTC ¶9389, 877 F2d 838 (10 Cir. 1989) arguing that the court allowed a police officer to deduct commuting expenses. There a deduction was allowed for travel expenses incurred by police captains while driving their personally owned, unmarked cars between home and headquarters. The employer required by order police captains to begin duty on departure from home and

continue duty until return home at end of workday, to respond to calls, perform inspections and supervisory functions during that time. The order also required that the officer's vehicle be specially equipped with lights, sirens and other police equipment. Therefore the court considered the miles travelled from the officer's home to the police station to be work miles and not commuting miles. Here there was no order presented showing that Taxpayer was mandated to be on duty during her commute, that she had to perform work related functions or that her vehicle was required to be equipped with police equipment. The *Pollei* case is therefore distinguishable. Taxpayer's commuting expense were non-deductible.

The 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 accruing interest included in the proposed assessment was proper.

Based on the foregoing, the Section's proposed assessment dated March 27, 2013 is upheld.

DATED this 20th day of May, 2014.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section