

# STATE OF ARIZONA

Department of Revenue  
Office of the Director  
(602) 716-6090



Janet Napolitano  
Governor

Gale Garriott  
Director

**CERTIFIED MAIL** [REDACTED]

The Director's Review of the Decision  
of the Hearing Officer Regarding:

[REDACTED]

**UTI:** [REDACTED]

**ORDER**

**Case No. 200600055 - I**

On June 12, 2006 the Hearing Officer issued a decision regarding the protest of [REDACTED] ("Taxpayer"). Taxpayer appealed this decision on June 27, 2006. The appeal being timely filed, the Director of the Department of Revenue ("Director") issued a notice of intent to review the decision.

In accordance with the notice given the parties, the Director has reviewed the Hearing Officer's decision and now issues this order.

## Statement of Case

The Individual Income Tax Section of the Audit Division ("Division") issued a deficiency assessment to Taxpayer for tax year 1999 making adjustments regarding itemized deductions and a credit for a contribution to a public school. Taxpayer protested the assessment. At the hearing the Division discussed a modified proposed assessment. The only issue in dispute at the hearing was whether expenses associated with Taxpayer driving between home and the police station where she worked were deductible as a business expense. The Hearing Officer denied the protest and the proposed assessment was modified as represented at the hearing. On appeal, Taxpayer argues that A.R.S. § 23-1021.01 makes an Arizona police person's drive into work within the scope of employment and thus an itemized deduction as a business expense because those costs were not reimbursed. The Division maintains the expenses are for commuting and are not deductible.

### **Findings of Fact**

The Director adopts into this order from the findings of fact set forth in the decision of the Hearing Officer as follows:

1. In 1999 Taxpayer was a police officer for the [REDACTED].
2. Taxpayer incurred expenses in traveling between home and the police station.
3. Taxpayer claimed an itemized deduction for these expenses on her amended income tax return for 1999.

### **Conclusions of Law**

The Director adopts into this order from the conclusions of law set forth by the Hearing Officer as follows:

1. A.R.S. § 43-1042(A) allows taxpayers to use the miscellaneous itemized deductions provided in subtitle A, chapter 1, subchapter B, parts VI and VII of the internal revenue code, which includes I.R.C. § 162.
2. I.R.C. § 162(a) provides for a deduction of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including traveling expenses while away from home in the pursuit of a trade or business.
3. I.R.C. § 262(a) provides that “[e]xcept as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.”
4. With regard to deductibility of daily transportation expenses, the Internal Revenue Service’s Revenue Ruling 99-7 provides that, in general, daily transportation expenses incurred in going between a taxpayer’s residence and a work location are nondeductible commuting expenses. None of the exceptions to the general rule are applicable in the present case.
5. 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.”

6. The general rule that the expenses of commuting are not deductible is not changed by A.R.S. § 23-1021.01.A.
7. Taxpayer is not entitled to claim an itemized deduction for expenses associated with traveling between home and the police station.

### **Discussion**

The Division audited Taxpayer's 1999 Arizona return and disallowed \$2,068 of charitable contributions and \$4,795 of unreimbursed employee business expenses that Taxpayer had claimed. The Division also disallowed a \$200 public school tax credit and accordingly issued a proposed assessment for 1999 that included tax, a late payment penalty and interest. Taxpayer timely protested the assessment. At the hearing, the Division's representative submitted a modified assessment that allowed \$201 of unreimbursed employee business expenses. For the hearing and on appeal the only issue is the whether the unreimbursed expenses associated with Taxpayer's traveling to and from her work place should be allowed as an itemized deduction.

A.R.S. § 43-1042(A) allows taxpayers to use the miscellaneous itemized deductions provided in subtitle A, chapter 1, subchapter B, parts VI and VII of the internal revenue code, which includes I.R.C. § 162. On her federal and Arizona returns Taxpayer took deductions for unreimbursed employee business expense (I.R.C. § 162).<sup>1</sup> I.R.C. § 162(a), provides in pertinent part:

. . . There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business. . .

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<sup>1</sup> The limitation of I.R.C. § 67(b) (a deduction is only allowable to the extent that deduction and other miscellaneous itemized deductions exceed 2% of adjusted gross income), is applicable to employee business expenses. Reg. § 62-1T (e) (3).

I.R.C. § 262(a) provides that “[e]xcept as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.” With regard to deductibility of daily transportation expenses, IRS Revenue Ruling 99-7 provides in pertinent part:

In general, daily transportation expenses incurred in going between a taxpayer’s residence and a work location are nondeductible commuting expenses.

There are three listed exceptions to the general rule,<sup>2</sup> none of which are applicable to the present case.

In 1999 Taxpayer was a Police Officer for the City of Phoenix. Taxpayer argues that I.R.S. §162(a) allows the deduction of travel expenses that are work related, that an Arizona police officer’s travel to and from work is considered travel while “at work” because of a provision in the workers’ compensation law and, therefore, that this travel is worked related making the expenses deductible. The provision in the workers’ compensation law to which Taxpayer refers is A.R.S. § 23-1021.01, added by Laws 1998, Ch. 60, § 2 (S.B. 1077), which provides:

A. A peace officer or fire fighter as defined in § 1-215 who is injured or killed while traveling directly to or from work as a peace officer shall be considered in the course and scope of

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<sup>2</sup> The exceptions are: (1) A taxpayer may deduct daily transportation expenses incurred in going between the taxpayer’s residence and a temporary work location outside the metropolitan area where the taxpayer lives and normally works. However, unless paragraph (2) or (3) below applies, daily transportation expenses incurred in going between the taxpayer’s residence and a temporary work location within that metropolitan area are nondeductible commuting expenses. (2) If 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. (The Service will continue not to follow the Walker decision.) (3) If 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, regardless of whether the other work location is regular or temporary and regardless of the distance.

employment *solely for the purposes of eligibility for workers' compensation benefits*, provided that the peace officer or fire fighter is not engaged in criminal activity.

B. Nothing in this section shall create any liability on the part of the peace officer's or fire fighter's employer for any civil damages occurring through the peace officer's or fire fighter's negligent or intentional conduct while traveling to or from work as a peace officer. (Emphasis added.)

The language of A.R.S. § 23-1021.01.A states that traveling to or from work is considered in the course and scope of employment "solely for the purposes of eligibility for workers' compensation benefits." Taxpayer seeks to apply this statutory provision to income tax laws. Not only is there is no evidence that the Legislature intended to change the income tax laws governing transportation to and from work (commuting) expenses, the language of the statute clearly states the law was only to change eligibility for workers' compensation benefits.

Taxpayer presented case law addressing the fact that service covered under workmen's compensation can be extended from the regular time and place of employment by agreement. While agreement or legislation might change the applicability of worker's compensation benefits, there is specific language indicating that the Legislature sought to limit the effect of A.R.S. § 23-1021.01 to worker's compensation benefits. Even if the commute is within the scope of Taxpayer's employment, it is still commuting. Commuting expenses are not deductible as stated in Revenue Ruling 99-7.

The Hearing Officer correctly determined that A.R.S. § 23-1021.01.A does not change taxation of income. Therefore, the Division properly denied a deduction for expenses related to traveling to and from Taxpayer's workplace. The modified proposed assessment is proper.

**ORDER**

The Hearing Officer's decision is affirmed.

This decision is the final order of the Department of Revenue. Taxpayer may contest the final order of the Department in one of two manners. Within 60 days of the receipt of the final order, Taxpayer may file an appeal to the State Board of Tax Appeals, 100 North 15<sup>th</sup> Avenue, Suite 140 Phoenix, AZ 85007 or, if the amount in dispute is greater than five thousand dollars, Taxpayer may bring an action in Tax Court (125 West Washington, Phoenix, Arizona 85003). For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102. For information from the Tax Court, call (602) 506-3763.

Dated this 8th day of January 2007.

ARIZONA DEPARTMENT OF REVENUE

Gale Garriott  
Director

Original of the foregoing  
sent via certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

GG:dl

cc: Individual Income Protest Section  
Individual Income Tax Section  
Audit Division