

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
UTI # [REDACTED])	Case No. 200900171-I
_____)	

A hearing was held on November 5, 2009 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2003. At the hearing leave to submit documentation and Post-Hearing Memoranda was granted. The memoranda having been timely filed, this case is ready for ruling.

FINDINGS OF FACT

1. Taxpayer timely filed his Arizona income tax return for tax year 2003.
2. The Section issued a proposed assessment to Taxpayer making two adjustments.
3. The first adjustment added [REDACTED] to the Arizona gross income reported by Taxpayer in his return. Taxpayer agreed to this adjustment in his Reply Memorandum.
4. The second adjustment disallowed the qualifying parent/ancestor exemption Taxpayer took in his return.
5. Taxpayer timely protested the assessment.
6. During calendar year 2003 Taxpayer lived with his mother, [REDACTED], in her house.
7. Taxpayer's mother received \$7,896.00 from social security in 2003.
8. The social security benefits were used to pay [REDACTED]'s doctor bills, prescription expenses and personal debts.
9. The social security benefits were used for the support of [REDACTED].

10. Taxpayer documented expenditures he made of \$2,628.00 for the support of the household (food) and \$7,735.00 for the support of [REDACTED].
11. The total cost of support provided by Taxpayer was \$9,049.00 (\$7,735.00 for the support of [REDACTED] and one-half of the household support of \$2,628).
12. The Section calculated the fair rental value of [REDACTED]'s home to be \$5,508.00 per year.
13. The Section's estimate was based on information from two internet websites showing rentals of two bedroom, one bath homes in the [REDACTED], Arizona area.
14. The Section calculated its estimate using the lowest monthly rental amount (\$459.00 per month) it found on the websites.
15. Taxpayer presented no evidence as to the fair rental value of [REDACTED]'s home.
16. The Section's estimate of \$5,508.00 per year as the fair rental value of the home is reasonable.
17. Taxpayer has provided no additional evidence or substantiation for the expenses he incurred for the support of [REDACTED].
18. The total cost of support for [REDACTED] during 2003 was \$19,699.00 (\$7,896.00 [REDACTED] spent on her doctor bills, prescriptions and personal debts, \$2,754.00 which is one-half of the fair rental value of [REDACTED]'s home and \$9,049.00 provided by Taxpayer).
19. Fifty percent of the total cost of support for [REDACTED] during 2003 was \$9,849.50.
20. Taxpayer has not shown that he paid more than one-half of [REDACTED]'s total support and maintenance costs for tax year 2003.

CONCLUSIONS OF LAW

1. A.R.S. § 43-1023(C) provides an exemption of \$10,000 for each parent or ancestor of a parent of the taxpayer who is age sixty-five or older, who requires assistance with activities of daily living and who lives in the taxpayer's principal residence for the entire taxable year, if the taxpayer pays more than one-half of the person's total support and maintenance costs.
2. Fair rental value of the home is a part of the household costs and is included in the worksheet for determining support.
3. 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).
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 the period prescribed in § 42-1104." A.R.S. § 42-1105(D).
6. Hearings may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. A.R.S. § 41-1062(A)(1).
7. Evidence supporting a decision or order needs to be substantial, reliable, and probative. A.R.S. § 41-1062(A)(1).
8. The evidence supporting the Section's estimate of \$5,508.00 per year as the fair rental value of the home was probative, reliable and substantial.
9. Taxpayer was not qualified to take the exemption under A.R.S. § 43-1023(C) because he did not show he paid more than one-half of [REDACTED]'s total support and maintenance costs in 2003.

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 proposed assessment issued by the Section for tax year 2003 was proper.

DISCUSSION

A.R.S. § 43-1023(C) provides an exemption of \$10,000 for each parent of the taxpayer who is age sixty-five or older, who requires assistance with activities of daily living and who lives in the taxpayer's principal residence for the entire taxable year, if the taxpayer pays more than one-half of the person's total support and maintenance costs. Taxpayer took the exemption for his mother on his 2003 individual income tax return.

The Section audited Taxpayer's 2003 tax return and disallowed the exemption. The Section raised two issues: whether Taxpayer provided more than one-half of the total support for [REDACTED] and whether [REDACTED] required assistance with the activities of daily living. Because Taxpayer did not provide more than one-half of the total support for [REDACTED], the decision does not address whether [REDACTED] required assistance with the activities of daily living.

"The presumption is that an additional assessment of income tax is correct and the burden is on the taxpayer to overcome such presumption." *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 105, 191 P.2d 729 (1948). The burden is on the Taxpayer to show that he did provide more than one-half of the total support for [REDACTED]. Based on the record presented, Taxpayer did not meet the burden.

[REDACTED]'s total support and maintenance was \$19,699.00, which included the amounts Taxpayer showed he paid for [REDACTED]'s support and maintenance, the amounts [REDACTED] spent from her own funds to pay her doctor bills, prescriptions and personal debts and one-half of the fair rental value of her residence. One-half of that amount is \$9,849.50.

The evidence presented showed that Taxpayer provided \$9,049.00 towards the support and maintenance of [REDACTED]. That is less than one-half of the total support and maintenance. Taxpayer has not shown that he is entitled to take the exemption under A.R.S. § 43-1023(C). Therefore the disallowance of the exemption was proper.

The proposed assessment also 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. 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.

Based on the foregoing, the Section's proposed assessment dated April 9, 2008 is affirmed.

DATED this 19th day of January, 2010.

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