



1 including personal problems involving finances, family and health. While sympathetic to Appellant's  
2 hardships, the Board must address only issues properly before it.

3 An assessment of additional income tax is presumed correct. *Arizona State Tax Commission v.*  
4 *Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948). Taxpayers must keep and preserve "suitable records and  
5 other books and accounts necessary to determine the tax for which the person is liable for the period  
6 prescribed . . . ." See A.R.S. § 42-1105(D).

7 Appellant maintains that she is not liable for the tax assessed for a number of reasons. First, she  
8 contends that her income for tax year 2001 from Honeywell International, Inc. ("Honeywell") is exempt  
9 from taxation under Article 19 of the tax treaty between the People's Republic of China and the United  
10 States. She further argues that her H1-B Visa status also exempts her from taxation.

11 Article 19 of the tax treaty provides that:

12 An individual who is, or immediately before visiting a Contracting State was, a  
13 resident of the other Contracting State and is temporarily present in the first mentioned  
14 Contracting State for the primary purpose of *teaching, giving lectures or conducting*  
15 *research at a university, college, school or other accredited educational institution* in the  
16 first mentioned Contracting State shall be exempt from tax for a period *not exceeding*  
17 *three years* in the aggregate in respect of remuneration for such teaching, lectures, or  
18 research. (Emphasis added.)

19 Article 3.1(c).

20 It is an undisputed fact that Appellant has been a resident of Arizona since at least 1994 -- well  
21 outside of the applicable three year period. Further, she has not shown that position with Honeywell,  
22 which she describes as a "software developer," involved teaching, lecturing or research, or that  
23 Honeywell was a qualifying institution. Finally, the provisions addressing Appellant's H1-B Visa relate to  
24 penalties imposed against employers who violate employment conditions, etc. and do not apply to the tax  
25 issues involved in this case. See 8 U.S.C § 1182(n)(2)(G)(ii).

Appellant next argues that she operated a business in tax year 2001. Therefore, she is entitled to  
deductions for Schedule C business expenses claimed in the amount of \$24,600 and for a car used for

1 business purposes. However, Appellant reported no business income on her 2001 federal income tax  
2 return and has not provided documentation substantiating these claims.

3 Appellant argues that she is entitled to additional deductions for interest paid to Bank of America  
4 as home mortgage interest expenses, dental expenses related to braces for her and her son, and for \$50  
5 in charitable contributions. She also claims she is entitled to deductions of \$10,500 for money paid into  
6 her 401(k) account and for money used to repay her mother and brother.

7 The Department has previously allowed deductions of \$2,867.04 for home mortgage interest  
8 expenses, \$1,453 for medical and dental expenses and \$280 for charitable contributions. Appellant has  
9 not shown that she is entitled to any further deductions related to these expenses. Money paid into  
10 Appellant's 401(k) was excluded from taxable income on her federal income tax return. Arizona law does  
11 not allow a deduction for 401(k) contributions that were already excluded from taxable income. Further,  
12 there is no provision under Arizona law allowing a deduction for money repaid to family members.

13 Finally, Appellant contends she is entitled to a deduction of \$906 related to legal costs and fees  
14 associated with court proceedings. Appellant's miscellaneous itemized deductions may be deducted only  
15 to the extent they exceed 2 percent of her federal adjusted gross income of \$58,881. See A.R.S. 43-  
16 1042(A). The \$906 legal costs and fees claimed as miscellaneous deductions are less than 2 percent of  
17 Appellant's federal adjusted gross income. Therefore, Appellant is not entitled to this deduction.

18 For the foregoing reasons, the Board finds that Appellant is liable for the tax assessed. Further,  
19 Appellant is liable for the interest under A.R.S § 42-1123(C), which provides that if tax "or any portion of  
20 the tax is not paid" when due, "the department shall collect, as a part of the tax, interest on the unpaid  
21 amount" until the tax has been paid.

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CONCLUSIONS OF LAW

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2           1. The Department properly disallowed the federal schedule C business expenses and certain  
3 itemized deductions claimed by Appellant on her 2001 Arizona individual income tax return. Therefore,  
4 Appellant is liable for the additional income tax assessed. *See Arizona State Tax Commission v.*  
5 *Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948); A.R.S. § 42-1105(D).

6           2. Appellant is liable for the interest assessed. A.R.S § 42-1123(C).

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