

REFERENCE TITLE: department of revenue; revenue changes

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

# SB 1221

Introduced by  
Senator Garcia

## AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; AMENDING SECTIONS 42-1004, 42-1114, 42-1129 AND 42-1201, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 1, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1207; AMENDING SECTIONS 42-2066, 42-5005 AND 42-5017, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-436; MAKING APPROPRIATIONS; RELATING TO THE DEPARTMENT OF REVENUE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding  
3 chapter 16, to read:

4 CHAPTER 16

5 FINANCIAL INSTITUTIONS DATA MATCH AND DATA EXCHANGE

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Financial institutions data match and data exchange;  
8 surrender of assets of delinquent taxpayer;  
9 nonliability

10 A. FINANCIAL INSTITUTIONS MAY ENTER INTO AGREEMENTS WITH THE  
11 DEPARTMENT OF REVENUE FOR DATA MATCH AND DATA EXCHANGE AS PRESCRIBED BY  
12 SECTION 42-1207.

13 B. ON RECEIPT OF A NOTICE OF LEVY, A FINANCIAL INSTITUTION SHALL  
14 ENCUMBER OR SURRENDER, AS APPROPRIATE, ASSETS HELD BY THE FINANCIAL  
15 INSTITUTION ON BEHALF OF A DELINQUENT TAXPAYER. IF THE FINANCIAL INSTITUTION  
16 RECEIVES TWO NOTICES OF LEVY ON THE SAME DAY FOR THE SAME PERSON, A LEVY  
17 ISSUED TO COLLECT CHILD SUPPORT PURSUANT TO SECTION 25-521 HAS PRIORITY OVER  
18 A LEVY ISSUED PURSUANT TO THIS SECTION.

19 C. NOTWITHSTANDING ANY OTHER LAW, A FINANCIAL INSTITUTION IS NOT  
20 SUBJECT TO CIVIL LIABILITY FOR EITHER:

21 1. DISCLOSING TO THE DEPARTMENT OF REVENUE OR ITS AGENT A PERSON'S  
22 FINANCIAL RECORD PURSUANT TO SECTION 42-1207 OR ANY ACTS OF OMISSION THAT ARE  
23 INADVERTENT AND MADE IN GOOD FAITH.

24 2. ENCUMBERING OR SURRENDERING ANY ASSETS HELD BY THE FINANCIAL  
25 INSTITUTION IN RESPONSE TO A NOTICE OF LEVY THAT IS ISSUED BY THE DEPARTMENT  
26 OF REVENUE OR FOR ANY ACTION TAKEN IN GOOD FAITH TO COMPLY WITH THIS SECTION.

27 D. THE REMEDY UNDER SUBSECTION B OF THIS SECTION IS LIMITED TO  
28 COLLECTION OF DELINQUENT TAXES, PENALTIES AND INTEREST.

29 Sec. 2. Section 42-1004, Arizona Revised Statutes, is amended to read:

30 42-1004. General powers and duties of the department; res  
31 judicata; remedies; enforcement; special collections  
32 account

33 A. The department shall administer and enforce ~~the provisions of~~ this  
34 title, title 43 and other laws assigned to it and has all the powers and  
35 duties prescribed by law for such purposes. In all proceedings prescribed by  
36 law, the department may act on behalf of this state. In addition, the  
37 department shall:

38 1. Formulate policies, plans and programs to effectuate the missions  
39 and purposes of the department.

40 2. Employ and remove personnel subject to ~~the provisions of~~ title 41,  
41 chapter 4, articles 5 and 6, determine the conditions of employment and  
42 prescribe the duties and powers of administrative, professional, technical,  
43 secretarial, clerical and other personnel as may be necessary in the  
44 performance of its duties, and contract for the services of outside advisors,  
45 consultants and aides as may be reasonably necessary.

1           3. Make contracts and incur obligations within the general scope of  
2 its activities and operations subject to the availability of its funds.

3           4. Contract with or assist other departments, agencies or institutions  
4 of the state, local, Indian tribal and federal governments in the furtherance  
5 of its purposes, objectives and programs.

6           5. Accept grants, matching funds and direct payments from public or  
7 private agencies for the conduct of programs which are consistent with the  
8 overall purposes and objectives of the department.

9           6. Provide information and advice within the scope of its duties  
10 subject to the laws on confidentiality of information and departmental rules  
11 adopted pursuant to such laws.

12           7. Advise with and make recommendations to the governor and the  
13 legislature on all matters concerning its objectives.

14           8. Have an official seal which shall be judicially noticed.

15           9. Provide an integrated, coordinated and uniform system of tax  
16 administration and revenue collection for the state.

17           B. The department may:

18           1. With the approval of the attorney general:

19           (a) Abate any balance owed by a taxpayer if the balance is  
20 uncollectible. Related liens, if any, are extinguished on abatement.

21           (b) Abate all or part of the unpaid portion of any tax if the director  
22 determines that the administration and collection costs involved would exceed  
23 the amount of the tax.

24           2. Offer publications relating to the administration of state taxes  
25 for sale at a price equal to the pro rata cost of publication and  
26 distribution. Monies received from the sale of publications shall be placed  
27 in a revenue publications revolving fund. Monies in the fund:

28           (a) Shall be used to meet publication and distribution expenses.

29           (b) Are exempt from the provisions of section 35-190 relating to  
30 lapsing of appropriations.

31           3. Enter into contingent fee contracts to collect delinquent state  
32 taxes, penalties and interest due under title 43 and chapter 5, article 1 of  
33 this title, consistent with the requirements of chapter 2, article 1 of this  
34 title. No contract may be entered into for ~~—~~

35           ~~(a) The collection of delinquent state taxes which exceed five hundred~~  
36 ~~dollars for an individual resident, Arizona corporation or partnership.~~

37           ~~(b)~~ the hiring of auditors on a contingent fee basis except auditors  
38 that are hired to enforce ~~the provisions of~~ title 44, chapter 3.

39           C. In the determination of any issue of law or fact under this title  
40 or title 43, neither the department, nor any officer or agency having any  
41 administrative duties under this title or title 43, nor any court is bound by  
42 the determination of any other executive officer or administrative agency of  
43 this state. In the determination of any case arising under this title or  
44 title 43, the rule of res judicata is applicable only if the liability  
45 involved is for the same year or period as was involved in another case  
46 previously determined under this title or title 43.

1 D. The remedies of this state provided for in this title and title 43  
2 are cumulative, and no action taken by the department constitutes an election  
3 by this state to pursue any remedy to the exclusion of any other remedy  
4 provided by law.

5 E. The attorney general shall prosecute in the name of this state all  
6 actions necessary to enforce this title and title 43. The attorney general  
7 may defend all actions brought against this state or an officer or agency of  
8 this state arising under this title and title 43. The attorney general may  
9 delegate the prosecuting authority to any county attorney for prosecution in  
10 that county.

11 F. A special collections account is established in the state general  
12 fund. All monies collected pursuant to contracts authorized by subsection B,  
13 paragraph 3 of this section shall be deposited in the special collections  
14 account. The department shall pay from the account all fees and court costs  
15 provided for in the contracts authorized under subsection B, paragraph 3 of  
16 this section. The department shall allocate the remainder of the amounts  
17 collected under subsection B, paragraph 3 of this section to the state or the  
18 political subdivision in the proportion that the monies would have been  
19 distributed pursuant to chapter 5 of this title or section 43-206,  
20 respectively.

21 Sec. 3. Section 42-1114, Arizona Revised Statutes, is amended to read:  
22 42-1114. Suit to recover taxes

23 A. The department may bring an action in the name of this state to  
24 recover the amount of any taxes, penalties and interest due and unpaid. The  
25 department of law shall prosecute the action. In the action a writ of  
26 attachment may be issued and no bond or affidavit previous to issuing the  
27 attachment is required. In the action, a certificate by the department of  
28 revenue showing the delinquency is prima facie evidence of the levy of the  
29 tax, of the delinquency and of the compliance by the department of revenue  
30 with all the provisions of law relating to the computation and levy of the  
31 tax.

32 B. The department of revenue may bring an appropriate action in any  
33 court of competent jurisdiction in the United States or any foreign country  
34 in the name of this state to recover the amount of any taxes, interest and  
35 penalties due. The department of law shall prosecute the action.

36 C. The action shall not commence more than ~~six~~ TEN years after the  
37 amount of taxes determined to be due becomes final unless the taxpayer and  
38 the department extend the ~~six~~ TEN year limitation or enforced collection has  
39 been stayed by operation of federal or state law. If enforced collection has  
40 been stayed, the period of limitations shall be extended by the period of  
41 time that the department was stayed from engaging in enforced collections.  
42 If an action is not commenced within the ~~six~~ TEN year period or within the  
43 period extended by agreement, the lien of the tax is extinguished as provided  
44 in section 42-1151.



1 C. As used in this chapter, "levy" includes the power of distraint and  
2 seizure by any means. Except as otherwise provided in subsection E or F of  
3 this section, a levy extends only to property possessed and obligations  
4 existing at the time of the levy or within twenty-one days after the date of  
5 the levy. In any case in which the department may levy upon property or  
6 rights to property, it may seize and sell the property or rights to the  
7 property, whether real or personal, tangible or intangible.

8 D. If any property or right to property upon which a levy has been  
9 made under subsection A of this section is not sufficient to satisfy the  
10 claim of the department for which the levy is made, the department may as  
11 often as may be necessary proceed to levy in like manner upon any other  
12 property liable to levy of the person against whom such claim exists, until  
13 the amount due, together with all expenses, is fully paid.

14 E. The effect of a levy on salary or wages payable to or received by a  
15 taxpayer is continuous from the date the levy is first made until the  
16 liability out of which the levy arose is satisfied or becomes unenforceable.

17 F. With respect to a levy described in subsection E of this section,  
18 the department shall promptly release the levy when the liability out of  
19 which the levy arose is satisfied or becomes unenforceable and shall promptly  
20 notify the person upon whom the levy was made that the levy has been  
21 released.

22 Sec. 6. Title 42, chapter 1, article 5, Arizona Revised Statutes, is  
23 amended by adding section 42-1207, to read:

24 42-1207. Financial institutions data match; prohibited  
25 disclosure; civil liability; fee; definition

26 A. THE DEPARTMENT MAY ENTER INTO AGREEMENTS WITH FINANCIAL  
27 INSTITUTIONS THAT CONDUCT BUSINESS IN THIS STATE TO DEVELOP AND OPERATE A  
28 DATA MATCH SYSTEM TO ASSIST THE DEPARTMENT IN THE COLLECTION OF DELINQUENT  
29 TAXES, PENALTIES AND INTEREST. THE DATA MATCH SYSTEM SHALL USE AUTOMATED  
30 DATA EXCHANGE PROCEDURES TO THE MAXIMUM EXTENT POSSIBLE.

31 B. ANY DATA EXCHANGES BETWEEN FINANCIAL INSTITUTIONS AND THE  
32 DEPARTMENT UNDER AN AGREEMENT PURSUANT TO SUBSECTION A SHALL OCCUR QUARTERLY.  
33 THE DATA EXCHANGES SHALL INCLUDE THE NAME, ADDRESS OF RECORD, SOCIAL SECURITY  
34 NUMBER OR OTHER TAXPAYER IDENTIFICATION NUMBER AND ANY OTHER IDENTIFYING  
35 INFORMATION FOR EACH DELINQUENT TAXPAYER WHO MAINTAINS AN ACCOUNT AT THE  
36 INSTITUTION AND WHO OWES DELINQUENT TAXES AS IDENTIFIED BY THE DEPARTMENT BY  
37 NAME AND SOCIAL SECURITY NUMBER OR OTHER TAXPAYER IDENTIFICATION NUMBER.

38 C. THE DEPARTMENT OR ITS AGENT MAY ONLY DISCLOSE A PERSON'S FINANCIAL  
39 RECORD UNDER THIS SECTION IN ORDER TO ENFORCE THE COLLECTION OF A PERSON'S  
40 DELINQUENT TAX OBLIGATION.

41 D. A DEPARTMENT EMPLOYEE WHO KNOWINGLY OR NEGLIGENTLY DISCLOSES A  
42 PERSON'S FINANCIAL RECORDS IN VIOLATION OF SUBSECTION C IS SUBJECT TO CIVIL  
43 LIABILITY IN AN AMOUNT EQUAL TO THE GREATER OF EITHER:

44 1. ONE THOUSAND DOLLARS FOR EACH ACT OF UNAUTHORIZED DISCLOSURE OF A  
45 FINANCIAL RECORD WITH RESPECT TO WHICH THE DEPARTMENT EMPLOYEE IS FOUND  
46 LIABLE.

1           2. THE SUM OF THE ACTUAL DAMAGES SUSTAINED BY THE PLAINTIFF AS A  
2 RESULT OF THE UNAUTHORIZED DISCLOSURE AND, IN THE CASE OF A WILFUL DISCLOSURE  
3 OR A DISCLOSURE THAT IS THE RESULT OF GROSS NEGLIGENCE, PUNITIVE DAMAGES,  
4 INCLUDING COSTS AND ATTORNEY FEES.

5           E. THE DEPARTMENT MAY PAY A REASONABLE FEE TO A FINANCIAL INSTITUTION  
6 FOR CONDUCTING A DATA MATCH. THE FEE SHALL NOT EXCEED THE ACTUAL COSTS  
7 INCURRED BY THE FINANCIAL INSTITUTION.

8           F. FOR THE PURPOSES OF THIS SECTION, "FINANCIAL INSTITUTION" MEANS  
9 STATE AND FEDERALLY CHARTERED BANKS, TRUST COMPANIES, FEDERAL AND STATE  
10 SAVINGS AND LOAN ASSOCIATIONS, FEDERAL AND STATE CREDIT UNIONS, CONSUMER  
11 LENDERS, INTERNATIONAL BANKING FACILITIES AND FINANCIAL INSTITUTION HOLDING  
12 COMPANIES, INSURANCE COMPANIES, BENEFIT ASSOCIATIONS, SAFE DEPOSIT COMPANIES,  
13 MONEY MARKET MUTUAL FUNDS AND SIMILAR INSTITUTIONS AUTHORIZED TO DO BUSINESS  
14 IN THIS STATE AND ANY PARTY AFFILIATED WITH THESE FINANCIAL INSTITUTIONS.

15           Sec. 7. Section 42-2066, Arizona Revised Statutes, is amended to read:  
16 42-2066. Statute of limitations on tax debts

17           A. A taxpayer's obligations for any tax, interest or penalty required  
18 to be collected by the department for any tax period are extinguished, if not  
19 previously satisfied, ~~six~~ TEN years after the amount of tax determined to be  
20 due becomes final unless one of the following circumstances applies:

21           1. The department has commenced a suit to collect the debt pursuant to  
22 section 42-1114.

23           2. The taxpayer has agreed in writing to extend this time period  
24 before the time period expires.

25           3. Enforced collection has been stayed by the operation of federal or  
26 state law during the period. The period of limitations prescribed by this  
27 section is extended by the period of time that the department was stayed from  
28 engaging in enforced collections.

29           B. If a tax obligation is extinguished pursuant to this section, any  
30 related liens for those obligations are also extinguished.

31           Sec. 8. Section 42-5005, Arizona Revised Statutes, is amended to read:  
32 42-5005. Privilege licenses: revocation; violation;  
33 classification

34           A. Every person who receives gross proceeds of sales or gross income  
35 upon which a privilege tax is imposed by this article, desiring to engage or  
36 continue in business, shall make application to the department for a  
37 privilege license accompanied by a fee of ~~twelve~~ FIFTY dollars. Such  
38 licenses shall be ~~effective indefinitely~~ RENEWED ANNUALLY. Such person shall  
39 not engage or continue in business until the person has obtained a privilege  
40 license.

41           B. If the applicant is not in arrears in payment of any tax imposed by  
42 this article, the department shall issue a license authorizing the applicant  
43 to engage and continue in such business, upon the condition that the  
44 applicant complies with this article. The license number shall be  
45 continuous.

1 C. The privilege license shall not be transferable upon a change of  
2 ownership or change of location of the business. For the purposes of this  
3 subsection:

4 1. "Location" means the business address appearing in the application  
5 for the license and on the privilege license.

6 2. "Ownership" means any right, title or interest in the business.

7 3. "Transferable" means the ability to convey or change the right or  
8 privilege to engage or continue in business by virtue of the issuance of the  
9 privilege license.

10 D. When the ownership or location of a business upon which a privilege  
11 tax is imposed by this article has been changed within the meaning of  
12 subsection C of this section, the licensee shall surrender the license to the  
13 department. The license shall be reissued to the new owners or for the new  
14 location upon application by the taxpayer and payment of the ~~twelve~~ FIFTY  
15 dollar fee.

16 E. A person engaged in or conducting a business in two or more  
17 locations or under two or more business names shall procure a license for  
18 each location or business name. This requirement shall not be construed as  
19 conflicting with section 42-5020.

20 F. If a person violates this article or any rule adopted under this  
21 article, the department upon hearing may revoke any privilege license issued  
22 to the person. The department shall provide ten days' written notice of the  
23 hearing, stating the time and place and requiring the person to appear and  
24 show cause why the license or licenses should not be revoked. The department  
25 shall provide written notice to the person of the revocation of the license.  
26 The notices may be served personally or by mail pursuant to section 42-5037.  
27 After revocation, the department shall not issue a new license to the person  
28 unless the person presents evidence satisfactory to the department that the  
29 person will comply with this article and with the rules adopted under this  
30 article. The department may prescribe the terms under which a revoked  
31 license may be reissued.

32 G. A person who violates any provision of this section is guilty of a  
33 class 3 misdemeanor.

34 Sec. 9. Section 42-5017, Arizona Revised Statutes, is amended to read:

35 42-5017. Credit for accounting and reporting expenses;  
36 definition

37 A. A credit is allowed against the taxes imposed by this article and  
38 article 5 of this chapter for expenses incurred by the taxpayer in accounting  
39 and reporting those taxes. The credit is equal to one per cent of the amount  
40 of tax due but not to exceed a total of ten thousand dollars in any calendar  
41 year for the combined total of all business premises of a taxpayer.  
42 Estimated taxes under section 42-5014, subsection D are not considered a  
43 separate reporting period.

44 B. A taxpayer shall claim the credit for each tax period on forms  
45 prescribed and furnished by the department, which may be incorporated in the  
46 return form prescribed pursuant to section 42-5014. A claim for credit is

1 not allowed if the taxpayer fails to pay the tax due, plus any estimated tax  
2 liability, before the payment becomes delinquent. A CLAIM FOR CREDIT UNDER  
3 THIS SECTION IS ALLOWED ONLY IF THE TAXPAYER FILES AND PAYS TAXES  
4 ELECTRONICALLY.

5 C. ~~As used in~~ FOR THE PURPOSES OF this section, "taxpayer" means the  
6 business entity under which the business reports for state income tax  
7 purposes or an entity that is exempt from state income tax.

8 Sec. 10. Title 43, chapter 4, article 3, Arizona Revised Statutes, is  
9 amended by adding section 43-436, to read:

10 43-436. Payroll service providers; electronic filing; penalty

11 A. A PAYROLL SERVICE PROVIDER THAT FILES AND PAYS WITHHOLDING TAX ON  
12 BEHALF OF AN EMPLOYER IN THIS STATE SHALL FILE AND PAY THE WITHHOLDING TAX BY  
13 ELECTRONIC MEANS.

14 B. A FAILURE TO FILE AND PAY WITHHOLDING TAX PURSUANT TO SUBSECTION A  
15 IS SUBJECT TO A CIVIL PENALTY OF TWENTY-FIVE DOLLARS.

16 Sec. 11. Department of revenue; appropriations; purposes

17 In addition to any other appropriation made to the department of  
18 revenue for fiscal year 2010-2011, the following amounts are appropriated to  
19 the department of revenue from the state general fund for fiscal year  
20 2010-2011:

21 1. The sum of \$3,000,000 and 74 FTE positions for the purposes of  
22 hiring temporary tax collectors.

23 2. The sum of \$140,000 and 4 FTE positions for the purposes of  
24 processing transaction privilege tax licenses.

25 3. The sum of \$65,000 and 4 FTE positions for the purposes of  
26 outsourcing a portion of the collection inventory.

27 4. The sum of \$175,000 for the purposes automating the bank levy  
28 process.

29 5. The sum of \$4,479,300 and 71 FTE positions for the purposes of  
30 restoring the department of revenue's auditors and license compliance  
31 officers.

32 6. The sum of \$360,000 and 7 FTE positions for the purposes of  
33 increasing collectors to address the department of revenue's business tax  
34 inventory.

35 7. The sum of \$275,500 and 4 FTE positions to accommodate the increase  
36 in the statute of limitations pursuant to sections 42-1114, 42-1201 and  
37 42-2066, Arizona Revised Statutes, as amended by this act.

38 Sec. 12. Requirements for enactment; two-thirds vote

39 Pursuant to article IX, section 22, Constitution of Arizona, this act  
40 is effective only on the affirmative vote of at least two-thirds of the  
41 members of each house of the legislature and is effective immediately on the  
42 signature of the governor or, if the governor vetoes this act, on the  
43 subsequent affirmative vote of at least three-fourths of the members of each  
44 house of the legislature.