

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 197
HOUSE BILL 2449

AN ACT

AMENDING SECTION 42-1125, ARIZONA REVISED STATUTES; AMENDING TITLE 42,
CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-2203;
RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-1125, Arizona Revised Statutes, is amended to
3 read:

4 42-1125. Civil penalties; definition

5 A. If a taxpayer fails to make and file a return for a tax
6 administered pursuant to this article on or before the due date of the return
7 or the due date as extended by the department, unless it is shown that the
8 failure is due to reasonable cause and not due to wilful neglect, four and
9 one-half percent of the tax required to be shown on such return shall be
10 added to the tax for each month or fraction of a month elapsing between the
11 due date of the return and the date on which it is filed. The total penalty
12 shall not exceed twenty-five percent of the tax found to be remaining due.
13 The penalty so added to the tax is due and payable on notice and demand from
14 the department. For the purpose of computing the penalty imposed under this
15 subsection, the amount required to be shown as tax on a return shall be
16 reduced by the amount of any part of the tax ~~which~~ THAT is paid on or before
17 the beginning of such month and by the amount of any credit against the tax
18 ~~which~~ THAT may be claimed on the return. If the amount required to be shown
19 as tax on a return is less than the amount shown as tax on such return, the
20 penalty described in this subsection shall be applied by substituting such
21 lower amount.

22 B. If a taxpayer fails or refuses to file a return on notice and
23 demand by the department, the taxpayer shall pay a penalty of twenty-five
24 percent of the tax, which is due and payable on notice and demand by the
25 department, in addition to any penalty prescribed by subsection A of this
26 section, unless it is shown that the failure is due to reasonable cause and
27 not due to wilful neglect. This penalty is payable on notice and demand from
28 the department.

29 C. If a taxpayer fails or refuses to furnish any information requested
30 in writing by the department, the department may add a penalty of twenty-five
31 percent of the amount of any deficiency tax assessed by the department
32 concerning the assessment of which the information was required, unless it is
33 shown that the failure is due to reasonable cause and not due to wilful
34 neglect.

35 D. If a person fails to pay the amount shown as tax on any return
36 within the time prescribed, a penalty of one-half of one percent, not to
37 exceed a total of ten percent, shall be added to the amount shown as tax for
38 each month or fraction of a month during which the failure continues, unless
39 it is shown that the failure is due to reasonable cause and not due to wilful
40 neglect. If the department determines that the person's failure to pay was
41 due to reasonable cause and not due to wilful neglect and that a payment
42 agreement pursuant to section 42-2057 is appropriate, the department shall
43 not impose the penalty unless the taxpayer fails to comply with the payment
44 agreement. If the taxpayer is also subject to a penalty under subsection A
45 of this section for the same tax period, the total penalties under subsection
46 A of this section and this subsection shall not exceed twenty-five

1 percent. For the purpose of computing the penalty imposed under this
2 subsection:

3 1. The amount shown as tax on a return shall be reduced by the amount
4 of any part of the tax that is paid on or before the beginning of that month
5 and by the amount of any credit against the tax that may be claimed on the
6 return.

7 2. If the amount shown as tax on a return is greater than the amount
8 required to be shown as tax on that return, the penalty shall be applied by
9 substituting the lower amount.

10 E. If a person fails to pay any amount required to be shown on any
11 return that is not so shown within twenty-one calendar days after the date of
12 notice and demand, a penalty of one-half of one percent, not to exceed a
13 total of ten percent, shall be added to the amount of tax for each month or
14 fraction of a month during which the failure continues, unless it is shown
15 that the failure is due to reasonable cause and not due to wilful neglect.
16 If the taxpayer is also subject to penalty under subsection A of this section
17 for the same tax period, the total penalties under subsection A of this
18 section and this subsection shall not exceed twenty-five percent. For the
19 purpose of computing the penalty imposed under this subsection, any amount
20 required to be shown on any return shall be reduced by the amount of any part
21 of the tax that is paid on or before the beginning of that month and by the
22 amount of any credit against the tax that may be claimed on the return.

23 F. In the case of a deficiency, for which a determination is made of
24 an additional amount due, ~~which~~ THAT is due to negligence but without intent
25 to defraud, the person shall pay a penalty of ten percent of the amount of
26 the deficiency.

27 G. If part of a deficiency is due to fraud with intent to evade tax,
28 fifty percent of the total amount of the tax, in addition to the deficiency,
29 interest and other penalties provided in this section, shall be assessed,
30 collected and paid as if it were a deficiency.

31 H. If the amount, whether determined by the department or the
32 taxpayer, required to be withheld by the employer pursuant to title 43,
33 chapter 4 is not paid to the department on or before the date prescribed for
34 its remittance, the department may add a penalty of twenty-five percent of
35 the amount required to be withheld and paid, unless it is shown that the
36 failure is due to reasonable cause and not due to wilful neglect.

37 I. A person who, with or without intent to evade any requirement of
38 this article or any lawful administrative rule of the department of revenue
39 under this article, fails to file a return or to supply information required
40 under this article or who, with or without such intent, makes, prepares,
41 renders, signs or verifies a false or fraudulent return or statement or
42 supplies false or fraudulent information shall pay a penalty of not more than
43 one thousand dollars. This penalty shall be recovered by the department of
44 law in the name of this state by an action in any court of competent
45 jurisdiction.

1 J. If the taxpayer files what purports to be a return of any tax
2 administered pursuant to this article but that is frivolous or that is made
3 with the intent to delay or impede the administration of the tax laws, that
4 person shall pay a penalty of five hundred dollars.

5 K. If any person who is required to file or provide an information
6 return under this title or title 43 or who is required to file or provide a
7 return or report under chapter 3 of this title fails to file the return or
8 report at the prescribed time or in the manner required, or files a return or
9 report that fails to show the information required, that person shall pay a
10 penalty of one hundred dollars for each month or fraction of a month during
11 which the failure continues unless it is shown that the failure is due to
12 reasonable cause and not due to wilful neglect. The total penalties for each
13 return or report under this subsection shall not exceed five hundred dollars.

14 L. If it appears to the superior court that proceedings before it have
15 been instituted or maintained by a taxpayer primarily for delay or that the
16 taxpayer's position is frivolous or groundless, the court may award damages
17 in an amount not to exceed one thousand dollars to this state. Damages so
18 awarded shall be collected as a part of the tax.

19 M. A person who is required under section 43-413 to furnish a
20 statement to an employee and who wilfully furnishes a false or fraudulent
21 statement, or who wilfully fails to furnish a statement required by section
22 43-413, is for each such failure subject to a penalty of fifty dollars.

23 N. A person who is required to collect or truthfully account for and
24 pay a tax administered pursuant to this article, including any luxury
25 privilege tax, and who wilfully fails to collect the tax or truthfully
26 account for and pay the tax, or wilfully attempts in any manner to evade or
27 defeat the tax or its payment, is, in addition to other penalties provided by
28 law, liable for a penalty equal to the total amount of the tax evaded, not
29 collected or not accounted for and paid. Except as provided in subsections
30 U, V and W of this section, no other penalty under this section relating to
31 failure to pay tax may be imposed for any offense to which this subsection
32 applies.

33 O. For reporting periods beginning from and after February 28, 2011,
34 if a taxpayer who is required under section 42-1129 to make payment by
35 electronic funds transfer fails to do so, that taxpayer shall pay a penalty
36 of five percent of the amount of the payment not made by electronic funds
37 transfer unless it is shown that the failure is due to reasonable cause and
38 not due to wilful neglect. For the reporting periods beginning on July 1,
39 2015, the penalty in this subsection applies to any taxpayer who is required
40 under section 42-3053 to make payment by electronic funds transfer and fails
41 to do so unless it is shown that the failure is due to reasonable cause and
42 not due to wilful neglect.

1 P. Unless due to reasonable cause and not to wilful neglect:

2 1. A person who fails to provide that person's taxpayer identification
3 number in any return, statement or other document as required by section
4 42-1105, subsection A shall pay a penalty of five dollars for each such
5 failure.

6 2. A person, when filing any return, statement or other document for
7 compensation on behalf of a taxpayer, who fails to include that person's own
8 taxpayer identification number and the taxpayer's identification number shall
9 pay a penalty of fifty dollars for each such failure.

10 3. A person, when filing any return, statement or other document
11 without compensation on behalf of a taxpayer, who fails to include that
12 person's own taxpayer identification number and the taxpayer's identification
13 number is not subject to a penalty.

14 No other penalty under this section may be imposed if the only violation is
15 failure to provide taxpayer identification numbers.

16 Q. If a taxpayer fails to pay the full amount of estimated tax
17 required by title 43, chapter 5, article 6, a penalty is assessed equal to
18 the amount of interest that would otherwise accrue under section 42-1123 on
19 the amount not paid for the period of nonpayment, not exceeding ten percent
20 of the amount not paid. The penalty prescribed by this subsection is in lieu
21 of any other penalty otherwise prescribed by this section and in lieu of
22 interest prescribed by section 42-1123.

23 R. Beginning January 1, 2015, if a taxpayer continues in business
24 without timely renewing a municipal privilege tax license as prescribed in
25 section 42-5005, subsection D, a civil penalty of up to twenty-five dollars
26 shall be added to the renewal fee for each jurisdiction.

27 S. The department of law, with the consent of the department of
28 revenue, may compromise any penalty for which it may bring an action under
29 this section.

30 T. Penalties shall not be assessed under subsection D of this section
31 on additional amounts of tax paid by a taxpayer at the time the taxpayer
32 voluntarily files an amended return. This subsection does not apply if:

33 1. The taxpayer is under audit by the department.

34 2. The amended return was filed on demand or request by the
35 department.

36 ~~3. The total additional tax paid and due for the tax period represents~~
37 ~~a substantial understatement of tax liability. For the purposes of this~~
38 ~~paragraph, there is a substantial understatement of tax for any tax period if~~
39 ~~the amount of the understatement for the tax period exceeds the greater of~~
40 ~~ten percent of the actual tax liability for the tax period or two thousand~~
41 ~~dollars.~~

42 U. In addition to other penalties provided by law, a person who
43 knowingly and intentionally does not comply with any requirement under
44 chapter 3 of this title relating to cigarettes shall pay a penalty of one
45 thousand dollars. A person who knowingly and intentionally does not pay any
46 luxury tax that relates to cigarettes imposed by chapter 3 of this title

1 shall pay a penalty that is equal to ten percent of the amount of the unpaid
2 tax.

3 V. A manufacturer, ~~OR~~ OR importer or A distributor, as defined in
4 section 42-3001, who knowingly and intentionally sells or possesses
5 cigarettes with false manufacturing labels or cigarettes with counterfeit tax
6 stamps, or who obtains cigarettes through the use of a counterfeit license,
7 shall pay the following penalties:

8 1. For a first violation involving two thousand or more cigarettes,
9 one thousand dollars.

10 2. For a subsequent violation involving two thousand or more
11 cigarettes, five thousand dollars.

12 W. The civil penalties in this section are in addition to any civil
13 penalty under chapter 3, article 10, 11 or 12 of this title.

14 X. For the purposes of this section, and only as applied to the taxes
15 imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3
16 of this title, "reasonable cause" means a reasonable basis for the taxpayer
17 to believe that the tax did not apply to the business activity or the
18 storage, use or consumption of the taxpayer's tangible personal property in
19 this state.

20 Sec. 2. Heading change

21 The article heading of title 42, chapter 2, article 5, Arizona Revised
22 Statutes, is changed from "INNOCENT SPOUSES" to "INNOCENT AND INJURED
23 SPOUSES".

24 Sec. 3. Title 42, chapter 2, article 5, Arizona Revised Statutes, is
25 amended by adding section 42-2203, to read:

26 42-2203. Protection from application of joint overpayment
27 against spouse's delinquencies or debts; recovery of
28 protected monies; appeal

29 A. NOTWITHSTANDING SECTION 42-1122, AT THE TIME OF FILING A JOINT
30 INCOME TAX RETURN PURSUANT TO SECTION 43-309, A TAXPAYER MAY APPLY TO THE
31 DEPARTMENT FOR PROTECTION OF THE TAXPAYER'S SHARE OF ANY OVERPAYMENT OR
32 REFUND FROM SETOFF FOR THE PAST DUE STATE TAXES, CHILD SUPPORT, SPOUSAL
33 MAINTENANCE OR OTHER OBLIGATIONS OF THE TAXPAYER'S SPOUSE THAT ARE ORDERED BY
34 A COURT OR OWED TO AN AGENCY OF THIS STATE.

35 B. THE DEPARTMENT SHALL RECEIVE APPLICATIONS FOR PROTECTION UNDER THIS
36 SECTION IN A FORM AND MANNER PRESCRIBED BY THE DEPARTMENT.

37 C. IF THE DEPARTMENT GRANTS RELIEF UNDER THIS SECTION, THE AMOUNT OF
38 THE CLAIMANT'S PROTECTED SHARE:

39 1. IS DETERMINED BY A PRORATION BASED ON EACH SPOUSE'S ESTIMATED TAX
40 PAYMENTS OR TAXES WITHHELD FROM WAGES. FOR PURPOSES OF THIS PRORATION,
41 ESTIMATED PAYMENTS WILL BE DIVIDED EVENLY BETWEEN SPOUSES UNLESS IT IS
42 CLEARLY DEMONSTRATED BY THE TAXPAYERS THAT A PORTION OF THE ESTIMATED
43 PAYMENTS WERE FOR INCOME THAT IS NOT COMMUNITY PROPERTY.

44 2. MAY NOT EXCEED THE PORTION OF THE ENTIRE REFUND OR OVERPAYMENT WITH
45 RESPECT TO THE JOINT RETURN PROPERLY ALLOCABLE TO THE CLAIMANT. THE CLAIMANT
46 HAS THE BURDEN OF PROVING THE PORTION PROPERLY ALLOCABLE TO THE CLAIMANT.

1 D. IF MONIES PROTECTED UNDER SUBSECTION A OF THIS SECTION HAVE ALREADY
2 BEEN DISTRIBUTED TO AN AGENCY OR POLITICAL SUBDIVISION, THE CLAIMANT SHALL
3 FILE WITH THE APPROPRIATE AGENCY OR POLITICAL SUBDIVISION A REQUEST FOR
4 RECOVERY OF THE PROTECTED AMOUNT PURSUANT TO SECTION 42-1122.

5 E. A TAXPAYER MAY APPEAL A DETERMINATION UNDER THIS SECTION PURSUANT
6 TO SECTION 42-1251 OR 42-1253.

7 Sec. 4. Effective date

8 This act is effective and applies to taxable years beginning from and
9 after December 31, 2016.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.