

REFERENCE TITLE: tax adjudications; attorney fees

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2131

Introduced by
Representative Mitchell

AN ACT

AMENDING SECTIONS 12-348, 41-1007 AND 42-2064, ARIZONA REVISED STATUTES;
RELATING TO TAX ADJUDICATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-348, Arizona Revised Statutes, is amended to
3 read:
4 12-348. Award of fees and other expenses against the state or a
5 city, town or county; reduction or denial of award;
6 application; basis for amount of award; source of
7 award; definitions
8 A. In addition to any costs that are awarded as prescribed by statute,
9 a court shall award fees and other expenses to any party other than this
10 state or a city, town or county that prevails by an adjudication on the
11 merits in any of the following:
12 1. A civil action brought by ~~the~~ THIS state or a city, town or county
13 against the party.
14 2. A court proceeding to review a state agency decision pursuant to
15 chapter 7, article 6 of this title or any other statute authorizing judicial
16 review of agency, city, town or county decisions.
17 3. A proceeding pursuant to section 41-1034.
18 4. A special action proceeding brought by the party to challenge an
19 action by this state or a city, town or county against the party.
20 5. An appeal by this state to a court of law from a decision of the
21 personnel board under title 41, chapter 4, article 6.
22 6. A civil action brought by the party to challenge the seizure and
23 sale of personal property by this state or a city, town or county.
24 B. In addition to any costs that are awarded as prescribed by statute,
25 a court ~~may~~ SHALL award fees and other expenses to any party, other than this
26 state or a city, town or county, that prevails by an adjudication on the
27 merits in an action brought by the party against this state or a city, town
28 or county challenging:
29 1. The assessment, ~~or~~ collection OR REFUND of taxes or in an action
30 brought by this state or a city, town or county against the party to enforce
31 the assessment or collection of taxes OR THE DENIAL OF A REFUND.
32 2. The adequacy or regularity of notice of delinquent taxes.
33 3. The regularity of sales of property for delinquent taxes.
34 C. The court in its discretion may deny the award provided for in this
35 section or may reduce the award if it finds that any of the following
36 applies:
37 1. During the course of the proceeding the prevailing party unduly and
38 unreasonably protracted the final resolution of the matter.
39 2. The reason that the party other than this state or a city, town or
40 county has prevailed is an intervening change in the applicable law.
41 3. The prevailing party refused an offer of civil settlement that was
42 at least as favorable to the party as the relief ultimately granted.
43 D. A party may apply pursuant to the applicable procedural rules for
44 an award of attorney fees and other expenses authorized under this section
45 and shall include as part of the application evidence of the party's

1 eligibility for the award and the amount sought, including an itemized
2 statement from the attorneys and experts stating the actual time expended in
3 representing the party and the rate at which the fees were computed.

4 E. The court shall base any award of fees as provided in this section
5 on prevailing market rates for the kind and quality of the services
6 furnished, except that:

7 1. An expert is not eligible for compensation at a rate in excess of
8 the highest rate of compensation for experts paid by this state or a city,
9 town or county ~~EXCEPT FOR AWARDS MADE PURSUANT TO SUBSECTION B OF THIS~~
10 ~~SECTION.~~

11 2. Except for awards made pursuant to subsection B of this section,
12 the award of attorney fees may not exceed the amount that the prevailing
13 party has paid or has agreed to pay the attorney or a maximum amount of
14 seventy-five dollars per hour unless the court determines that an increase in
15 the cost of living or a special factor, such as the limited availability of
16 qualified attorneys for the proceeding involved, justifies a higher fee.

17 ~~3. For awards made pursuant to subsection B of this section, the award~~
18 ~~of attorney fees may not exceed the amount that the prevailing party has paid~~
19 ~~or agreed to pay the attorney or a maximum amount of one hundred seventy-five~~
20 ~~dollars per hour.~~

21 ~~4.~~ 3. Except for awards made pursuant to subsection B of this
22 section, an award of fees against a city, town or county as provided in this
23 section shall not exceed ten thousand dollars.

24 ~~5.~~ 4. For awards made pursuant to subsection B of this section, an
25 award of fees against this state or a city, town or county shall not exceed
26 ~~thirty thousand dollars for fees~~ THE AMOUNT THE PREVAILING PARTY HAS PAID OR
27 AGREED TO PAY THE ATTORNEY, incurred at each level of judicial appeal.

28 F. The particular state agency over which a party prevails shall pay
29 the fees and expenses awarded as provided in this section from any monies
30 appropriated to the agency for that purpose. If no agency is involved or if
31 an agency fails or refuses to pay fees and other expenses within thirty days
32 after demand by a person who has received an award pursuant to this section,
33 and if no further review or appeals of the award are pending, the person may
34 file a claim for the fees and other expenses with the department of
35 administration, which shall pay the claim within thirty days, in the same
36 manner as an uninsured property loss under title 41, chapter 3.1, article 1.
37 If, at the time the agency failed or refused to pay the award, it had
38 appropriated monies either designated or assignable for the purpose of paying
39 awards, the legislature shall reduce the agency's operating appropriation for
40 the following year by the amount of the award and shall appropriate the
41 amount of the reduction to the department of administration as reimbursement
42 for the loss.

1 G. **THIS STATE OR** a city, town or county shall pay fees and expenses
2 awarded as provided in this section within thirty days after demand by a
3 party who has received an award if no further review or appeal of the award
4 is pending.

5 H. This section does not:

6 1. Apply to an action arising from a proceeding before this state or a
7 city, town or county in which the role of this state or a city, town or
8 county was to determine the eligibility or entitlement of an individual to a
9 monetary benefit or its equivalent, to adjudicate a dispute or issue between
10 private parties or to establish or fix a rate.

11 2. Apply to proceedings brought by this state pursuant to title 13
12 or 28.

13 3. Entitle a party to obtain fees and other expenses incurred in
14 making an application for an award pursuant to this section for fees and
15 other expenses.

16 4. Apply to proceedings involving eminent domain, foreclosure,
17 collection of judgment debts or proceedings in which ~~the~~ **THIS** state or a
18 city, town or county is a nominal party.

19 5. Personally obligate any officer or employee of this state or a
20 city, town or county for the payment of an award entered under this section.

21 6. Apply, except as provided in subsection A, paragraph 5 of this
22 section, to proceedings involving the personnel board under title 41, chapter
23 4, article 6.

24 7. Apply to proceedings brought by a city, town or county pursuant to
25 title 13 or 28.

26 8. Apply to proceedings brought by a city, town or county on
27 collection of taxes or pursuant to traffic ordinances or to criminal
28 proceedings brought by a city, town or county on ordinances which contain a
29 criminal penalty or fine for violations of those ordinances.

30 I. For the purposes of this section:

31 1. "Fees and other expenses" means the reasonable expenses of expert
32 witnesses, the reasonable cost of any study, analysis, engineering report,
33 test or project which the court finds to be directly related to and necessary
34 for the presentation of the party's case and reasonable and necessary
35 attorney fees, **INCLUDING CONTINGENT FEES**, and in the case of an action to
36 review an agency decision pursuant to subsection A, paragraph 2 of this
37 section, all fees and other expenses that are incurred in the contested case
38 proceedings in which the decision was rendered.

39 2. "Party" means an individual, partnership, corporation, **LIMITED**
40 **LIABILITY COMPANY**, association or public or private organization.

41 3. "State" means this state and any agency, officer, department, board
42 or commission of this state.

43 4. **"TAXES" INCLUDES ALL TAXES AND RELATED LEVIES AND ASSESSMENTS**
44 **ADDRESSED IN SECTION 12-163.**

1 pay, the legislature shall reduce the department's operating appropriation
2 for the following fiscal year by the amount of the award and appropriate that
3 amount to the department of administration as reimbursement for the loss.

4 G. This section does not apply to:

5 1. Any grievance and appeal procedure pursuant to title 36,
6 chapter 29.

7 2. Any appeal procedure pursuant to chapter 4, article 6 of this
8 title.

9 3. Any administrative appeal filed by an inmate in an Arizona state
10 prison.

11 H. For the purposes of this section:

12 1. "Department" includes a state agency, department, board or
13 commission, and the universities.

14 2. "Party" includes an individual, partnership, corporation,
15 association and public or private organization.

16 Sec. 3. Section 42-2064, Arizona Revised Statutes, is amended to read:
17 42-2064. Reimbursement of fees and other costs; definitions

18 A. A taxpayer who is a prevailing party may be reimbursed for
19 reasonable fees and other costs related to an administrative proceeding that
20 is brought by or against the department in connection with an assessment,
21 determination, collection or refund of any tax listed in section 42-1101.
22 For THE purposes of this subsection, a taxpayer is considered to be a
23 prevailing party only if both of the following are true:

24 1. The department's position was not substantially justified.

25 2. The taxpayer prevails as to the most significant issue or set of
26 issues.

27 B. Reimbursement under this section may be denied if any of the
28 following circumstances apply:

29 1. During the course of the proceeding the taxpayer unduly and
30 unreasonably protracted the final resolution of the matter.

31 2. The reason that the taxpayer prevailed is due to an intervening
32 change in the applicable law.

33 C. The taxpayer shall present an itemization of the reasonable fees
34 and other costs to the taxpayer problem resolution officer within thirty days
35 after the conclusion of the administrative proceedings. The taxpayer problem
36 resolution officer shall determine the validity of the fees and other costs
37 within thirty days after receiving the itemization. The taxpayer problem
38 resolution officer's decision is considered the department's final decision
39 or order and is subject to appeal to the state board under section 42-1253.

40 D. The department of revenue shall pay the fees and other costs
41 awarded as provided in this section from any monies appropriated for such
42 purpose. If the department of revenue does not pay the fees and other costs
43 within thirty days after demand by a person who has received an award
44 pursuant to this section, and if no further review or appeals of the award
45 are pending, the person may file a claim for the fees and other costs with

1 the department of administration, which shall pay the claim within thirty
2 days, in the same manner as an uninsured property loss under title 41,
3 chapter 3.1, article 1. If, at the time the department of revenue failed to
4 pay the award, it had appropriated monies either designated or assignable for
5 the purpose of paying such awards, the legislature shall reduce the
6 department of revenue's operating appropriation for the following year by the
7 amount of the award and appropriate the amount of the reduction to the
8 department of administration, risk management division, as reimbursement for
9 the loss.

10 ~~E. Reimbursement to a taxpayer under this section shall not exceed~~
11 ~~twenty thousand dollars or actual monies spent, whichever is less. The~~
12 ~~reimbursable attorney or other representative fees shall not exceed one~~
13 ~~hundred dollars per hour or actual monies spent, whichever is less, unless~~
14 ~~the state board of tax appeals determines that an increase in the cost of~~
15 ~~living or a special factor such as the limited availability of qualified~~
16 ~~attorneys for the proceeding involved justifies a higher fee.~~

17 ~~F.~~ E. The department shall adopt administrative rules to implement
18 this section.

19 ~~G.~~ F. Notwithstanding any provision of title 12, chapter 3, article
20 5, a taxpayer who is a prevailing party may only be reimbursed pursuant to
21 this section.

22 ~~H.~~ G. For THE purposes of this section:

23 1. "Administrative proceeding" means any review proceeding or appeal
24 pursuant to section 42-1251 that is conducted under the authority of section
25 42-1003 and an appeal to the state board of tax appeals pursuant to section
26 42-1253.

27 2. "Reasonable fees and other costs" means fees and other costs that
28 are based on prevailing market rates for the kind and quality of the
29 furnished services, INCLUDING CONTINGENT FEES, but not exceeding the amounts
30 actually spent for expert witnesses, the cost of any study, analysis, report,
31 test or project that is found to be necessary to prepare the party's case and
32 necessary fees for attorneys or other representatives.