

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

HOUSE BILL 2131

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 **EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION**, a court may award fees
26 and other expenses to any party, other than this state or a city, town or
27 county, that prevails by an adjudication on the merits in an action brought
28 by the party against this state or a city, town 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.

1 D. A party may apply pursuant to the applicable procedural rules for
2 an award of attorney fees and other expenses authorized under this section
3 and shall include as part of the application evidence of the party's
4 eligibility for the award and the amount sought, including an itemized
5 statement from the attorneys and experts stating the actual time expended in
6 representing the party and the rate at which the fees were computed.

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

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

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

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

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

27 5. For awards made pursuant to subsection B of this section, an award
28 of fees against this state or a city, town or county shall not exceed ~~thirty~~
29 SEVENTY-FIVE thousand dollars for fees incurred at each level of judicial
30 appeal.

31 6. FOR EACH CALENDAR YEAR BEGINNING FROM AND AFTER DECEMBER 31, 2015,
32 THE INCOME DOLLAR AMOUNTS FOR MAXIMUM AWARDS MADE PURSUANT TO SUBSECTIONS B
33 AND E OF THIS SECTION SHALL BE ADJUSTED BY THE ATTORNEY GENERAL ACCORDING TO
34 THE AVERAGE ANNUAL CHANGE IN THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX
35 PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS. THE REVISED
36 DOLLAR AMOUNTS SHALL BE RAISED TO THE NEAREST WHOLE DOLLAR. THE INCOME
37 DOLLAR AMOUNTS MAY NOT BE REVISED BELOW THE AMOUNTS PRESCRIBED IN THE PRIOR
38 CALENDAR YEAR.

39 F. The particular state agency over which a party prevails shall pay
40 the fees and expenses awarded as provided in this section from any monies
41 appropriated to the agency for that purpose. If no agency is involved or if
42 an agency fails or refuses to pay fees and other expenses within thirty days
43 after demand by a person who has received an award pursuant to this section,
44 and if no further review or appeals of the award are pending, the person may
45 file a claim for the fees and other expenses with the department of

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

9 G. A city, town or county shall pay fees and expenses awarded as
10 provided in this section within thirty days after demand by a party who has
11 received an award if no further review or appeal of the award is pending.

12 H. This section does not:

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

18 2. Apply to proceedings brought by this state pursuant to title 13
19 or 28.

20 3. Entitle a party to obtain fees and other expenses incurred in
21 making an application for an award pursuant to this section for fees and
22 other expenses.

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

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

28 6. Apply, except as provided in subsection A, paragraph 5 of this
29 section, to proceedings involving the personnel board under title 41, chapter
30 4, article 6.

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

33 8. Apply to proceedings brought by a city, town or county on
34 collection of taxes or pursuant to traffic ordinances or to criminal
35 proceedings brought by a city, town or county on ordinances which contain a
36 criminal penalty or fine for violations of those ordinances.

37 I. For the purposes of this section:

38 1. "Fees and other expenses" means the reasonable expenses of expert
39 witnesses, the reasonable cost of any study, analysis, engineering report,
40 test or project which the court finds to be directly related to and necessary
41 for the presentation of the party's case and reasonable and necessary
42 attorney fees, and in the case of an action to review an agency decision
43 pursuant to subsection A, paragraph 2 of this section, all fees and other
44 expenses that are incurred in the contested case proceedings in which the
45 decision was rendered.

1 2. "Party" means an individual, partnership, corporation, LIMITED
2 LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, association or public or
3 private organization.

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

6 4. "TAXES" INCLUDES ALL TAXES AND RELATED LEVIES AND ASSESSMENTS
7 ADDRESSED IN SECTION 12-163.

8 Sec. 2. Section 41-1007, Arizona Revised Statutes, is amended to read:
9 41-1007. Award of costs and fees against a department in
10 administrative hearings; exceptions; definitions

11 A. Except as provided in section 32-3632 and section 42-2064,
12 subsection ~~G~~ F, a hearing officer or administrative law judge shall award
13 fees and other costs to any prevailing party in a contested case or an
14 appealable agency action brought pursuant to any state administrative hearing
15 authority. For purposes of this subsection, a person is considered to be a
16 prevailing party only if both:

17 1. The agency's position was not substantially justified.

18 2. The person prevails as to the most significant issue or set of
19 issues unless the reason that the person prevailed is due to an intervening
20 change in the law.

21 B. Reimbursement under this section may be denied if during the course
22 of the proceeding the party unduly and unreasonably protracted the final
23 resolution of the matter.

24 C. A party that seeks an award of fees or other costs shall apply to
25 the hearing officer or administrative law judge, within thirty days after the
26 final decision or order, providing:

27 1. Evidence of the party's eligibility for the award.

28 2. The amount sought.

29 3. An itemized statement from the attorneys and experts stating:

30 (a) The actual time spent representing the party.

31 (b) The rate at which the fees were computed.

32 D. The award of reasonable attorney fees pursuant to subsection A of
33 this section need not equal or relate to the attorney fees actually paid or
34 contracted, but an award may not exceed the amount paid or agreed to be paid.

35 E. A decision of a hearing officer or administrative law judge under
36 this section is subject to judicial review. If fees and other costs were
37 denied by the hearing officer or administrative law judge because the party
38 was not the prevailing party but the party prevails on appeal, the court may
39 award fees and other costs for the proceedings before the hearing officer or
40 administrative law judge if the court finds that fees and other costs should
41 have been awarded under subsection A of this section.

42 F. The department shall pay the fees and costs awarded pursuant to
43 this section from any monies appropriated to the department and available for
44 that purpose, or from other operating costs of the department. If the
45 department fails or refuses to pay the award within thirty days after the

1 demand, and if no further review or appeals of the award are pending, the
2 person may file a claim for the award with the department of administration
3 which shall pay the claim within thirty days in the same manner as an
4 uninsured property loss under chapter 3.1, article 1 of this title, except
5 that the department shall be responsible for the total amount awarded and
6 shall pay it from operating monies. If the department had appropriated
7 monies available for paying the award at the time it failed or refused to
8 pay, the legislature shall reduce the department's operating appropriation
9 for the following fiscal year by the amount of the award and appropriate that
10 amount to the department of administration as reimbursement for the loss.

11 G. This section does not apply to:

12 1. Any grievance and appeal procedure pursuant to title 36,
13 chapter 29.

14 2. Any appeal procedure pursuant to chapter 4, article 6 of this
15 title.

16 3. Any administrative appeal filed by an inmate in an Arizona state
17 prison.

18 H. For the purposes of this section:

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

21 2. "Party" includes an individual, partnership, corporation, **LIMITED**
22 **LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP**, association and public or
23 private organization.

24 Sec. 3. Section 42-2064, Arizona Revised Statutes, is amended to read:
25 **42-2064. Reimbursement of fees and other costs; definitions**

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

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

33 2. The taxpayer prevails as to the most significant issue or set of
34 issues.

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

37 1. During the course of the proceeding the taxpayer unduly and
38 unreasonably protracted the final resolution of the matter.

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

41 C. The taxpayer shall present an itemization of the reasonable fees
42 and other costs to the taxpayer problem resolution officer within thirty days
43 after the conclusion of the administrative proceedings. The taxpayer problem
44 resolution officer shall determine the validity of the fees and other costs
45 within thirty days after receiving the itemization. The taxpayer problem

1 resolution officer's decision is considered the department's final decision
2 or order and is subject to appeal to the state board under section 42-1253.

3 D. The department of revenue shall pay the fees and other costs
4 awarded as provided in this section from any monies appropriated for such
5 purpose. If the department of revenue does not pay the fees and other costs
6 within thirty days after demand by a person who has received an award
7 pursuant to this section, and if no further review or appeals of the award
8 are pending, the person may file a claim for the fees and other costs with
9 the department of administration, which shall pay the claim within thirty
10 days, in the same manner as an uninsured property loss under title 41,
11 chapter 3.1, article 1. If, at the time the department of revenue failed to
12 pay the award, it had appropriated monies either designated or assignable for
13 the purpose of paying such awards, the legislature shall reduce the
14 department of revenue's operating appropriation for the following year by the
15 amount of the award and appropriate the amount of the reduction to the
16 department of administration, risk management division, as reimbursement for
17 the loss.

18 E. Reimbursement to a taxpayer under this section shall not exceed
19 ~~twenty~~ SEVENTY-FIVE thousand dollars or actual monies spent, whichever is
20 less. The reimbursable attorney or other representative fees shall not
21 exceed ~~one~~ THREE hundred FIFTY dollars per hour or actual monies spent,
22 whichever is less, unless the state board of tax appeals determines that an
23 increase in the cost of living or a special factor such as the limited
24 availability of qualified attorneys for the proceeding involved justifies a
25 higher fee.

26 F. FOR EACH CALENDAR YEAR BEGINNING FROM AND AFTER DECEMBER 31, 2015,
27 THE INCOME DOLLAR AMOUNTS FOR MAXIMUM AWARDS MADE PURSUANT TO SUBSECTION E OF
28 THIS SECTION SHALL BE ADJUSTED BY THE ATTORNEY GENERAL ACCORDING TO THE
29 AVERAGE ANNUAL CHANGE IN THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX
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32 DOLLAR AMOUNTS MAY NOT BE REVISED BELOW THE AMOUNTS PRESCRIBED IN THE PRIOR
33 CALENDAR YEAR.

34 ~~F.~~ G. The department shall adopt administrative rules to implement
35 this section.

36 ~~G.~~ H. Notwithstanding any provision of title 12, chapter 3, article
37 5, a taxpayer who is a prevailing party may only be reimbursed pursuant to
38 this section.

39 ~~H.~~ I. For THE purposes of this section:

40 1. "Administrative proceeding" means any review proceeding or appeal
41 pursuant to section 42-1251 that is conducted under the authority of section
42 42-1003 and an appeal to the state board of tax appeals pursuant to section
43 42-1253.

1 2. "Reasonable fees and other costs" means fees and other costs that
2 are based on prevailing market rates for the kind and quality of the
3 furnished services, but not exceeding the amounts actually spent for expert
4 witnesses, the cost of any study, analysis, report, test or project that is
5 found to be necessary to prepare the party's case and necessary fees for
6 attorneys or other representatives.