

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SENATE BILL 1319

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 ~~per-cent~~ PERCENT of the tax required to be shown on such return
10 shall be added to the tax for each month or fraction of a month elapsing
11 between the due date of the return and the date on which it is filed. The
12 total penalty shall not exceed twenty-five ~~per-cent~~ PERCENT of the tax found
13 to be remaining due. The penalty so added to the tax is due and payable on
14 notice and demand from the department. For the purpose of computing the
15 penalty imposed under this subsection, the amount required to be shown as tax
16 on a return shall be reduced by the amount of any part of the tax ~~which~~ THAT
17 is paid on or before the beginning of such month and by the amount of any
18 credit against the tax ~~which~~ THAT may be claimed on the return. If the
19 amount required to be shown as tax on a return is less than the amount shown
20 as tax on such return, the penalty described in this subsection shall be
21 applied by substituting such 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 ~~per~~
24 ~~cent~~ 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 ~~per-cent~~ PERCENT of the amount of any deficiency tax assessed by the
32 department concerning the assessment of which the information was required,
33 unless it is shown that the failure is due to reasonable cause and not due to
34 wilful 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 ~~per-cent~~ PERCENT,
37 not to exceed a total of ten ~~per-cent~~ PERCENT, shall be added to the amount
38 shown as tax for each month or fraction of a month during which the failure
39 continues, unless it is shown that the failure is due to reasonable cause and
40 not due to wilful neglect. If the department determines that the person's
41 failure to pay was due to reasonable cause and not due to wilful neglect and
42 that a payment agreement pursuant to section 42-2057 is appropriate, the
43 department shall not impose the penalty unless the taxpayer fails to comply
44 with the payment agreement. If the taxpayer is also subject to a penalty
45 under subsection A of this section for the same tax period, the total

1 penalties under subsection A of this section and this subsection shall not
2 exceed twenty-five ~~per cent~~ PERCENT. For the purpose of computing the penalty
3 imposed under this subsection:

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

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

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

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

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

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

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

1 law in the name of this state by an action in any court of competent
2 jurisdiction.

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

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

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

21 M. A person who is required under section 43-413 to furnish a
22 statement to an employee and who wilfully furnishes a false or fraudulent
23 statement, or who wilfully fails to furnish a statement required by section
24 43-413, is for each such failure subject to a penalty of fifty dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 U. A PENALTY MAY NOT BE ASSESSED UNDER SUBSECTION D OF THIS SECTION ON
42 ADDITIONAL AMOUNTS OF TAX PAID IF THE TAXPAYER VOLUNTARILY IDENTIFIES ERRORS
43 CONTAINED IN THE ORIGINAL RETURN AND FILES AN AMENDED RETURN.

44 ~~U.~~ V. In addition to other penalties provided by law, a person who
45 knowingly and intentionally does not comply with any requirement under

1 chapter 3, article 5 of this title relating to cigarettes shall pay a penalty
2 of one thousand dollars. A person who knowingly and intentionally does not
3 pay any luxury tax that relates to cigarettes imposed by chapter 3 of this
4 title shall pay a penalty that is equal to ten ~~per-cent~~ PERCENT of the amount
5 of the unpaid tax.

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

11 1. For a first violation involving two thousand or more cigarettes,
12 one thousand dollars.

13 2. For a subsequent violation involving two thousand or more
14 cigarettes, five thousand dollars.

15 ~~W.~~ X. The civil penalties in this section are in addition to any
16 civil penalty under chapter 3, article 5 of this title.

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

23 Sec. 2. Heading change

24 The article heading of title 42, chapter 2, article 5, Arizona Revised
25 Statutes, is changed from "INNOCENT SPOUSES" to "INNOCENT AND INJURED
26 SPOUSES".

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

29 42-2203. Protection from application of joint overpayment
30 against spouse's delinquencies or debts

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

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

38 C. IF THE DEPARTMENT GRANTS RELIEF UNDER THIS SECTION, THE TAXPAYER'S
39 CLAIM FOR PROTECTION MAY NOT EXCEED THE PORTION OF THE ENTIRE REFUND OR
40 OVERPAYMENT WITH RESPECT TO THE JOINT RETURN PROPERLY ALLOCABLE TO THE
41 TAXPAYER. THE CLAIMANT HAS THE BURDEN OF PROVING THE PORTION PROPERLY
42 ALLOCABLE TO THE CLAIMANT.