ARIZONA STATE SENATE

Fifty-Second Legislature, First Regular Session

FACT SHEET FOR S.B. 1319

taxation; self-reported errors; injured spouses

Purpose

Eliminates tax penalties for taxpayers who voluntarily identify errors in their returns and specifies the process by which a joint-filing spouse can apply for protection of their share of any refunds from being seized for the payment of the other spouse's debts.

Background

Current statute prescribes the penalties due for a taxpayer who fails to make and file a tax return before the due date, fails to pay the complete amount due on the return or who otherwise resists or evades tax responsibilities (A.R.S § 42-1125).

A monthly penalty is assessed of 0.5 percent to the taxes of a person who fails to pay the amount shown as tax on the return within the time prescribed. Statute further states that the penalty is prohibited from being imposed if the Department of Revenue (DOR) determines that a person's failure to pay taxes was due to reasonable cause and not wilful neglect, and that the person is willing to enter into a payment agreement.

In Arizona, taxpayers that file a joint return are jointly and individually responsible for the tax and any interest or penalty due on their return. According to DOR, a spouse can qualify for relief from joint and several liability under "innocent spouse relief" if the following conditions are met: a) the "innocent" spouse has filed a joint return in which there has been an understatement of tax; b) the understatement of tax must be due to erroneous items of the other spouse; c) the "innocent" spouse must establish lack of knowledge of the tax understatement; and d) DOR, taking into account all facts and circumstances, finds it would be unfair to hold the "innocent" spouse liable for the tax understatement. An understatement of tax is the difference between taxes owed and taxes actually paid. Erroneous items refer to incorrectly stated deductions or credits or any income that is not reported on the tax return.

According to the U.S. Internal Revenue Service (IRS), an individual may be considered for "injured spouse relief" when the individual has filed a joint return and all or part of the individual's refund is applied towards their spouse's past-due taxes, spousal supports, loans or other debts. In such a case, the "injured" spouse may be entitled to a portion of the tax refund without this amount being seized to cover the other spouse's debts. No "injured spouse" statute currently exists in the A.R.S.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Prohibits DOR from assessing a penalty on taxpayers that have failed to pay additional amounts of tax in the allotted period of time if the taxpayer has voluntarily identified errors in the return and files an amended return.

2. Permits a joint-filing taxpayer to apply for protection of the taxpayer's share of a refund from setoff for past due taxes or other obligations of the taxpayer's spouse.

3. Instructs DOR to prescribe the form and manner of applying for "injured spouse" protection.

4. Prohibits any relief granted to a taxpayer from exceeding the amount of the taxpayer's properly allocated amount of the refund or overpayment, as proven by the taxpayer.

5. Makes technical and conforming changes.

6. Becomes effective on the general effective date.

Prepared by Senate Research
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