House Engrossed

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

HOUSE BILL 2492

AN ACT

AMENDING SECTIONS 42-1251, 42-2059 AND 42-2064, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF REVENUE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-1251, Arizona Revised Statutes, is amended to read:

42-1251. Appeal to the department; hearing

A. Except in the case of individual income taxes, a person from whom an amount is determined to be due under article 3 of this chapter may apply to the department by a petition in writing within forty-five days after the notice of a proposed assessment made pursuant to section 42-1109, subsection B or the notice required by section 42-1108, subsection B is received, or within such additional time as the department may allow, for a hearing, correction or redetermination of the action taken by the department. In the case of individual income taxes the period is ninety days from the date the notice is mailed. The petition shall set forth the reasons why the hearing, correction or redetermination should be granted and the amount in which any tax, interest and penalties should be reduced. If only a portion of the deficiency assessment is protested, all unprotested amounts of tax, interest and penalties must be paid at the time the protest is filed. The department shall consider the petition and grant a hearing, if requested. To represent the taxpayer at the hearing or to appear on the taxpayer's behalf is deemed not to be the practice of law.

B. NOTWITHSTANDING THE DEADLINES PRESCRIBED IN SUBSECTION A OF THIS SECTION, IF A PERSON HAS REQUESTED THAT THE DEPARTMENT PRODUCE DOCUMENTS OR RECORDS RELATED TO AN AMOUNT DETERMINED TO BE DUE UNDER ARTICLE 3 OF THIS CHAPTER, THE PETITION FOR A HEARING, CORRECTION OR REDETERMINATION OF THE ACTION MUST BE FILED WITHIN FORTY-FIVE DAYS AFTER THE DATE THAT THE DOCUMENTS OR RECORDS HAVE BEEN PROVIDED TO THE PERSON.

~~B.~~ C. If the taxpayer does not file a petition for hearing, correction or redetermination within the period provided by this section, the amount determined to be due becomes final at the expiration of the period. The taxpayer is deemed to have waived and abandoned the right to question the amount determined to be due, unless the taxpayer pays the total deficiency assessment, including interest and penalties. The taxpayer may then file a claim for refund pursuant to section 42-1118 within six months of payment of the deficiency assessment or within the time limits prescribed by section 42-1106, whichever period expires later.

~~C.~~ D. All orders or decisions made on the filing of a petition for a hearing, correction or redetermination become final thirty days after notice has been received by the petitioner, unless the petitioner appeals the order or decision to the state board of tax appeals.

Sec. 2. Section 42-2059, Arizona Revised Statutes, is amended to read:

42-2059. No additional audits or proposed assessments; exceptions

A. When the department completes an audit or the findings of a managed audit are accepted by the director or approved on appeal and a deficiency has been completely determined under section 42-1108 or chapter 1, article 6 of

this title, the taxpayer's liability for the particular tax for the period subjected to the audit is fixed and determined, and no additional audit may be conducted except under the following circumstances:

1. If a taxpayer files a claim for refund under section 42-1251, subsection ~~B~~ C or any other provision authorizing a claim for refund. Any departmental audit of the claim is limited to the issues presented on the claim for refund.

2. Changes or corrections required to be reported to the department by section 43-327. The department may audit any such reports or any periods for which a report was required notwithstanding this section and may determine a tax deficiency or a refund.

3. If the taxpayer failed to disclose material information during the audit, or has falsified books or records or otherwise engaged in an action that prevented the department from conducting an accurate audit, the applicability of this subsection may be part of a subsequent protest and may be contested by the taxpayer pursuant to chapter 1, article 6 of this title.

4. If a managed audit is completed under the terms of a limited managed audit agreement, the department may audit the issues not covered by the limited managed audit agreement within the statute of limitations prescribed by section 42-1104.

B. If the department issues a notice of proposed assessment of taxes imposed by chapter 5, article 1 or 4 of this title or title 43, chapter 10, the department may not increase the amount of the proposed assessment except in one or more of the following circumstances:

1. The taxpayer has made a material misrepresentation of facts.

2. The taxpayer has failed to disclose a material fact to the auditor.

3. The department has requested information and the taxpayer fails to provide that information to the department.

4. After issuing the notice of proposed assessment but before the assessment becomes final the tax court, court of appeals or supreme court issues a decision, the application of which causes the tax initially proposed to increase.

C. Subsection B of this section does not apply to changes or corrections that are required to be reported to the department by section 43-327.

Sec. 3. Section 42-2064, Arizona Revised Statutes, is amended to read:

42-2064. Reimbursement of fees and other costs; definitions

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

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

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

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

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

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

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

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

E. Reimbursement to a taxpayer under this section shall not exceed seventy-five thousand dollars or actual monies spent, whichever is less. The reimbursable attorney or other representative fees shall not exceed three hundred fifty dollars per hour or actual monies spent, whichever is less, unless the state board of tax appeals determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys for the proceeding involved justifies a higher fee.

F. For each calendar year beginning from and after December 31, 2015, the income dollar amounts for maximum awards made pursuant to subsection E of this section shall be adjusted by the attorney general according to the average annual change in the metropolitan phoenix consumer price index published by the United States bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts may not be revised below the amounts prescribed in the prior calendar year.

G. IF THE DEPARTMENT DOES NOT PROVIDE THE REQUESTED PUBLIC OR TAXPAYER RECORDS OF A TAXPAYER WITHIN THIRTY BUSINESS DAYS AFTER THE RECEIPT OF THE REQUEST, THE TAXPAYER MAY NOTIFY THE DIRECTOR IN WRITING OF THE FAILURE TO PROVIDE PUBLIC OR PRIVATE RECORDS REQUESTED BY THE TAXPAYER.

~~G.~~ H. The department shall adopt administrative rules to implement this section.

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

~~I.~~ J. For the purposes of this section:

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

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