

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 169
HOUSE BILL 2367

AN ACT

AMENDING SECTION 42-1108 AND 42-1109, ARIZONA REVISED STATUTES; RELATING
TO TAX ADMINISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-1108, Arizona Revised Statutes, is amended to
3 read:

4 42-1108. Audit; deficiency assessments

5 A. If a taxpayer fails to file a return required by this title or
6 title 43, or if the department is not satisfied with the return or payment
7 of the amount of tax required to be paid under either title, the
8 department may examine any return, including any books, papers, records or
9 memoranda relating to the return, to determine the correct amount of tax.
10 This examination must occur within the time periods prescribed by section
11 42-1104 and may be accomplished through a detailed review of transactions
12 or records or by a statistically valid sampling method.

13 B. The department shall give the taxpayer notice of its
14 determination of a deficiency by mail or as prescribed by subsection C of
15 this section, and the deficiency, plus penalties and interest, is final
16 forty-five days ~~from~~ AFTER the date of receipt of the notice to the
17 taxpayer unless an appeal is taken to the department. For individual
18 income tax, the period is ninety days ~~from~~ AFTER the date of mailing. In
19 the case of a joint income tax return, the notice may be a single joint
20 notice mailed to the last known address, but if either spouse notifies the
21 department that separate residences have been established, the department
22 shall mail duplicate originals of the joint notice to each spouse.

23 C. ~~Except for individual income tax, the~~ THE department may issue
24 notice of its determination of a deficiency under subsection B of this
25 section by using an electronic portal in lieu of mail, if all of the
26 requirements of this subsection are met, ~~for taxable periods beginning~~
27 ~~from and~~ after December 31, 2018 or when the department establishes the
28 electronic portal, whichever is later. The use of the electronic portal
29 in lieu of mail is subject to the following requirements and conditions:

30 ~~1. The taxpayer shall provide an e-mail address to the department~~
31 ~~to receive the written notice of its determination of a deficiency using~~
32 ~~the electronic portal. The taxpayer shall notify the department of any~~
33 ~~update to the taxpayer's e-mail address.~~

34 1. THE TAXPAYER AGREES IN WRITING TO ALLOW THE DEPARTMENT TO USE
35 THE ELECTRONIC PORTAL TO ISSUE NOTICE OF THE DEPARTMENT'S DETERMINATION OF
36 DEFICIENCY FOR SPECIFIED TAX PERIODS. THE AGREEMENT SHALL INCLUDE AN
37 E-MAIL ADDRESS THAT THE DEPARTMENT MAY USE TO NOTIFY THE TAXPAYER AS
38 REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION. A TAXPAYER THAT PROVIDES AN
39 E-MAIL ADDRESS IS CERTIFYING THAT THE TAXPAYER REGULARLY MONITORS THAT
40 E-MAIL ADDRESS. IF THE TAXPAYER'S E-MAIL ADDRESS CHANGES, THE TAXPAYER
41 SHALL NOTIFY THE DEPARTMENT OF A NEW E-MAIL ADDRESS.

42 2. The department shall notify the taxpayer, using the taxpayer's
43 e-mail address, on the same day the notice of its determination of a
44 deficiency is posted to the electronic portal.

1 3. The date of receipt for a notice provided by electronic portal
2 is the later of the date the notice is posted to the electronic portal or
3 the date the notification is received by the taxpayer. A notification
4 sent by e-mail is considered to be received by the taxpayer on the day it
5 is sent by the department.

6 D. If a deficiency is determined and the assessment becomes final,
7 the department shall mail notice and demand to the taxpayer for the
8 payment of the deficiency. Notwithstanding section 42-1125, subsection E,
9 the deficiency assessed is due and payable at the expiration of ten days
10 ~~from~~ AFTER the date of the notice and demand.

11 E. A certificate by the department of the mailing or e-mailing of
12 the notices specified in this section is prima facie evidence of the
13 assessment of the deficiency and the giving of the notices.

14 F. Any amount of tax in excess of that disclosed by the return due
15 to a nonaudit adjustment, as listed in subsection G of this section,
16 notice of which has been mailed to the taxpayer, is not a deficiency
17 assessment within the meaning of this section. The taxpayer may not
18 protest or appeal as in the case of a deficiency assessment, based on such
19 a notice, and the assessment or collection of the amount of tax
20 erroneously omitted in the return is not prohibited by this article.

21 G. An adjustment due to any of the following is considered a
22 nonaudit adjustment:

23 1. An addition, subtraction, multiplication, division or other
24 mathematical error shown on any return.

25 2. The failure of the taxpayer to properly compute the tax
26 liability based on the taxable income reported on the return.

27 3. An incorrect usage or selection of information for a filed
28 return from tax tables, schedules or similar documents provided by the
29 department if the incorrect usage is apparent from the existence of other
30 information on the return.

31 4. An entry on a return that is inconsistent with an entry on a
32 schedule, form, statement, list or other document filed with the return.

33 5. An omission of information required on the return to
34 substantiate an entry.

35 6. An entry on a return of a deduction or credit in an amount that
36 exceeds a statutory limit if the limit is a monetary figure, a percentage,
37 a ratio or a fraction and the items entered into the application of this
38 limit appear on the return, including claiming a deduction or credit that
39 is not authorized by statute for the taxable period.

40 7. Missing or incorrect taxpayer identification numbers for the
41 purposes of claiming personal exemptions, dependents or credits.

42 8. An entry of a credit or deduction that requires a preapproval if
43 the credit or deduction has not been preapproved or if the entry is for
44 more than the preapproved amount.

1 9. An entry of a credit or deduction amount carried forward from a
2 prior year that is outside of the statutory period allowed for the
3 carryforward or is for an amount that is inconsistent with the taxpayer's
4 prior year returns.

5 H. If a taxpayer that files its return electronically is allowed to
6 input the information from a document into the electronic filing program
7 instead of providing the actual document with the return, the department
8 may request a copy of the document from the taxpayer at any time. If the
9 taxpayer provides the document, the department may adjust the return to
10 reflect the amounts on the document. If the taxpayer does not provide the
11 requested document within the period provided by the department, the
12 department may deny any deduction, credit or withholding that the document
13 is intended to substantiate.

14 ~~i. For the purposes of this section, "electronic portal" means a~~
15 ~~secure location on a website established by the department that requires~~
16 ~~the taxpayer to enter a password to access.~~

17 Sec. 2. Section 42-1109, Arizona Revised Statutes, is amended to
18 read:

19 42-1109. Failure to file return; false or fraudulent return;
20 limited scope review; mandamus; order to produce
21 documents; electronic portal

22 A. If a person who is required to file a report or return fails to
23 do so within fifteen days after written demand by the department, the
24 department shall proceed to obtain facts and information on which to base
25 the tax, and for ~~such~~ THAT purpose the department or its agent may examine
26 the books, records and papers of ~~such~~ THE person and may take evidence on
27 oath of any person who ~~it~~ THE DEPARTMENT believes ~~is in possession of~~ HAS
28 facts or information pertinent to the inquiry. The director or the
29 director's agent may administer the oath. As soon as the department
30 procures ~~such~~ THE information, it shall hold a hearing ~~for the purpose of~~
31 ~~ascertaining~~ TO DETERMINE the amount of tax payable by the person. The
32 department shall give at least ten days' notice in writing of the time and
33 place of holding the hearing, which shall be mailed to the person's last
34 known address or served personally. The levy of the tax is final after
35 the hearing as to any person who fails or refuses to file a return.

36 B. If a taxpayer files a false or fraudulent return or fails or
37 neglects to file a return within fifteen CALENDAR days after written OR
38 ELECTRONIC demand by the department, the department, at any time, may
39 require a return or a supplementary return or may ~~make an~~ estimate of the
40 taxable income from any available information and may propose to assess
41 the amount of tax, interest and penalties due. ~~At~~ The provisions of this
42 article ~~relative~~ RELATING to delinquent taxes apply to the tax, interest
43 and penalties computed pursuant to this subsection. A proceeding in court
44 ~~for the collection of~~ TO COLLECT the tax, interest and penalties provided
45 for in this subsection may be begun without assessment at any time.

1 Notwithstanding section 42-1004, subsection C, the assessment of tax,
2 interest or penalties under this subsection does not preclude subsequent
3 deficiency assessments under section 42-1108.

4 C. THE DEPARTMENT MAY CONDUCT A LIMITED SCOPE REVIEW OF A FILED
5 INDIVIDUAL INCOME TAX RETURN IF IT DISCOVERS A DISCREPANCY BETWEEN AMOUNTS
6 REPORTED ON THE RETURN AND THE INFORMATION THE DEPARTMENT RECEIVES
7 PURSUANT TO SECTION 43-412. IN A NOTICE TO THE TAXPAYER, THE DEPARTMENT
8 MAY REQUEST RECORDS FROM A TAXPAYER IN SUPPORT OF THE TAXPAYER'S FILED
9 RETURNS AND PROPOSE A TENTATIVE AMOUNT OF TAX, INTEREST AND PENALTIES DUE
10 ON THE BASIS OF THIS ADDITIONAL INFORMATION. THE TAXPAYER SHALL HAVE AT
11 LEAST THIRTY CALENDAR DAYS TO RESPOND TO THIS NOTICE ON A FORM PRESCRIBED
12 BY THE DEPARTMENT. A LIMITED SCOPE REVIEW UNDER THIS SUBSECTION MAY BE
13 CONDUCTED ONLY ONCE PER TAXABLE YEAR PER TAXPAYER AND SHALL NOT BE
14 CONSIDERED AN INITIAL AUDIT CONTACT FOR PURPOSES OF SECTION 42-2075 IF ANY
15 OF THE FOLLOWING APPLIES:

16 1. THE TAXPAYER PROVIDES DOCUMENTATION OR AN EXPLANATION THAT
17 RESOLVES THE DISCREPANCY BETWEEN THE ORIGINALLY FILED RETURN AND THE
18 INFORMATION RECEIVED PURSUANT TO SECTION 43-412.

19 2. THE TAXPAYER FILES AN AMENDED RETURN THAT CORRECTS THE
20 DISCREPANCY.

21 3. THE DEPARTMENT, AT THE TAXPAYER'S REQUEST, ADJUSTS THE RETURN
22 FILED BY THE TAXPAYER BASED ON AN AGREED AMOUNT. AN ADJUSTMENT MADE AT
23 THE TAXPAYER'S REQUEST UNDER THIS PARAGRAPH IS NOT CONSIDERED AN AUDIT AND
24 DOES NOT PRECLUDE A FUTURE AUDIT OF THE SAME YEAR UNDER SECTION 42-1108.

25 4. THE DEPARTMENT NOTIFIES THE TAXPAYER REQUESTING THE TAXPAYER TO
26 RESOLVE THE DISCREPANCY BY FILING AN AMENDED RETURN IN ORDER TO AVOID A
27 POSSIBLE FUTURE AUDIT AND REDUCE POSSIBLE FUTURE PENALTIES AND INTEREST.
28 ANY FUTURE AUDIT SHALL BE CONDUCTED PURSUANT TO SECTION 42-1108.

29 ~~C.~~ D. If an assessment is proposed under this section, the
30 taxpayer has the right to protest the assessment, to have an oral hearing
31 on the protest if requested and to appeal to the state board of tax
32 appeals from the department's action on the protest. The taxpayer shall
33 proceed under this section in the manner and within the time prescribed by
34 article 6 of this chapter.

35 ~~D.~~ E. In addition to the remedies provided by subsection B of this
36 section, if a taxpayer fails to file a return within sixty days ~~of~~ AFTER
37 the time prescribed by this chapter, the department may petition the tax
38 court to issue a writ of mandamus requiring the person to file a
39 return. The petition shall be returnable not later than ten days after
40 filing the petition. The petition shall be heard and determined on the
41 return day or on such day thereafter as the court shall fix, having regard
42 to the speediest possible determination of the case, consistent with the
43 rights of the parties. The court shall provide at least ten days' written
44 notice of the hearing to the taxpayer, which shall be mailed to the
45 taxpayer's last known address or served on the taxpayer personally. The

1 judgment shall include costs in favor of the prevailing party.
2 Proceedings on such suits shall comply with the rules of procedure for
3 special actions.

4 ~~E.~~ F. If a person wilfully refuses to make available any books,
5 papers or records for examination by the department, or wilfully refuses
6 to attend and testify, in connection with any proceedings instituted under
7 subsection A of this section, the department may apply to the tax court
8 for an order directing that person to produce the books, papers or records
9 or to compel the person's attendance and testimony. If the books, papers
10 or records required by the department are in the custody of a corporation,
11 the order of the court may be directed to any principal officer of the
12 corporation or its registered statutory agent. The failure to obey such
13 an order of the court may be punished by the court as contempt.

14 G. THE DEPARTMENT MAY ISSUE NOTICE OF ITS DETERMINATION OF
15 DEFICIENCY UNDER SUBSECTION B OF THIS SECTION BY USING AN ELECTRONIC
16 PORTAL IN LIEU OF MAIL IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

17 1. THE TAXPAYER AGREES IN WRITING TO ALLOW THE DEPARTMENT TO USE
18 THE ELECTRONIC PORTAL TO ISSUE NOTICE OF THE DEPARTMENT'S DETERMINATION OF
19 DEFICIENCY FOR SPECIFIED TAX PERIODS. THE AGREEMENT SHALL INCLUDE AN
20 E-MAIL ADDRESS THAT THE DEPARTMENT MAY USE TO NOTIFY THE TAXPAYER AS
21 REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION. A TAXPAYER THAT PROVIDES AN
22 E-MAIL ADDRESS IS CERTIFYING THAT THE TAXPAYER REGULARLY MONITORS THAT
23 E-MAIL ADDRESS. IF THE TAXPAYER'S E-MAIL ADDRESS CHANGES, THE TAXPAYER
24 SHALL NOTIFY THE DEPARTMENT OF A NEW E-MAIL ADDRESS.

25 2. THE DEPARTMENT NOTIFIES THE TAXPAYER VIA THE E-MAIL ADDRESS WHEN
26 THE NOTICE OF THE DEPARTMENT'S DETERMINATION OF DEFICIENCY IS POSTED TO
27 THE ELECTRONIC PORTAL.

28 3. THE E-MAIL NOTIFICATION UNDER PARAGRAPH 2 OF THIS SUBSECTION IS
29 SENT ON THE SAME DAY THE NOTICE OF THE DEPARTMENT'S DETERMINATION OF
30 DEFICIENCY IS POSTED TO THE ELECTRONIC PORTAL.

31 4. THE DATE OF RECEIPT FOR A NOTICE OF THE DEPARTMENT'S
32 DETERMINATION OF DEFICIENCY IS THE LATER OF THE DATE THE NOTICE IS POSTED
33 TO THE ELECTRONIC PORTAL OR THE DATE THE TAXPAYER RECEIVES THE E-MAIL
34 NOTIFICATION REQUIRED UNDER PARAGRAPH 3 OF THIS SUBSECTION. AN E-MAIL
35 NOTIFICATION IS DEEMED RECEIVED BY THE TAXPAYER ON THE DAY IT IS SENT BY
36 THE DEPARTMENT.

APPROVED BY THE GOVERNOR MAY 6, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2019.