

REFERENCE TITLE: DOR; administrative rulings; procedures.

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1347

Introduced by
Senator Ugenti-Rita

AN ACT

AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 42-2080; AMENDING SECTION 42-2101, ARIZONA REVISED
STATUTES; RELATING TO THE DEPARTMENT OF REVENUE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 42, chapter 2, article 2, Arizona Revised
3 Statutes, is amended by adding section 42-2080, to read:

4 42-2080. Rulings, procedures and other administrative
5 announcements; notice; public comment; records;
6 confidentiality; exceptions

7 A. THE DEPARTMENT MAY ISSUE DRAFT RULINGS, PROCEDURES AND OTHER
8 ADMINISTRATIVE ANNOUNCEMENTS THAT APPLY TO AND SUBSTANTIVELY INTERPRET TAX
9 LAWS AND REGULATIONS EITHER GENERALLY OR FOR A SPECIFIC SET OF FACTS.
10 EXCEPT FOR PRIVATE TAXPAYER RULINGS ISSUED PURSUANT TO SECTION 42-2101,
11 THE DEPARTMENT SHALL ALLOW FOR AND ACCEPT WRITTEN PUBLIC COMMENTS ON THE
12 DRAFT RULING, PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT AS PRESCRIBED BY
13 THIS SECTION. A RULING, PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT BECOMES
14 FINAL AND EFFECTIVE THIRTY DAYS AFTER THE RULING, PROCEDURE OR
15 ADMINISTRATIVE ANNOUNCEMENT IS ISSUED FOR PUBLIC COMMENT AND REVIEW UNLESS
16 THE DEPARTMENT WITHDRAWS THE RULING, PROCEDURE OR ADMINISTRATIVE
17 ANNOUNCEMENT. THE DEPARTMENT MAY AMEND THE DRAFT RULING, PROCEDURE OR
18 ADMINISTRATIVE ANNOUNCEMENT IN RESPONSE TO PUBLIC COMMENTS RECEIVED DURING
19 THE THIRTY-DAY PERIOD.

20 B. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A PUBLICLY
21 ACCESSIBLE RECORD OF ALL DRAFT AND FINAL RULINGS, PROCEDURES AND
22 ADMINISTRATIVE ANNOUNCEMENTS ON THE DEPARTMENT'S WEBSITE AND SHALL
23 PROMINENTLY ANNOUNCE ADDITIONS, MODIFICATIONS AND OTHER CHANGES TO THIS
24 RECORD ON THE DEPARTMENT WEBSITE'S HOME PAGE.

25 C. A DRAFT RULING, PROCEDURE OR OTHER ADMINISTRATIVE ANNOUNCEMENT
26 THAT APPLIES TO AND INTERPRETS TAX LAWS AND REGULATIONS MAY NOT BE
27 CONSIDERED FINAL AND EFFECTIVE UNLESS THE RULING, PROCEDURE OR THE
28 ADMINISTRATIVE ANNOUNCEMENT CONTAINS ALL OF THE FOLLOWING:

29 1. THE SUBJECT MATTER OF THE DRAFT RULING, PROCEDURE OR
30 ADMINISTRATIVE ANNOUNCEMENT.

31 2. A CITATION TO ALL STATUTES, RULES AND PUBLISHED ADMINISTRATIVE
32 RULINGS RELATING TO THE DRAFT RULING, PROCEDURE OR ADMINISTRATIVE
33 ANNOUNCEMENT.

34 3. THE NAME AND CONTACT INFORMATION OF DEPARTMENT PERSONNEL WITH
35 WHOM PERSONS MAY COMMUNICATE REGARDING THE DRAFT RULING, PROCEDURE OR
36 ADMINISTRATIVE ANNOUNCEMENT.

37 4. THE DATE ON WHICH THE DRAFT RULING, PROCEDURE OR ADMINISTRATIVE
38 ANNOUNCEMENT WAS PROPOSED.

39 5. THE DATE ON WHICH THE DRAFT RULING, PROCEDURE OR ADMINISTRATIVE
40 ANNOUNCEMENT WILL BECOME FINAL AND EFFECTIVE.

41 6. A STATEMENT OF WHETHER PUBLIC COMMENTS ON THE DRAFT RULING,
42 PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT WERE RECEIVED AND WHERE THE
43 WRITTEN COMMENTS AND THE DEPARTMENT'S RESPONSE TO THOSE COMMENTS ARE
44 AVAILABLE FOR INSPECTION.

1 D. BEFORE A DRAFT RULING, PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT
2 IS EFFECTIVE AND FINAL PURSUANT TO SUBSECTION A OF THIS SECTION, THE
3 DEPARTMENT SHALL CONSIDER ANY PUBLIC COMMENTS RECEIVED ON THE DRAFT
4 RULING, PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT. IF THE DEPARTMENT
5 CHOOSES NOT TO INCORPORATE A PUBLIC COMMENT INTO THE FINAL RULING,
6 PROCEDURE OR ADMINISTRATIVE ANNOUNCEMENT, THE DEPARTMENT SHALL RESPOND TO
7 THE COMMENT EXPLAINING THE BASIS FOR THE DEPARTMENT'S DECISION AND
8 PRESERVE THAT RESPONSE AS A PUBLIC RECORD.

9 E. THE DIRECTOR SHALL ENSURE THAT ANY PUBLIC RECORDS REQUIRED BY
10 THIS SECTION COMPLY WITH THE CONFIDENTIALITY REQUIREMENTS PRESCRIBED BY
11 ARTICLE 1 OF THIS CHAPTER.

12 F. THIS SECTION DOES NOT APPLY TO DEPARTMENT ACTIONS THAT ARE
13 SUBJECT TO TITLE 41, CHAPTER 6, PRIVATE TAXPAYER RULINGS ISSUED PURSUANT
14 TO SECTION 42-2101, TAX FORMS AND INSTRUCTIONS, ROUTINE NOTICES THAT
15 REMIND TAXPAYERS OF NORMAL FILING OBLIGATIONS AND OTHER ROUTINE DEPARTMENT
16 COMMUNICATIONS THAT DO NOT SUBSTANTIVELY APPLY TO AND INTERPRET TAX LAWS
17 AND REGULATIONS.

18 Sec. 2. Section 42-2101, Arizona Revised Statutes, is amended to
19 read:

20 42-2101. Private taxpayer rulings; request; revocation or
21 modification; taxpayer information ruling;
22 definitions

23 A. The department may issue private taxpayer rulings to taxpayers
24 and potential taxpayers on request. Each request shall be in writing and
25 shall:

26 1. State the name, address and, if applicable, taxpayer identifying
27 number of the taxpayer or potential taxpayer who requests the ruling.

28 2. Describe all facts that are relevant to the requested ruling.

29 3. State whether, to the best knowledge of the taxpayer or
30 potential taxpayer, the issue or related issues are being considered by
31 the department in connection with an active audit, protest or appeal that
32 involves the taxpayer or potential taxpayer and whether the same request
33 has been or is being submitted to another taxing authority for a ruling.

34 4. Be signed by the taxpayer or potential taxpayer who makes the
35 request or by an authorized representative of the taxpayer or potential
36 taxpayer.

37 B. A taxpayer ruling request that complies with subsection A,
38 paragraphs 2 and 3 of this section and that is signed by a representative
39 of a taxpayer or potential taxpayer shall be considered a request for a
40 taxpayer information ruling instead of a private taxpayer ruling.

41 C. A private taxpayer ruling or taxpayer information ruling may be
42 revoked or modified by either:

43 1. A change or clarification in the law that was applicable at the
44 time the ruling was issued, including changes or clarifications caused by
45 legislation, adopted administrative rules and court decisions.

1 2. Actual written notice by the department to the last known
2 address of the taxpayer or potential taxpayer of the revocation or
3 modification of the private taxpayer ruling or taxpayer information ruling
4 if the taxpayer identifying information has been disclosed to the
5 department pursuant to subsection E of this section. If taxpayer
6 identifying information has not been disclosed, written notice by the
7 department to the last known address of the taxpayer representative who
8 requested the ruling will constitute notice to the taxpayer or potential
9 taxpayer.

10 D. With respect to the taxpayer or prospective taxpayer to whom the
11 private taxpayer ruling was issued, the revocation or modification of a
12 private taxpayer ruling shall not be applied retroactively to tax periods
13 or tax years before the effective date of the revocation or modification
14 and the department shall not assess any penalty or tax attributable to
15 erroneous advice that it furnished to the taxpayer or potential taxpayer
16 in the private taxpayer ruling if:

17 1. The taxpayer reasonably relied on the private taxpayer ruling.

18 2. The penalty or tax did not result either from a failure by the
19 taxpayer to provide adequate or accurate information or from a change in
20 the information.

21 E. Subsection D of this section applies to a taxpayer information
22 ruling if the taxpayer or potential taxpayer provides its name, address,
23 identifying number, if applicable, and authorization pursuant to section
24 42-2003, subsection A, paragraph 1 for the representative of the taxpayer
25 or potential taxpayer before the date the department publishes the ruling.
26 The department shall notify the representative of the taxpayer or
27 potential taxpayer of the proposed publication date. If the director has
28 determined that the taxpayer information ruling should not be published
29 pursuant to subsection ~~+~~ M of this section, subsection D of this section
30 applies if the taxpayer or potential taxpayer provides the identifying
31 information before the date specified by the department on issuing the
32 taxpayer information ruling to the representative. If the taxpayer or
33 potential taxpayer does not provide the department with the identifying
34 information and representative authorization before the proposed
35 publication date, or for an unpublished ruling, the date specified by the
36 department, the taxpayer information ruling is not binding on the
37 department for the purpose of abating interest, penalty or tax.

38 F. A private taxpayer ruling or taxpayer information ruling may not
39 be relied upon, cited or introduced into evidence in any proceeding by a
40 taxpayer other than the taxpayer who has received the private taxpayer
41 ruling.

42 G. A taxpayer may apply for an administrative hearing to determine
43 the propriety of a retroactive application of a revoked or modified
44 private taxpayer ruling by filing a written petition with the department
45 pursuant to section 42-1251 within forty-five days after receiving written

1 notice of the department's intent to retroactively apply a revoked or
2 modified private taxpayer ruling. This subsection applies to a taxpayer
3 information ruling if the taxpayer has disclosed the taxpayer's
4 identifying information pursuant to subsection E of this section.

5 H. A private taxpayer ruling or taxpayer information ruling
6 constitutes the department's interpretation of the law or rules only as
7 they apply to the taxpayer making, and the particular facts contained in,
8 the request.

9 I. A private taxpayer ruling or taxpayer information ruling may be
10 issued only if no tax has accrued with respect to the transactions, events
11 or facts contained in the request. The department may issue a private
12 taxpayer ruling or taxpayer information ruling addressing a taxpayer's
13 ongoing business activities, except that the ruling applies only to
14 transactions that occur or tax liabilities that accrue from and after the
15 date the taxpayer receives the ruling.

16 J. ~~WITHIN THIRTY DAYS AFTER RECEIVING THE WRITTEN REQUEST, THE~~
17 ~~DEPARTMENT SHALL MEET WITH THE REQUESTOR TO DISCUSS THE FACTS AND~~
18 ~~CIRCUMSTANCES PERTAINING TO THE REQUEST AT A TIME AND PLACE DESIGNATED BY~~
19 ~~THE DEPARTMENT, UNLESS THE REQUESTOR WAIVES THIS MEETING.~~ The department
20 shall ~~attempt to~~ issue private taxpayer rulings or taxpayer information
21 rulings within ~~forty-five~~ NINETY days after receiving the written request
22 ~~and on receiving the facts that are relevant to the ruling,~~ UNLESS THE
23 DEPARTMENT AND THE REQUESTOR AGREE TO DELAY THE RULING. If the ruling is
24 expected to be delayed, the department shall notify the requestor of the
25 BASIS FOR THE PROPOSED delay and the proposed date of issuance. PURSUANT
26 TO SUBSECTION A OF THIS SECTION, THE DEPARTMENT MAY DECLINE TO ISSUE A
27 RULING, AND THIS SUBSECTION DOES NOT REQUIRE THE DEPARTMENT TO ISSUE A
28 RULING. IF THE DEPARTMENT DECLINES TO ISSUE A RULING, THE DEPARTMENT
29 SHALL ISSUE APPROPRIATE WRITTEN ASSISTANCE OR ADVICE THAT EXPLAINS THE
30 REASON THE DEPARTMENT DECLINED TO ISSUE A RULING AND PROVIDE A GENERAL
31 DISCUSSION OF RELEVANT TAX PRINCIPLES OR APPLICATIONS.

32 K. THE DEPARTMENT SHALL PROVIDE THE REQUESTOR WITH A DRAFT OF THE
33 PRIVATE TAXPAYER RULING OR TAXPAYER INFORMATION RULING AT LEAST THIRTY
34 DAYS BEFORE ISSUING THE RULING PURSUANT TO SUBSECTION J OF THIS SECTION.
35 IF THE REQUESTED BY THE REQUESTOR, THE DEPARTMENT SHALL MEET WITH THE
36 REQUESTOR WITHIN FOURTEEN DAYS AFTER PROVIDING THE DRAFT RULING, AT A TIME
37 AND PLACE DESIGNATED BY THE DEPARTMENT, TO DISCUSS THE CONTENTS OF THE
38 DRAFT RULING.

39 ~~K.~~ L. The department shall maintain the private taxpayer ruling or
40 taxpayer information RULING as a public record and make it available at a
41 reasonable cost for public inspection and copying. The text of private
42 taxpayer or taxpayer information rulings is open to public inspection
43 subject to the confidentiality requirements prescribed by article 1 of
44 this chapter.

1 ~~M.~~ M. At the time of making a private taxpayer RULING or taxpayer
2 information ruling request, a taxpayer or potential taxpayer may submit a
3 written request that the ruling not be published due to concerns about
4 confidentiality or other disclosed reasons. If the director determines
5 that the ruling should not be published AND THE TAXPAYER REQUESTS THAT THE
6 RULING BE KEPT CONFIDENTIAL, the ruling shall be deemed confidential for
7 the purpose of section 39-121.01, subsection D, paragraph 2. If the
8 director determines that the ruling should be published AND THE TAXPAYER
9 REQUESTS THAT THE RULING BE KEPT CONFIDENTIAL, the taxpayer may withdraw
10 the ruling request, and the department shall not proceed with a ruling if
11 the request is withdrawn. Notwithstanding section 41-1092.02, the
12 decision of the director to publish is not an appealable agency action as
13 defined in section 41-1092 and is not subject to appeal by the taxpayer.

14 ~~M.~~ N. For the purposes of this section:

15 1. "Private taxpayer ruling" means a written determination by the
16 department issued on or after September 21, 1991 that interprets and
17 applies one or more statutes contained in this title or title 43 and any
18 applicable administrative rules that the department has adopted to the
19 specific prospective facts described in the request for a private taxpayer
20 ruling.

21 2. "Taxpayer information ruling" means a written determination by
22 the department issued on or after ~~the effective date of this amendment to~~
23 ~~this section~~ SEPTEMBER 26, 2008 that interprets and applies one or more
24 statutes contained in this title or title 43 and any applicable
25 administrative rules that the department has adopted to the specific
26 prospective facts described in a request for a taxpayer information
27 ruling.