

FILED

**Jane Dee Hull
Secretary of State**

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

CHAPTER 128

SENATE BILL 1242

AN ACT

AMENDING SECTION 42-124, ARIZONA REVISED STATUTES; AMENDING SECTION 42-172, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, CHAPTER 323, SECTION 20; RELATING TO EXCISE TAX APPEALS.

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

Section 1. Section 42-124, Arizona Revised Statutes, is amended to read:

42-124. Appeals

A. EXCEPT AS PROVIDED IN SUBSECTION C, a person aggrieved by a final decision or order of the department under this article may appeal to the state board of tax appeals by filing a notice of appeal in writing within thirty days after the receipt of the decision or order from which the appeal is taken. The board shall take testimony and examine documentary evidence as necessary to determine the appeal, all pursuant to administrative rules to govern such appeals. On determining the appeal the board shall issue a decision consistent with its determination. The board's decision is final on the expiration of thirty days from the date when notice of its action is received by the taxpayer, unless either the department or the taxpayer brings an action in tax court as provided in subsection B of this section.

B. The department or a taxpayer aggrieved by a decision of the state board of tax appeals may bring an action in tax court. IF THE DEPARTMENT IS AGGRIEVED BY A DECISION OF THE BOARD AND THE AMOUNT IN DISPUTE IS LESS THAN FIVE THOUSAND DOLLARS, THE DEPARTMENT MAY NOT BRING AN ACTION IN TAX COURT UNLESS THE DEPARTMENT DETERMINES THAT THE DECISION OF THE BOARD INVOLVES AN ISSUE OF SUBSTANTIAL SIGNIFICANCE TO THE STATE. A TAXPAYER AGGRIEVED BY A DETERMINATION OF THE DEPARTMENT THAT AN ISSUE IS OF SUBSTANTIAL SIGNIFICANCE

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1 TO THE STATE MAY FILE A MOTION WITH THE TAX COURT TO DISMISS THE ACTION
2 BROUGHT BY THE DEPARTMENT ON THE GROUNDS THAT THE DETERMINATION CONSTITUTES
3 AN ABUSE OF DISCRETION.

4 C. EXCEPT IN THE CASE OF INDIVIDUAL INCOME CASES WHERE THE AMOUNT IN
5 DISPUTE IS LESS THAN FIVE THOUSAND DOLLARS, A PERSON WHO IS AGGRIEVED BY A
6 FINAL DECISION OR ORDER OF THE DEPARTMENT UNDER THIS ARTICLE MAY, IN LIEU OF
7 APPEALING TO THE STATE BOARD OF TAX APPEALS UNDER THIS SECTION, BRING AN
8 ACTION IN TAX COURT BY FILING A NOTICE OF APPEAL IN WRITING WITHIN THIRTY
9 DAYS AFTER THE RECEIPT OF THE DECISION OR ORDER FROM WHICH THE APPEAL IS
10 TAKEN subject to the following provisions:

11 1. No injunction, writ of mandamus or other legal or equitable process
12 may issue in an action in any court in this state against an officer of this
13 state to prevent or enjoin the collection of any tax, penalty or interest.

14 2. The action shall not begin more than thirty days after the order
15 or decision of the board becomes final. Failure to bring the action within
16 thirty days after the order or decision of the board becomes final
17 constitutes a waiver of the protest and a waiver of all claims against this
18 state arising from or based on the illegality in the tax, penalties and
19 interest at issue, except that within the time limits set forth in section
20 42-115, a taxpayer who fails to bring an action within thirty days may pay
21 the tax under protest stating the grounds of objection to the legality of the
22 tax and then file a claim for refund of the taxes paid. The refund claim
23 shall then be governed by section 42-130 and this section. The tax court
24 shall hear and determine the appeal as a trial de novo. Either party to such
25 action may appeal to the court of appeals or supreme court as provided by
26 law.

27 3. If a final judgment is rendered in favor of the taxpayer in the
28 action, the amount or such portion of the judgment as may be necessary shall
29 first be credited to any taxes, penalties and interest due from the plaintiff
30 taxpayer, and the amount of the balance remaining due the taxpayer shall be
31 certified by the department of revenue to the department of administration,
32 with a certified copy of the final judgment and a claim for refund
33 authenticated by the department of revenue. On receipt, the department of
34 administration shall draw a warrant directed to the state treasurer in favor
35 of the taxpayer in an amount equal to the amount of the tax found by the
36 judgment to be illegal, less the amount of any taxes, penalties and interest
37 due from the taxpayer. The department of administration shall draw a
38 separate warrant directed to the state treasurer in favor of the taxpayer in
39 an amount equal to the interest and other costs recovered against the
40 department of revenue by the judgment, which shall be paid by the state
41 treasurer from the appropriate tax account.

1 Sec. 2. Section 42-172, Arizona Revised Statutes, as amended by Laws
2 1994, chapter 323, section 20, is amended to read:

3 42-172. State board of tax appeals; employees; meetings

4 A. The state board of tax appeals shall appoint a clerk, hearing
5 officers and such other employees as it deems necessary to carry out its
6 duties. The hearing officer qualifications for each division shall be the
7 same as the selection criteria for the members as prescribed by section
8 42-171, subsections C and E, respectively. Notwithstanding section 41-192,
9 subsection E, upon request of the board, the attorney general shall
10 designate, for such time and purposes as the board requires, an attorney,
11 acceptable to the board, whose compensation shall be fixed and paid by the
12 board.

13 B. The STATE board OF TAX APPEALS shall meet annually at the state
14 capitol on the first Monday after July 15 and shall hold hearings and
15 meetings at such other times at the call of the chairman or a majority of the
16 board and otherwise as may be prescribed by the rules of the board as
17 required to carry out its duties. The principal office of the board shall
18 be at the capitol, but the board may sit or hold hearings at any other place
19 within the state. A majority of the board shall constitute a quorum for
20 making orders and decisions or transacting other official business, and the
21 board may act even though up to three positions on the board are vacant. One
22 or more members may hold hearings and take testimony to be reported for
23 action by the board when authorized by rule or order of the board. The board
24 shall keep a record of its proceedings.

25 C. Each division of the STATE board OF TAX APPEALS shall have the same
26 powers and duties with respect to its own management and procedures as are
27 provided for the board in subsections A and B of this section, except that:

28 1. Division two may not act if more than one position is vacant.

29 2. One or more members or a hearing officer of a division or panel may
30 hold hearings and take testimony to be reported for action by the division
31 or panel when authorized by rule of the board or order of the division.

32 3. Division one may use a two, three or five member panel appointed
33 by the chairman of the division to make orders and decisions for the
34 division, but if a two member panel fails to agree with respect to an order
35 or decision, the division chairman shall appoint a third member to achieve
36 a final order or decision.

37 D. IF THE AMOUNT IN ANY DISPUTE BEFORE THE STATE BOARD OF TAX APPEALS
38 IS LESS THAN FIVE THOUSAND DOLLARS, A TAXPAYER MAY BE REPRESENTED BEFORE THE
39 BOARD BY A CERTIFIED PUBLIC ACCOUNTANT OR BY A PERSON WHO IS ENROLLED TO
40 PRACTICE BEFORE THE UNITED STATES INTERNAL REVENUE SERVICE AND IS RECOGNIZED
41 AS AN ENROLLED AGENT.

~~APPROVED BY THE GOVERNOR APRIL 9, 1996.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 1996~~