

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 50  
**HOUSE BILL 2088**

AN ACT

AMENDING SECTIONS 41-1378, 42-2003, 43-1122, 43-1123 AND 43-1124, ARIZONA  
REVISED STATUTES; REPEALING SECTION 43-1128, ARIZONA REVISED STATUTES;  
RELATING TO CORPORATE INCOME TAX SUBTRACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Section 41-1378, Arizona Revised Statutes, is amended to  
3 read:

4 41-1378. Complaint; investigation; investigative authority;  
5 violation; classification

6 A. All complaints shall be addressed to the ombudsman-citizens aide.  
7 If an agency receives correspondence between a complainant and the  
8 ombudsman-citizens aide, it shall hold that correspondence in trust and shall  
9 promptly forward the correspondence, unopened, to the ombudsman-citizens  
10 aide.

11 B. Within thirty days of receipt of the complaint, the  
12 ombudsman-citizens aide shall notify the complainant of the decision to  
13 investigate or not to investigate the complaint. If the ombudsman-citizens  
14 aide decides not to investigate and if requested by the complainant, the  
15 ombudsman-citizens aide shall provide the reasons for not investigating in  
16 writing.

17 C. The ombudsman-citizens aide shall not charge any fees for  
18 investigations or complaints.

19 D. In an investigation, the ombudsman-citizens aide may:

20 1. Make inquiries and obtain information considered necessary subject  
21 to the restrictions in section 41-1377.

22 2. Enter without notice to inspect agency premises with agency staff  
23 on the premises.

24 3. Hold hearings.

25 4. Notwithstanding any other law, have access to all state agency  
26 records, including confidential records, except:

27 (a) Sealed court records without a subpoena.

28 (b) Active criminal investigation records.

29 (c) Records that could lead to the identity of confidential police  
30 informants.

31 (d) Attorney work product and communications that are protected under  
32 the attorney-client privilege.

33 (e) Confidential information as defined in section 42-2001, except as  
34 provided in section 42-2003, subsection N- M.

35 (f) Information protected by section 6103(d), 6103(p)(8) or 7213 of  
36 the internal revenue code.

37 (g) Confidential information relating to section 36-2903,  
38 subsection 1, section 36-2917, section 36-2932, subsection F or section  
39 36-2972.

40 (h) Confidential information relating to sections 36-507, 36-509 and  
41 36-2220.

42 5. Issue subpoenas if necessary to compel the attendance and testimony  
43 of witnesses and the production of books, records, documents and other  
44 evidence to which the ombudsman-citizens aide may have access pursuant to  
45 paragraph 4 of this subsection. The ombudsman-citizens aide may only issue

1 a subpoena if the ombudsman-citizens aide has previously requested testimony  
2 or evidence and the person or agency to which the request was made has failed  
3 to comply with the request in a reasonable amount of time.

4 E. It is contrary to the public policy of this state for any state  
5 agency or any individual acting for a state agency to take any adverse action  
6 against an individual in retaliation because the individual cooperated with  
7 or provided information to the ombudsman-citizens aide or the  
8 ombudsman-citizens aide's staff.

9 F. If requested by the complainants or witnesses, the  
10 ombudsman-citizens aide shall maintain confidentiality with respect to those  
11 matters necessary to protect the identities of the complainants or witnesses.  
12 The ombudsman-citizens aide shall ensure that confidential records are not  
13 disclosed by either the ombudsman-citizens aide or staff to the  
14 ombudsman-citizens aide. The ombudsman-citizens aide shall maintain the  
15 confidentiality of an agency record. With respect to requests made pursuant  
16 to title 39, chapter 1, article 2 or other requests for information, the  
17 ombudsman-citizens aide shall maintain all records that are received from a  
18 custodial agency in the same manner as the custodial agency would if it had  
19 received the request.

20 G. The ombudsman-citizens aide or any staff member or other employee  
21 of the ombudsman-citizens aide who knowingly divulges or makes known in any  
22 manner not permitted by law any particulars of any record, document or  
23 information for which the law restricts disclosure is guilty of a class 5  
24 felony.

25 Sec. 2. Section 42-2003, Arizona Revised Statutes, is amended to read:  
26 42-2003. Authorized disclosure of confidential information

27 A. Confidential information relating to:

28 1. A taxpayer may be disclosed to the taxpayer, its successor in  
29 interest or a designee of the taxpayer who is authorized in writing by the  
30 taxpayer. A principal corporate officer of a parent corporation may execute  
31 a written authorization for a controlled subsidiary.

32 2. A corporate taxpayer may be disclosed to any principal officer, any  
33 person designated by a principal officer or any person designated in a  
34 resolution by the corporate board of directors or other similar governing  
35 body.

36 3. A partnership may be disclosed to any partner of the partnership.  
37 This exception does not include disclosure of confidential information of a  
38 particular partner, unless otherwise authorized.

39 4. An estate may be disclosed to the personal representative of the  
40 estate and to any heir, next of kin or beneficiary under the will of the  
41 decedent if the department finds that the heir, next of kin or beneficiary  
42 has a material interest which will be affected by the confidential  
43 information.

44 5. A trust may be disclosed to the trustee or trustees, jointly or  
45 separately, and to the grantor or any beneficiary of the trust if the

1 department finds that the grantor or beneficiary has a material interest  
2 which will be affected by the confidential information.

3 6. Any taxpayer may be disclosed if the taxpayer has waived any rights  
4 to confidentiality either in writing or on the record in any administrative  
5 or judicial proceeding.

6 7. A claimant may be disclosed to the claimant, its successor in  
7 interest or a designee of the claimant pursuant to written authorization by  
8 the claimant.

9 B. Confidential information may be disclosed to:

10 1. Any employee of the department whose official duties involve tax  
11 or unclaimed property administration.

12 2. The office of the attorney general solely for its use in  
13 preparation for, or in an investigation which may result in, any proceeding  
14 involving tax or unclaimed property administration before the department or  
15 any other agency or board of this state, or before any grand jury or any  
16 state or federal court.

17 3. The department of liquor licenses and control for its use in  
18 determining whether a spirituous liquor licensee has paid all transaction  
19 privilege taxes and affiliated excise taxes incurred as a result of the sale  
20 of spirituous liquor at the licensed establishment and imposed on the  
21 licensed establishments by this state and its political subdivisions.

22 4. Other state tax or unclaimed property officials of this state whose  
23 official duties require the disclosure for proper tax or unclaimed property  
24 administration purposes if the information is sought in connection with an  
25 investigation or any other proceeding conducted by the official. Any  
26 disclosure is limited to information of a taxpayer or claimant who is being  
27 investigated or who is a party to a proceeding conducted by the official.

28 5. The following agencies, officials and organizations, if they grant  
29 substantially similar privileges to the department for the type of  
30 information being sought, pursuant to statute and a written agreement between  
31 the department and the foreign country, agency, state, Indian tribe or  
32 organization:

33 (a) The United States internal revenue service, United States bureau  
34 of alcohol, tobacco and firearms, United States drug enforcement agency and  
35 federal bureau of investigation.

36 (b) A state tax or unclaimed property official of another state.

37 (c) An organization of states that operates an information exchange  
38 for tax administration purposes.

39 (d) An agency, official or organization of a foreign country with  
40 responsibilities that are comparable to those listed in subdivision (a), (b)  
41 or (c) of this paragraph.

42 (e) An agency, official or organization of an Indian tribal government  
43 with responsibilities comparable to the responsibilities of the agencies,  
44 officials or organizations identified in subdivision (a), (b) or (c) of this  
45 paragraph.

1           6. The auditor general, in connection with any audit of the department  
2 subject to the restrictions in section 42-2002, subsection C.

3           7. Any person to the extent necessary for effective tax or unclaimed  
4 property administration in connection with:

5           (a) The processing, storage, transmission, destruction and  
6 reproduction of the information.

7           (b) The programming, maintenance, repair, testing and procurement of  
8 equipment for purposes of tax administration.

9           8. The office of administrative hearings relating to taxes  
10 administered by the department pursuant to section 42-1101, but the  
11 department shall not disclose any confidential information:

12           (a) Regarding income tax, withholding tax or estate tax.

13           (b) On any tax issue relating to information associated with the  
14 reporting of income tax, withholding tax or estate tax.

15           9. The United States treasury inspector general for tax administration  
16 for the purpose of reporting a violation of internal revenue code section  
17 7213A (26 United States Code section 7213A), unauthorized inspection of  
18 returns or return information.

19           10. The financial management service of the United States treasury  
20 department for use in the treasury offset program.

21           C. Confidential information may be disclosed in any state or federal  
22 judicial or administrative proceeding pertaining to tax or unclaimed property  
23 administration if the taxpayer or claimant is a party to the proceeding.

24           D. Identity information may be disclosed for purposes of notifying:

25           1. Persons entitled to tax refunds if the department is unable to  
26 locate the persons after reasonable effort.

27           2. Owners of unclaimed property pursuant to section 44-309.

28           E. The department, upon the request of any person, shall provide the  
29 names and addresses of bingo licensees as defined in section 5-401 or verify  
30 whether or not a person has a privilege license and number or withholding  
31 license and number.

32           F. A department employee, in connection with the official duties  
33 relating to any audit, collection activity or civil or criminal  
34 investigation, may disclose return information to the extent that disclosure  
35 is necessary to obtain information which is not otherwise reasonably  
36 available. These official duties include the correct determination of and  
37 liability for tax, the amount to be collected or the enforcement of other  
38 state tax revenue laws.

39           G. If an organization is exempt from this state's income tax as  
40 provided in section 43-1201 for any taxable year, the name and address of the  
41 organization and the application filed by the organization upon which the  
42 department made its determination for exemption together with any papers  
43 submitted in support of the application and any letter or document issued by  
44 the department concerning the application are open to public inspection.

1 H. Confidential information relating to transaction privilege tax, use  
2 tax and rental occupancy tax may be disclosed to any county, city or town tax  
3 official if the information relates to a taxpayer who is or may be taxable  
4 by the county, city or town. Any taxpayer information released by the  
5 department to the county, city or town:

6 1. May only be used for internal purposes.

7 2. May not be disclosed to the public in any manner that does not  
8 comply with confidentiality standards established by the department. The  
9 county, city or town shall agree in writing with the department that any  
10 release of confidential information that violates the confidentiality  
11 standards adopted by the department will result in the immediate suspension  
12 of any rights of the county, city or town to receive taxpayer information  
13 under this subsection.

14 I. The department may disclose statistical information gathered from  
15 confidential information if it does not disclose confidential information  
16 attributable to any one taxpayer or claimant of unclaimed property. In order  
17 to comply with the requirements of section 42-5029, subsection A,  
18 paragraph 3, the department may disclose to the state treasurer statistical  
19 information gathered from confidential information, even if it discloses  
20 confidential information attributable to a taxpayer.

21 J. The department may disclose the aggregate amounts of any tax  
22 credit, tax deduction or tax exemption enacted after January 1, 1994.  
23 Information subject to disclosure under this subsection shall not be  
24 disclosed if a taxpayer demonstrates to the department that such information  
25 would give an unfair advantage to competitors.

26 K. Except as provided in section 42-2002, subsection B, confidential  
27 information, described in section 42-2001, paragraph 3, subdivision (a), item  
28 (iii), may be disclosed to law enforcement agencies for law enforcement  
29 purposes.

30 ~~L. The department may disclose and publish the names of corporations,~~  
31 ~~the dividends of which qualify for the subtraction provided by section~~  
32 ~~43-1128.~~

33 M. L. The department may provide transaction privilege tax license  
34 information to property tax officials in a county for the purpose of  
35 identification and verification of the tax status of commercial property.

36 N. M. The department may provide transaction privilege tax, luxury  
37 tax, use tax, property tax and severance tax information to the  
38 ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

39 O. N. Except as provided in section 42-2002, subsection C, a court  
40 may order the department to disclose confidential information pertaining to  
41 a party to an action. An order shall be made only upon a showing of good  
42 cause and that the party seeking the information has made demand upon the  
43 taxpayer or claimant for the information.

44 P. O. This section does not prohibit the disclosure by the department  
45 of any information or documents submitted to the department by a bingo

1 licensee. Before disclosing the information the department shall obtain the  
2 name and address of the person requesting the information.

3 ~~Q.~~ P. If the department is required or permitted to disclose  
4 confidential information, it may charge the person or agency requesting the  
5 information for the reasonable cost of its services.

6 ~~R.~~ Q. Except as provided in section 42-2002, subsection C, the  
7 department of revenue shall release confidential information as requested by  
8 the department of economic security pursuant to section 42-1122 or 46-291.  
9 Information disclosed under this subsection is limited to the same type of  
10 information that the United States internal revenue service is authorized to  
11 disclose under section 6103(1)(6) of the internal revenue code.

12 ~~S.~~ R. To comply with the requirements of section 42-5031, the  
13 department may disclose to the state treasurer, to the county stadium  
14 district board of directors and to any city or town tax official that is part  
15 of the county stadium district confidential information attributable to a  
16 taxpayer's business activity conducted in the county stadium district.

17 ~~T.~~ S. The department shall release confidential information as  
18 requested by the attorney general for purposes of determining compliance with  
19 AND ENFORCING section 44-7101, THE MASTER SETTLEMENT AGREEMENT REFERRED TO  
20 THEREIN AND SUBSEQUENT AGREEMENTS TO WHICH THE STATE IS A PARTY THAT AMEND  
21 OR IMPLEMENT THE MASTER SETTLEMENT AGREEMENT. Information disclosed under  
22 this subsection is limited to luxury tax information relating to tobacco  
23 manufacturers, distributors, wholesalers and retailers and information  
24 collected by the department pursuant to section 44-7101(2)(j).

25 Sec. 3. Section 43-1122, Arizona Revised Statutes, is amended to read:

26 43-1122. Subtractions from Arizona gross income; corporations

27 In computing Arizona taxable income for a corporation, the following  
28 amounts shall be subtracted from Arizona gross income:

29 1. The amounts computed pursuant to section 43-1022, paragraphs 8  
30 through 15. For purposes of this paragraph "federal adjusted gross income"  
31 as used in section 43-1022 means "federal taxable income".

32 ~~2. The amount of dividend income received from Arizona corporations  
33 as prescribed by section 43-1128.~~

34 ~~3. 2. The amount of Arizona capital loss carryover as defined in  
35 section 43-1124 in an amount not to exceed one thousand dollars.~~

36 ~~4. 3. With respect to a financial institution as defined in section  
37 6-101, expenses and interest relating to tax-exempt income disallowed  
38 pursuant to section 265 of the internal revenue code.~~

39 ~~5. 4. Dividends received from another corporation owned or controlled  
40 directly or indirectly by a recipient corporation. "Control" for purposes  
41 of this paragraph means direct or indirect ownership or control of fifty per  
42 cent or more of the voting stock of the payor corporation by the recipient  
43 corporation. Dividends shall have the meaning provided in section 316 of the  
44 internal revenue code. This subtraction shall apply without regard to the  
45 provisions of section 43-961, paragraph 2 and article 4 of this chapter. A~~

1 corporation that has its commercial domicile, as defined in section 43-1131,  
2 in this state may subtract the full amount of the dividends. A corporation  
3 that does not have its commercial domicile in this state may subtract:

4 (a) For its taxable year beginning in 1990, an amount equal to  
5 one-half of the dividends.

6 (b) For taxable years beginning in 1991 and thereafter, the full  
7 amount of the dividends.

8 ~~6.~~ 5. Interest income received on obligations of the United States.

9 ~~7.~~ 6. The amount of dividend income from foreign corporations.

10 ~~8.~~ 7. The amount of net operating loss allowed by section 43-1123.

11 ~~9.~~ 8. The amount of any state income tax refunds received which were  
12 included as income in computing federal taxable income.

13 ~~10.~~ 9. The amount of expense recapture included in income pursuant to  
14 section 617 of the internal revenue code for mine exploration expenses.

15 ~~11.~~ 10. The amount of deferred exploration expenses allowed by section  
16 43-1127.

17 ~~12.~~ 11. The amount of exploration expenses related to the exploration  
18 of oil, gas or geothermal resources, computed in the same manner and on the  
19 same basis as a deduction for mine exploration pursuant to section 617 of the  
20 internal revenue code. This computation is subject to the adjustments  
21 contained in section 43-1121, paragraph 8 and paragraphs ~~10~~ 9 and ~~11~~ 10 of  
22 this section relating to exploration expenses.

23 ~~13.~~ 12. The amortization of pollution control devices allowed by  
24 section 43-1129.

25 ~~14.~~ 13. The amount of amortization of the cost of child care  
26 facilities pursuant to section 43-1130.

27 ~~15.~~ 14. The amount of income from a domestic international sales  
28 corporation required to be included in the income of its shareholders  
29 pursuant to section 995 of the internal revenue code.

30 ~~16.~~ 15. The income of an insurance company that is exempt under  
31 section 43-1201 to the extent that it is included in computing Arizona gross  
32 income on a consolidated return pursuant to section 43-947.

33 ~~17.~~ 16. The amount of contributions by the taxpayer during the taxable  
34 year to medical savings accounts established on behalf of the taxpayer's  
35 employees as provided by section 43-1028, to the extent that the  
36 contributions are not deductible under the internal revenue code.

37 ~~18.~~ 17. The amount by which a capital loss carryover allowable  
38 pursuant to section 43-1130.01, subsection F exceeds the capital loss  
39 carryover allowable pursuant to section 1341(b)(5) of the internal revenue  
40 code.

41 Sec. 4. Section 43-1123, Arizona Revised Statutes, is amended to read:  
42 43-1123. Net operating loss; definition

43 A. As used in this section, "net operating loss" means:

44 1. In the case of a taxpayer who has a net operating loss for the  
45 taxable year within the meaning of section 172(c) of the internal revenue

1 code, the amount of the net operating loss increased by the subtractions  
2 specified in section 43-1122, except the deduction allowed in section  
3 43-1122, paragraph 8- 7, and reduced by the additions specified in section  
4 43-1121.

5 2. In the case of a taxpayer not described in paragraph 1 of this  
6 subsection, any excess of the subtractions specified in section 43-1122,  
7 except the deduction allowed in section 43-1122, paragraph 8- 7, over the sum  
8 of the Arizona gross income plus the additions specified in section 43-1121.

9 B. If for any taxable year the taxpayer has a net operating loss, such  
10 net operating loss shall be a net operating loss carryover for each of the  
11 five succeeding taxable years, except that the carryover in the case of each  
12 such succeeding taxable year, other than the first succeeding taxable year,  
13 shall be the excess, if any, of the amount of such net operating loss over  
14 the sum of the taxable income for each of the intervening years computed by  
15 determining the net operating loss deduction for each intervening taxable  
16 year, without regard to such net operating loss or to the net operating loss  
17 for any succeeding taxable year.

18 C. The amount of the net operating loss deduction shall be the  
19 aggregate of the net operating loss carryovers to the taxable year.

20 Sec. 5. Section 43-1124, Arizona Revised Statutes, is amended to read:  
21 43-1124. Arizona capital loss carryover; corporations

22 A. For purposes of this chapter, Arizona capital loss carryover shall  
23 be Arizona capital loss carryover existing at the beginning of the taxable  
24 year from tax years beginning prior to January 1, 1988.

25 B. For purposes of this section, federal capital loss shall not  
26 include any capital loss carryover or carryback pursuant to section 1212 of  
27 the internal revenue code.

28 C. The subtraction taken pursuant to section 43-1122, paragraph 3- 2  
29 shall be subtracted from the Arizona capital loss carryover computed in  
30 subsection A of this section in arriving at the Arizona capital loss  
31 carryover at the beginning of the next taxable year.

32 Sec. 6. Repeal

33 Section 43-1128, Arizona Revised Statutes, is repealed.

34 Sec. 7. Department of revenue; disclosure

35 The department of revenue may disclose the names of corporations, the  
36 dividends of which qualified for the subtraction repealed by this act.

37 Sec. 8. Delayed repeal

38 Section 7 of this act relating to disclosure of information by the  
39 department of revenue is repealed from and after June 30, 2004.

40 Sec. 9. Retroactivity

41 This act applies retroactively to taxable years beginning from and  
42 after December 31, 2001.

1            Sec. 10. Requirements for enactment; two-thirds vote  
2            Pursuant to article IX, section 22, Constitution of Arizona, this act  
3 is effective only on the affirmative vote of at least two-thirds of the  
4 members of each house of the legislature and is effective immediately on the  
5 signature of the governor or, if the governor vetoes this act, on the  
6 subsequent affirmative vote of at least three-fourths of the members of each  
7 house of the legislature.

APPROVED BY THE GOVERNOR APRIL 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 2002.



Passed the House February 12, 2002,

Passed the Senate April 3, 2002,

by the following vote: 53 Ayes,

by the following vote: 30 Ayes,

6 Nays, 1 Not Voting  
Article IX, Section 22

0 Nays, 0 Not Voting  
with Art. IX, Sec. 22

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

           day of           , 20    

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

          , 20    ,

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this            day of           , 20    ,

at            o'clock            M.

            
Secretary of State

H.B. 2088

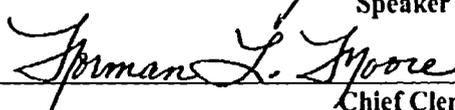
HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 15, 2002,

by the following vote: 54 Ayes,

2 Nays, 4 Not Voting  
*Article IX, Section 22*

  
Speaker of the House

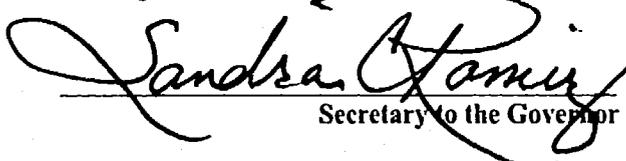
  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of April, 2002,

at 3:13 o'clock P M.

  
Secretary to the Governor

Approved this 20 day of

April, 2002,

at 3:28 o'clock P M.

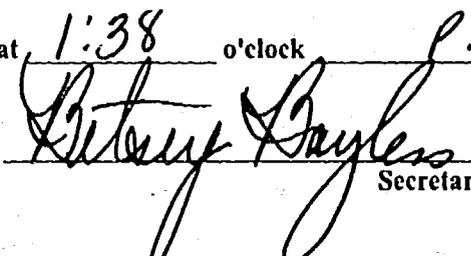
  
Governor of Arizona

H.B. 2088

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 22 day of April, 2002,

at 1:38 o'clock P M.

  
Secretary of State