

Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 83

SENATE BILL 1274

AN ACT

AMENDING SECTION 42-2056, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-2075 AND 42-2076; AMENDING LAWS 2003, CHAPTER 263, SECTION 85; RELATING TO TAXPAYER PROTECTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 42-2056, Arizona Revised Statutes, is amended to
3 read:

4 42-2056. Closing agreements in cases of extensive taxpayer
5 misunderstanding or misapplication; attorney general
6 approval; rules; definition

7 A. If the department determines that noncompliance with tax
8 obligations results from extensive misunderstanding or misapplication of
9 provisions of this title or title 43 it may enter into closing agreements
10 with those taxpayers under the following terms and conditions:

11 1. Extensive misunderstanding or misapplication of the tax laws occurs
12 if the department determines that more than sixty per cent of the persons in
13 the affected class have failed to properly account for their taxes owing to
14 the same misunderstanding or misapplication of the tax laws.

15 2. The department shall publicly declare the nature of the possible
16 misunderstanding or misapplication and the proposed definition of the class
17 of affected taxpayers and shall conduct a public hearing to hear testimony
18 regarding the extent of the misunderstanding or misapplication and the
19 definition of the affected class.

20 3. If, after the public hearing, the department determines that a
21 class of affected taxpayers has failed to comply with their tax obligations
22 because of extensive misunderstanding or misapplication of the tax laws it
23 shall issue a tax ruling announcing that finding and publish the ruling in
24 a newspaper of general circulation.

25 4. A closing agreement under this section may abate some or all of the
26 penalties, interest and tax that the taxpayers have failed to remit, or the
27 agreement may provide for the prospective treatment of the matter as to the
28 class of affected taxpayers. Notwithstanding section 42-1113, all taxpayers
29 in the class shall be offered the opportunity to enter into a similar
30 agreement for the same tax periods.

31 5. Taxpayers in the affected class who have properly accounted for
32 their tax obligations for these tax periods shall be offered the opportunity
33 to enter into a similar closing agreement providing for a pro rata credit or
34 refund of their taxes previously paid, subject to section 42-1104, subsection
35 A and section 42-1106, subsection A.

36 6. The closing agreement shall require the taxpayers to properly
37 account for and pay such taxes in the future. If a taxpayer fails to adhere
38 ~~to such a~~ COMPLY WITH THAT requirement, the agreement is voidable by the
39 department and the department may assess the taxpayer for the delinquent
40 taxes. The department may issue such a proposed assessment within six months
41 after the date that it declares the agreement void or within the period
42 prescribed by section 42-1104, whichever is later.

43 B. Before entering into closing agreements pursuant to this section,
44 the department shall secure the approval of the attorney general of the tax

1 ruling and the agreements. The department may not enter into the agreements
2 without the approval of the attorney general.

3 C. After a closing agreement has been signed pursuant to this section,
4 and subject to the taxpayer's compliance with the requirements of subsection
5 A, paragraph 6 of this section, it is final and conclusive except on a
6 showing of fraud, malfeasance or misrepresentation of a material fact. The
7 case shall not be reopened as to the matters agreed on, and the agreement
8 shall not be modified by any officer, employee or agent of the state. The
9 agreement or any determination, assessment, collection, payment abatement,
10 refund or credit made pursuant to the agreement shall not be annulled,
11 modified, set aside or disregarded in any suit, action or proceeding.

12 D. The department shall report in writing its activities under this
13 section to the governor, the president of the senate and the speaker of the
14 house of representatives on or before February 1 of each year.

15 E. The department may adopt rules to implement this section.

16 F. FOR THE PURPOSES OF THIS SECTION, "AFFECTED CLASS" MEANS TAXPAYERS
17 WHO ARE DIRECTLY AFFECTED BY THE DEPARTMENT'S POSITION IN A TAX MATTER.

18 Sec. 2. Title 42, chapter 2, article 2, Arizona Revised Statutes, is
19 amended by adding sections 42-2075 and 42-2076, to read:

20 42-2075. Audit duration; definition

21 A. AN AUDIT OF A TAXPAYER'S RETURN OR CLAIM FOR REFUND SHALL NOT
22 EXCEED TWO YEARS FROM THE DATE OF INITIAL AUDIT CONTACT TO THE ISSUANCE OF
23 A NOTICE OF PROPOSED DEFICIENCY ASSESSMENT OR PROPOSED OVERPAYMENT, EXCEPT:

24 1. AN AUDIT OF A FRAUDULENT TAX RETURN.

25 2. AN AUDIT DELAYED AS THE RESULT OF THE TAXPAYER'S BANKRUPTCY
26 PROCEEDING.

27 3. AN AUDIT IN WHICH THE DEPARTMENT HAS ISSUED A LETTER TO THE
28 TAXPAYER OR THE TAXPAYER'S REPRESENTATIVE CITING THE POTENTIAL IMPOSITION OF
29 THE PENALTY DESCRIBED IN SECTION 42-1125, SUBSECTION C FOR THE TAXPAYER'S
30 FAILURE OR REFUSAL TO PROVIDE INFORMATION PURSUANT TO THE DEPARTMENT'S
31 WRITTEN REQUEST.

32 4. AN AUDIT INVOLVING PROCEEDINGS CONCERNING THE ENFORCEMENT OR
33 VALIDITY OF A SUBPOENA OR SUBPOENA DUCES TECUM ISSUED PURSUANT TO SECTION
34 42-1006, SUBSECTION C.

35 5. AN AUDIT INVOLVING A PROCEEDING UNDER SECTION 42-2056.

36 6. AN AUDIT WHERE A TAXPAYER HAS FILED A PETITION PURSUANT TO SECTION
37 43-1148, BUT ONLY IN RELATION TO THE EFFECT OF THE PETITION REQUEST.

38 7. AN AUDIT IN WHICH THE TAXPAYER PROVIDES A WRITTEN REQUEST TO EXTEND
39 THE AUDIT BEYOND THE TWO-YEAR PERIOD. A REQUEST FOR EXTENSION UNDER THIS
40 PARAGRAPH IS NOT A SUBSTITUTE FOR A WAIVER OF THE STATUTE OF LIMITATIONS
41 PURSUANT TO SECTION 42-1104, SUBSECTION B, PARAGRAPH 9. HOWEVER, A WAIVER
42 OF THE STATUTE OF LIMITATIONS IS CONSIDERED TO BE A WRITTEN REQUEST TO EXTEND
43 THE AUDIT BEYOND THE TWO-YEAR PERIOD UNDER THIS PARAGRAPH.

1 B. THIS SECTION APPLIES TO AUDITS CONDUCTED BY THE DEPARTMENT AND TO
2 JOINT AUDITS CONDUCTED BY THE DEPARTMENT AND CITIES AND TOWNS PURSUANT TO
3 SECTION 42-6005.

4 C. FOR THE PURPOSES OF THIS SECTION, "INITIAL AUDIT CONTACT" MEANS:

5 1. FOR A FIELD AUDIT, THE DATE OF THE FIRST MEETING BETWEEN THE
6 TAXPAYER OR THE TAXPAYER'S REPRESENTATIVE AND A MEMBER OF THE DEPARTMENT'S
7 AUDIT STAFF.

8 2. FOR A DESK OR OFFICE AUDIT, THE DATE OF THE FIRST LETTER TO THE
9 TAXPAYER REGARDING THE AUDIT.

10 42-2076. Audit results; documentation

11 AT THE TIME WHEN THE DEPARTMENT ISSUES A DEFICIENCY ASSESSMENT OR
12 DENIES ALL OR PART OF A CLAIM FOR REFUND, THE DEPARTMENT SHALL ALSO PROVIDE
13 THE TAXPAYER AND, IF APPLICABLE, THE TAXPAYER'S AUTHORIZED REPRESENTATIVE
14 WITH A WRITTEN EXPLANATION OF ALL ADJUSTMENTS MADE, INCLUDING THE SPECIFIC
15 STATUTORY, REGULATORY AND JUDICIAL BASES FOR THE ADJUSTMENTS.

16 Sec. 3. Laws 2003, chapter 263, section 85 is amended to read:

17 Sec. 85. State and county tax amnesty; definitions

18 A. Notwithstanding title 42, chapter 1, article 3, Arizona Revised
19 Statutes, the director of the department of revenue shall establish a tax
20 amnesty program as provided by this section.

21 B. If a taxpayer complies with the requirements of this section by
22 applying to the department for amnesty during the amnesty period and
23 complying with the applicable tax requirements in the time and manner
24 prescribed by this section, the director shall abate or waive all or part of
25 the civil penalties and impose interest at a reduced rate for tax liabilities
26 that have been or could be assessed or imposed for any taxable period during
27 the applicable liability period without the need for the taxpayer to show
28 reasonable cause or the absence of wilful neglect. For the purposes of this
29 subsection, "liability period" means:

30 1. For taxpayers filing annually, any taxable period beginning from
31 and after December 31, 1982 and ending before January 1, 2002.

32 2. For taxpayers having a 52-53 week tax year, any taxable period
33 beginning from and after December 25, 1983 and ending before January 15,
34 2002.

35 3. For all other taxpayers, any taxable period beginning from and
36 after December 31, 1982 and ending before January 1, 2003.

37 C. The director may grant amnesty only for the taxable periods and tax
38 liabilities identified in the application and only if the taxpayer satisfies
39 all of the amnesty conditions and requirements prescribed by this section.

40 D. To qualify for amnesty, the taxpayer must:

41 1. Submit a complete and correct application as provided by subsection
42 F of this section during the amnesty period.

43 2. Pay the tax, plus any interest due pursuant to the provisions of
44 this section, either with the application or in installments as follows:

1 (a) At least one-third of the total amount due must be paid on or
2 before October 31, 2003.

3 (b) The balance due must be paid in full on or before May 1, 2004.

4 E. A taxpayer does not qualify for amnesty under this section if:

5 1. An audit determination has become final with respect to the taxable
6 period for which amnesty is sought.

7 2. The taxpayer is a party to any criminal investigation or to any
8 criminal administrative proceeding or criminal litigation that is pending on
9 September 1, 2003 in any court of the United States or of this state for
10 failure to file or failure to pay, or for fraud with respect to, any tax
11 imposed by any law of this state and required to be collected by the
12 department.

13 3. The taxpayer has been the subject of a past tax-related criminal
14 investigation, indictment or prosecution if the investigation, indictment or
15 prosecution resulted in a conviction, a guilty plea or a plea of no contest.

16 4. The taxpayer has been convicted of a crime relating to any period
17 or assessment of a tax that is the basis of the penalty or interest with
18 respect to which amnesty is sought.

19 5. The taxpayer is a party to a closing agreement with the department
20 for the tax periods included in the amnesty application.

21 F. An application for amnesty:

22 1. Must be on an application form furnished by the department that
23 requires the applicant to identify the tax, the qualifying taxable period and
24 the tax liability for which amnesty is sought and to furnish other
25 information prescribed by the director. The taxpayer shall include any
26 returns and reports, including amended returns and reports, for the tax and
27 taxable periods. Any return or report filed under this section is subject
28 to verification as provided by law. A taxpayer who has insufficient
29 information to file a full income tax return may file a gross income return
30 and compute the tax pursuant to established rate brackets based on average
31 tax rates for the applicable taxable years.

32 2. Must be filed with the department as prescribed by the director
33 during the amnesty period.

34 G. An application for amnesty constitutes an express and absolute
35 waiver of all administrative and judicial rights of appeal AVAILABLE AT THAT
36 TIME that have not run or otherwise expired as of the date of application.
37 The state board of tax appeals and any court shall dismiss each such action
38 or proceeding before that body on receiving a notification from the director
39 that amnesty has been granted for the taxable period FOR THAT TAXPAYER. If
40 the audit determination is not final, the taxpayer must withdraw from the
41 proceeding or litigation before amnesty is granted. A TAXPAYER THAT FILES
42 AN APPLICATION FOR AMNESTY RETAINS ALL ADMINISTRATIVE AND JUDICIAL RIGHTS OF
43 APPEAL WITH RESPECT TO ANY ADDITIONAL TAX ASSESSED IN A SUBSEQUENT AUDIT BY
44 THE DEPARTMENT.

1 H. On reviewing the application and determining compliance with the
2 requirements of the amnesty program under this section:

3 1. The director shall notify the taxpayer regarding the application
4 for amnesty, waiving or abating the civil penalties and imposing a reduced
5 interest rate for tax liabilities that were or could have been assessed for
6 the taxable periods covered by the application.

7 2. No administrative, civil or criminal action may be brought for
8 failure to comply with the tax requirements for the taxable periods covered
9 by the application.

10 I. A grant of amnesty under this section does not entitle any affected
11 taxpayer or other person to a refund or credit of any amount previously paid.

12 J. The director shall deny or revoke the amnesty of a person who files
13 a false or fraudulent application, return or report for purposes of this
14 section, or otherwise attempts to defeat or evade a tax through the amnesty
15 program. If a person who applies for amnesty fails to pay all amounts due
16 as provided by this section, any amnesty granted pursuant to this section is
17 void.

18 K. The director may:

19 1. Do all things necessary to provide for the timely implementation
20 of this section.

21 2. Adopt emergency rules pursuant to section 41-1026, Arizona Revised
22 Statutes, as necessary to administer this section.

23 L. The tax revenues collected pursuant to amnesty payments shall be
24 distributed by the department as provided by law on or after March 1, 2004
25 but before June 1, 2004.

26 M. For the purposes of this section:

27 1. "Amnesty period" means September 1, 2003 through October 31, 2003.

28 2. "Tax" means any tax administered or collected by the department of
29 revenue on behalf of this state or a county except estate tax and ad valorem
30 property taxes.

31 3. "Tax liability" includes any payment of estimated tax, withholding
32 tax, interest and penalties required by law.

33 4. "Tax requirement" means:

34 (a) Timely filing a complete and correct tax return or report required
35 by law.

36 (b) Timely paying a tax liability.

37 N. Beginning November 15, 2003 through June 15, 2004, the department
38 shall submit a cumulative monthly report to the governor, the speaker of the
39 house of representatives and the president of the senate. The report shall
40 include:

41 1. The number of taxpayers that have applied for amnesty under this
42 section.

43 2. The number of taxpayers that have been granted amnesty.

44 3. The amount of revenue received from taxpayers for amnesty periods.

1 4. The amount of outstanding liability from taxpayers that have begun
2 paying.

3 Sec. 4. Retroactivity

4 A. Sections 42-2075 and 42-2076, Arizona Revised Statutes, as added
5 by this act, apply retroactively to audits beginning on or after January 1,
6 2004.

7 B. Laws 2003, chapter 263, section 85 as amended by section 3 of this
8 act is effective retroactively to September 18, 2003.

APPROVED BY THE GOVERNOR APRIL 13, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2004.



Passed the House April 6, 2004

Passed the Senate March 9, 2004

by the following vote: 48 Ayes,

by the following vote: 30 Ayes,

9 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Lee Felmeth
President of the Senate

Spoman L. Moore
Chief Clerk of the House

Charmaine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7th day of April, 2004

at 2:10 o'clock P. M.

Jennifer Lybarga
Secretary to the Governor

Approved this 13 day of

April, 2004,

at 1:45 o'clock P. M.

Jan Napolitano
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13th day of April, 2004,

at 3:00 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1274