SENATE BILL 1171

AN ACT

AMENDING SECTION 42-2059, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; RELATING TO MANAGED AUDIT AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
S.B. 1171

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

Section 1. Section 42-2059, Arizona Revised Statutes, is amended to read:

42-2059. No additional audits or proposed assessments;
exceptions

A. When the department completes an audit OR THE FINDINGS OF A MANAGED
AUDIT ARE ACCEPTED BY THE DIRECTOR OR APPROVED ON APPEAL and a deficiency has
been completely determined under section 42-1108 or chapter 1, article 6 of
this title, the taxpayer's liability for the particular tax for the period
subjected to the audit is fixed and determined, and no additional audit may
be conducted except under the following circumstances:

1. If a taxpayer files a claim for refund under section 42-1251,
subsection B or any other provision authorizing a claim for refund. Any
departmental audit of the claim is limited to the issues presented on the
claim for refund.

2. Changes or corrections required to be reported to the department by
section 43-327. The department may audit any such reports or any periods for
which a report was required notwithstanding this section and may determine a
tax deficiency or a refund.

3. An audit of state transaction privilege or use tax does not
preclude a subsequent audit for a city or town. An audit of transaction
privilege or use tax for a city or town does not preclude a subsequent audit
for this state.

4. If the taxpayer failed to disclose material information during the
audit, or has falsified books or records or otherwise engaged in an action
that prevented the department from conducting an accurate audit, the
applicability of this subsection may be part of a subsequent protest and may
be contested by the taxpayer pursuant to chapter 1, article 6 of this title.

5. IF A MANAGED AUDIT IS COMPLETED UNDER THE TERMS OF A LIMITED
MANAGED AUDIT AGREEMENT, THE DEPARTMENT MAY AUDIT THE ISSUES NOT COVERED BY
THE LIMITED MANAGED AUDIT AGREEMENT WITHIN THE STATUTE OF LIMITATIONS
PRESCRIBED BY SECTION 42-1104.

B. If the department issues a notice of proposed assessment of taxes
imposed by chapter 5, article 1 or 4 of this title or title 43, chapter 10,
the department may not increase the amount of the proposed assessment except
in one or more of the following circumstances:

1. The taxpayer has made a material misrepresentation of facts.

2. The taxpayer has failed to disclose a material fact to the auditor.

3. The department has requested information and the taxpayer fails to
provide that information to the department.

4. After issuing the notice of proposed assessment but before the
assessment becomes final the tax court, court of appeals or supreme court
issues a decision, the application of which causes the tax initially proposed
to increase.
C. Subsection B of this section does not apply to changes or corrections that are required to be reported to the department by section 43-327.

Sec. 2. Title 42, chapter 2, Arizona Revised Statutes, is amended by adding article 7, to read:

ARTICLE 7. MANAGED AUDIT AGREEMENTS

42-2301. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "LIMITED MANAGED AUDIT AGREEMENT" MEANS A MANAGED AUDIT AGREEMENT THAT IS LIMITED IN SCOPE TO CERTAIN PERIODS, ACTIVITIES, LINES OF BUSINESS, GEOGRAPHIC AREAS OR TRANSACTIONS, INCLUDING TAX ON THE RECEIPTS OF CERTAIN SALES, THE VALUE OF CERTAIN ASSETS, THE VALUE OF CERTAIN ITEMS OR SERVICES AND OTHER CATEGORIES SPECIFIED IN THE AGREEMENT.
2. "MANAGED AUDIT" MEANS A REVIEW AND ANALYSIS BY A TAXPAYER OR THE TAXPAYER’S AUTHORIZED REPRESENTATIVE OF THE INVOICES, CHECKS, ACCOUNTING RECORDS OR OTHER DOCUMENTS AND INFORMATION TO DETERMINE A TAXPAYER’S LIABILITY UNDER CHAPTERS 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11.
3. "MANAGED AUDIT AGREEMENT" MEANS A WRITTEN AGREEMENT BETWEEN THE DIRECTOR AND TAXPAYER THAT CONSISTS OF AN AUDIT PLAN THAT REQUIRES THE TAXPAYER TO REVIEW SELECTED REVENUE, EXPENSE AND FACT RECORDS TO DETERMINE THE PROPER FILING METHOD AND TO CALCULATE THE TAXPAYER’S LIABILITY UNDER CHAPTER 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11. MANAGED AUDIT AGREEMENT INCLUDES A LIMITED MANAGED AUDIT AGREEMENT.
4. "TAXPAYER’S AUTHORIZED REPRESENTATIVE" MEANS A REPRESENTATIVE WHO IS SELECTED BY THE TAXPAYER TO CONDUCT THE MANAGED AUDIT AND WHO IS APPROVED BY THE DIRECTOR.

42-2302. Managed audit agreements
A. ON APPLICATION BY A TAXPAYER, THE DIRECTOR, IN THE DIRECTOR’S SOLE DISCRETION, MAY AGREE TO A MANAGED AUDIT WITH THE TAXPAYER. THE MANAGED AUDIT AGREEMENT SHALL:
1. BE SIGNED BY THE TAXPAYER AND THE DIRECTOR.
2. CONTAIN A DECLARATION BY THE TAXPAYER THAT ALL STATEMENTS OF FACT IN THE TAXPAYER’S APPLICATION AND AGREEMENT ARE TRUE AND CORRECT FOR EVERY MATERIAL MATTER.

B. THE MANAGED AUDIT AGREEMENT MAY BE MODIFIED IN WRITING IF THE AGREEMENT IS SIGNED BY THE TAXPAYER AND DIRECTOR AND THE AGREEMENT COMPLIES WITH SUBSECTION A OF THIS SECTION.

C. THE DIRECTOR MAY CONSIDER ALL RELEVANT FACTORS WHEN DETERMINING WHETHER TO AGREE TO A MANAGED AUDIT AGREEMENT, INCLUDING:
1. THE TAXPAYER’S HISTORY OF TAX COMPLIANCE.
2. THE AMOUNT OF THE TAXPAYER’S TIME AND QUALITY OF RESOURCES THAT THE TAXPAYER CAN DEDICATE TO THE AUDIT.
3. THE EXTENT AND AVAILABILITY OF THE TAXPAYER’S RECORDS.

4. THE NATURE AND SCOPE OF ANY LEGAL DISPUTE WITH THE DEPARTMENT AND ITS RELEVANCE TO THE MANAGED AUDIT PROPOSAL.

D. A MANAGED AUDIT AGREEMENT FOR TAXES UNDER CHAPTER 5 OF THIS TITLE SHALL INCLUDE COUNTY EXCISE TAXES. A TAXPAYER MAY REQUEST THAT THE MANAGED AUDIT AGREEMENT INCLUDE CITY AND TOWN EXCISE TAXES AND THE DEPARTMENT SHALL NOTIFY THE CITIES OR TOWNS IN WHICH THE TAXPAYER CONDUCTS BUSINESS. IF A CITY OR TOWN DOES NOT AGREE TO PARTICIPATE IN THE MANAGED AUDIT AGREEMENT, THE CITY OR TOWN SHALL NOT CONDUCT AN AUDIT OF THE TAXPAYER FOR FORTY-TWO MONTHS FROM THE END OF THE LAST TAX PERIOD THAT IS COVERED BY THE MANAGED AUDIT AGREEMENT UNLESS AN EXCEPTION APPLIES PURSUANT TO SECTION 42-2059.

42-2303. Managed audit operations; appeal

A. THE TAXPAYER OR THE TAXPAYER’S REPRESENTATIVE SHALL FURNISH WRITTEN FINDINGS OF THE MANAGED AUDIT TO THE DIRECTOR.


E. THE TAXPAYER AND DIRECTOR MAY AGREE TO A CLOSING AGREEMENT UNDER SECTION 42-1113 TO RESOLVE ANY ISSUES OR AMOUNTS THAT ARE DISPUTED.

42-2304. Interest and penalties; refunds

A. NOTWITHSTANDING SECTION 42-1125, THE DIRECTOR SHALL NOT ASSESS ANY PENALTIES UNLESS THE MANAGED AUDIT DISCLOSES THAT THE TAXPAYER COMMITTED FRAUD OR WILFUL TAX EVASION OR THAT THE TAXPAYER COLLECTED MONIES THAT WERE REPRESENTED AS TAX BUT WERE NOT REMITTED TO THE STATE.


C. IF THE FINDINGS OF A MANAGED AUDIT DETERMINE THAT A REFUND IS DUE TO THE TAXPAYER, THE DEPARTMENT SHALL NOT PAY INTEREST TO THE TAXPAYER IF THE REFUND IS ISSUED WITHIN FORTY-FIVE DAYS OF THE TAXPAYER’S DATE OF RECEIPT OF
THE NOTICE OF DETERMINATION. IF THE REFUND IS PAID AFTER FORTY-FIVE DAYS OF
THE TAXPAYER’S DATE OF RECEIPT OF THE NOTICE OF DETERMINATION, THE DEPARTMENT
SHALL PAY INTEREST PURSUANT TO SECTION 42-1123.

D. FOR THE PURPOSES OF SUBSECTIONS B AND C OF THIS SECTION, ‘NOTICE OF
DETERMINATION’ MEANS EITHER:

1. THE DIRECTOR’S NOTICE OF DETERMINATION, IF NOT APPEALED.

2. THE FINAL DECISION AT THE HIGHEST LEVEL OF APPEAL TO WHICH THE
MATTER IS TAKEN, IF A NOTICE OF DETERMINATION OR REJECTION IS APPEALED.

Sec. 3. Applicability

Except for the taxes imposed under title 43, chapter 11, Arizona Revised Statutes, this act applies for managed audit applications submitted to the director from and after December 31, 2005. For the taxes imposed under title 43, chapter 11, Arizona Revised Statutes, this act applies for managed audit applications submitted to the director from and after December 31, 2006.