

Conference Engrossed

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2202

AN ACT

AMENDING SECTION 42-2056, ARIZONA REVISED STATUTES; RELATING TO TAX CLOSING AGREEMENTS.

(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 MAKE AN INITIAL DETERMINATION AS TO THE
16 EXISTENCE OF AN AFFECTED CLASS OF TAXPAYERS. AFTER A REVIEW OF THE
17 TAXPAYER'S REQUEST, THE DEPARTMENT MAY DETERMINE THAT THERE HAS NOT BEEN AN
18 EXTENSIVE MISUNDERSTANDING OR MISAPPLICATION OF THE TAX LAWS BY AN AFFECTED
19 CLASS OF TAXPAYERS. AT THAT TIME, THE DEPARTMENT WILL NOTIFY THE TAXPAYER
20 THAT THE REQUEST IS DENIED.
21 ~~2-~~ 3. The department shall publicly declare the nature of the
22 possible misunderstanding or misapplication and the proposed definition of
23 the class of affected taxpayers and shall conduct a public hearing to hear
24 testimony regarding the extent of the misunderstanding or misapplication and
25 the definition of the affected class. WITHIN SIXTY DAYS AFTER CLOSE OF THE
26 PUBLIC HEARING, THE DEPARTMENT SHALL NOTIFY THE ATTENDEES AT THE PUBLIC
27 HEARING AND PUBLISH A PUBLIC NOTICE ON ITS WEBSITE STATING WHETHER RELIEF
28 WILL BE GRANTED.
29 ~~3-~~ 4. If, after the public hearing, the department determines that a
30 class of affected taxpayers has failed to comply with their tax obligations
31 because of extensive misunderstanding or misapplication of the tax laws it
32 shall issue a tax ruling announcing that finding and publish the ruling in a
33 newspaper of general circulation.
34 ~~4-~~ 5. A closing agreement under this section may abate some or all of
35 the penalties, interest and tax that the taxpayers have failed to remit, or
36 the agreement may provide for the prospective treatment of the matter as to
37 the class of affected taxpayers. Notwithstanding section 42-1113, all
38 taxpayers in the class shall be offered the opportunity to enter into a
39 similar agreement for the same tax periods.
40 ~~5-~~ 6. Taxpayers in the affected class who have properly accounted for
41 their tax obligations for these tax periods shall be offered the opportunity
42 to enter into a similar closing agreement providing for a pro rata credit or
43 refund of their taxes previously paid, subject to section 42-1104, subsection
44 A and section 42-1106, subsection A.

1 ~~6.~~ 7. The closing agreement shall require the taxpayers to properly
2 account for and pay such taxes in the future. If a taxpayer fails to comply
3 with that requirement, the agreement is voidable by the department and the
4 department may assess the taxpayer for the delinquent taxes. The department
5 may issue such a proposed assessment within six months after the date that it
6 declares the agreement void or within the period prescribed by section
7 42-1104, whichever is later.

8 B. A PERSON WHO FILED A WRITTEN REQUEST FOR RELIEF UNDER THIS SECTION
9 BUT HAS BEEN DENIED RELIEF AS THE RESULT OF THE DEPARTMENT'S DETERMINATION
10 THAT THE ELEMENTS OF SUBSECTION A, PARAGRAPH 3 OF THIS SECTION HAVE NOT BEEN
11 ESTABLISHED MAY APPEAL THAT DETERMINATION PURSUANT TO THE SAME PROCEDURE AS
12 PROVIDED IN CHAPTER 1, ARTICLE 6 OF THIS TITLE. A PERSON WHO FILES AN APPEAL
13 UNDER THIS SUBSECTION, WHO ALSO HAS ANOTHER APPEAL PENDING PURSUANT TO
14 CHAPTER 1, ARTICLE 6 OF THIS TITLE ON A MATTER SOLELY RELATED TO THE MATTER
15 AT ISSUE IN THE DEPARTMENT'S DETERMINATION UNDER THIS SECTION, MAY PETITION
16 THE RELEVANT APPELLATE FORUM TO HOLD THAT APPEAL IN ABEYANCE PENDING THE
17 RESOLUTION OF THE PERSON'S APPEAL PURSUANT TO THIS SECTION, AND THE AGENCY,
18 TRIBUNAL OR COURT MUST GRANT THE PETITION.

19 ~~B.~~ C. Before entering into closing agreements pursuant to this
20 section, the department shall secure the approval of the attorney general of
21 the tax ruling and the agreements. The department may not enter into the
22 agreements without ~~the~~ SUCH approval ~~of~~ FROM the attorney general.

23 ~~C.~~ D. After a closing agreement has been signed pursuant to this
24 section, and subject to the taxpayer's compliance with the requirements of
25 subsection A, paragraph 6 of this section, it is final and conclusive except
26 on a showing of fraud, malfeasance or misrepresentation of a material fact.
27 The case shall not be reopened as to the matters agreed on, and the agreement
28 shall not be modified by any officer, employee or agent of the state. The
29 agreement or any determination, assessment, collection, payment abatement,
30 refund or credit made pursuant to the agreement shall not be annulled,
31 modified, set aside or disregarded in any suit, action or proceeding.

32 ~~D.~~ E. The department shall report in writing its activities under
33 this section to the governor, the president of the senate and the speaker of
34 the house of representatives on or before February 1 of each year.

35 ~~E.~~ F. The department may adopt rules to implement this section.

36 ~~F.~~ G. For the purposes of this section, "affected class" means
37 taxpayers who are SIMILARLY SITUATED AND directly affected by the
38 department's position in a tax matter. FOR TRANSACTION PRIVILEGE OR USE TAX
39 PURPOSES, AFFECTED CLASS MAY INCLUDE TAXPAYERS IN THE SAME INDUSTRY CODE
40 UNDER THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM CODE, IF APPLICABLE
41 TO THE TAX MATTER OR TAXPAYERS THAT DIRECTLY COMPETE WITH EACH OTHER. FOR
42 THE PURPOSES OF THIS SECTION, AFFECTED CLASS SHALL NOT BE BROADLY DESCRIBED
43 UNLESS SUCH DESCRIPTION INCREASES THE NUMBER OF TAXPAYERS WHO ARE ELIGIBLE
44 FOR RELIEF.