House Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
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CHAPTER 242

HOUSE BILL 2086

AN ACT

AMENDING SECTIONS 42-1118 AND 44-1263, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE WARRANTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-1118, Arizona Revised Statutes, is amended to read:

42-1118. Refunds, credits, offsets and abatements

A. If the department determines that any amount of tax, penalty or interest has been paid in excess of the amount actually due, the department shall credit the excess amount against any tax administered pursuant to this article, including any penalty or interest owed by the taxpayer. If it is determined that the amount cannot be credited against a tax or installment of taxes due from the taxpayer, the department may:

1. Refund the entire amount of tax, interest and penalty, in a lump sum or in not more than five annual installments, to the taxpayer from whom it was collected.

2. Issue to the taxpayer a credit voucher for the entire amount of tax, interest and penalty collected, to be carried forward and applied against future tax liabilities until exhausted.

3. Refund part, and issue a credit voucher for the balance, of the tax, interest and penalties as provided in paragraphs 1 and 2 of this subsection.

B. If the total amount withheld from income under section 43-401 exceeds the amount of the tax on the employee's entire taxable income as computed under title 43, the department shall refund the amount of the excess deducted without requiring a filing of a refund claim as provided in this section. The failure of the department to make the refund does not limit the right of the taxpayer to file a claim for a refund pursuant to this section if the claim is not barred under section 42-1106. The department shall not refund amounts less than one dollar unless specifically requested by the taxpayer at the time the return or claim for refund is filed.

C. Any overpayment that may result from withholdings or estimates pursuant to section 43-401, 43-581 or 43-582 shall not be credited or refunded unless an Arizona income tax return has been filed for the tax year for which the withholdings or estimates were made.

D. The department shall give a vendor who has a duty to collect use tax pursuant to chapter 5, article 4 of this title AND who has not collected that tax full credit or offset for any use tax, interest and penalty paid to the department by the purchaser when issuing a determination of a deficiency pursuant to section 42-1108. This credit or offset shall be computed from the date of the use tax payment by the purchaser. If the purchaser has been audited by the department for use tax for the period of the purchase, the purchaser is considered to have paid the use tax to the department. For other purchases, the vendor may submit an affirmation by a purchaser on a form prescribed by the department that use tax was paid on the purchase. A fully completed certificate, taken in good faith by the vendor, constitutes proof that the vendor is entitled to this credit or offset. The department may require a purchaser who has submitted the certificate to establish the

accuracy and completeness of the information contained in the certificate. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable for a penalty equal to the amount of tax and interest that would have been paid by the seller and for the additional penalties pursuant to section 42-1125. Payment of the penalty relieves the purchaser of any responsibility for paying the use tax. The department may require this proof and may assess the purchaser within the later of the period of limitations set forth in section 42-1104 or one year from the date the notice of proposed deficiency is issued to the vendor if the purchaser does not establish the accuracy of the information contained in the certificate.

E. Each claim for refund shall be filed with the department in writing and shall identify the claimant by name, address and tax identification number. Each claim shall provide the amount of refund requested, the specific tax period involved and the specific grounds on which the claim is founded. Refunds are subject to setoff for debts pursuant to section 42-1122.

F. A MOTOR VEHICLE MANUFACTURER THAT REPURCHASES A VEHICLE PURSUANT TO SECTION 44-1263 OR FOR REASONS OF CONSUMER SATISFACTION MAY APPLY FOR A REFUND OF THE TAXES PAID UNDER CHAPTER 5 OF THIS TITLE IF THAT MANUFACTURER HAS REFUNDED THE AMOUNT OF TAX TO THE CONSUMER. A REFUND IS ALLOWED UNDER THIS SUBSECTION ONLY IF THE MANUFACTURER PROVIDES SATISFACTORY PROOF TO THE DEPARTMENT THAT TAX AMOUNTS ATTRIBUTED TO THE SALE OF THE VEHICLE WERE COLLECTED FROM THE CONSUMER AND THAT THE MANUFACTURER REFUNDED AN AMOUNT OF TAX TO THE CONSUMER. ANY REFUND PROVIDED UNDER THIS SUBSECTION IS IN LIEU OF ANY REFUND ON THE VEHICLE THAT THE DEALER MAY OTHERWISE BE ENTITLED TO RECEIVE. A MANUFACTURER MUST APPLY FOR A REFUND UNDER THIS SUBSECTION WITHIN FOUR YEARS AFTER REPURCHASING THE VEHICLE. FOR THE PURPOSES OF THIS SUBSECTION:

1. "CONSUMER" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-1261.

2. "MOTOR VEHICLE MANUFACTURER" MEANS A CORPORATION ENGAGED IN THE BUSINESS OF PRODUCING PASSENGER CARS, TRUCKS AND MULTIPURPOSE VEHICLES AS DESCRIBED IN 49 CODE OF FEDERAL REGULATIONS SECTION 571.3.

3. "SATISFACTORY PROOF" INCLUDES COPIES OF CHECKS AND A PURCHASE OR LEASE AGREEMENT THAT LISTS THE VEHICLE IDENTIFICATION NUMBER AND THAT ITEMIZES THE AMOUNT THAT WAS COLLECTED AS TAX FROM THE CONSUMER.

~~F.~~ G. If any amount has been erroneously determined to be due from any person but not yet collected, the department shall cancel the amount or amounts on its records.

~~G.~~ H. If, with or after the filing of a protest or an appeal with the department, the state board of tax appeals or the court, a taxpayer pays the tax protested or appealed before the department, board or court acts upon the protest or the appeal, such body shall treat the protest or the appeal as a claim for refund or an appeal from the denial of a claim for refund filed under this section.

Sec. 2. Section 44-1263, Arizona Revised Statutes, is amended to read:

44-1263. Inability to conform motor vehicle to express warranty; replacement of vehicle or refund of monies; affirmative defenses; tax refund

A. If the manufacturer, its agents or its authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The manufacturer shall make refunds to the consumer and lienholder, if any, as their interests appear. A reasonable allowance for use is that amount directly attributable to use by the consumer before his first written report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

B. It is an affirmative defense to any claim under this article that either:

1. An alleged nonconformity does not substantially impair the use and market value of the motor vehicle.

2. A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle.

C. IN THE CASE OF TAXES PAID PURSUANT TO TITLE 42, CHAPTER 5, IF THE MANUFACTURER:

1. ACCEPTS RETURN OF A MOTOR VEHICLE FROM A CONSUMER WITHOUT REPLACING THE MOTOR VEHICLE, THE MANUFACTURER SHALL REFUND THE AMOUNT OF TAX ATTRIBUTED TO THE SALE OF THE VEHICLE TO THAT CONSUMER.

2. REPLACES A MOTOR VEHICLE WITH A NEW MOTOR VEHICLE OF LESSER VALUE, THE MANUFACTURER SHALL REFUND THE DIFFERENCE BETWEEN THE ORIGINAL AMOUNT OF TAX ATTRIBUTED TO THE SALE OF THAT VEHICLE AND THE AMOUNT OF TAX ATTRIBUTED TO THE SALE OF THE REPLACEMENT VEHICLE, EXCLUDING THE VALUE OF THE MOTOR VEHICLE BEING REPLACED.

3. REPLACES A MOTOR VEHICLE WITH A NEW MOTOR VEHICLE OF GREATER VALUE, THE MANUFACTURER SHALL CALCULATE THE GROSS PROCEEDS OF SALES PURSUANT TO SECTION 42-5001, PARAGRAPH 6.

D. PURSUANT TO SECTION 42-1118, SUBSECTION F, THE MANUFACTURER MAY APPLY TO THE DEPARTMENT OF REVENUE FOR A REFUND FOR THE AMOUNT OF TAX THAT THE MANUFACTURER PROPERLY REFUNDS TO THE CONSUMER.

APPROVED BY THE GOVERNOR MAY 18, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2004.