Senate Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42-2075. Audit duration; definition

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

1. AN AUDIT OF A FRAUDULENT TAX RETURN.

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

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

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

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

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

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

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

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

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

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

42-2076. Audit results; documentation

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

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

Sec. 85. State and county tax amnesty; definitions

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

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

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

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

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

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

D. To qualify for amnesty, the taxpayer must:

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

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

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

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

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

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

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

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

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

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

F. An application for amnesty:

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

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

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

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

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

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

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

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

K. The director may:

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

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

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

M. For the purposes of this section:

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

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

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

4. "Tax requirement" means:

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

(b) Timely paying a tax liability.

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

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

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

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

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

Sec. 4. Retroactivity

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

B. Laws 2003, chapter 263, section 85 as amended by section 3 of this 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.