Senate Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

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

CHAPTER 84

# SENATE BILL 1361

AN ACT

AMENDING SECTION 42-1254, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 1, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1255; RELATING TO TAX DISPUTE RESOLUTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-1254, Arizona Revised Statutes, is amended to read:

42-1254. Appeal to tax court

A. The department or a taxpayer aggrieved by a decision of the state board of tax appeals may bring an action in tax court.

B. If the department is aggrieved by a decision of the board and the amount in dispute is less than five thousand dollars, the department may not bring an action in tax court unless the department determines that the decision of the board involves an issue of substantial significance to the state. A taxpayer aggrieved by a determination of the department that an issue is of substantial significance to the state may file a motion with the tax court to dismiss the action brought by the department on the grounds that the determination constitutes an abuse of discretion.

C. Except in the case of individual income tax cases in which the amount in dispute is less than five thousand dollars, a person who is aggrieved by a final decision or order of the department under section 42-1251 or article 3 of this chapter may, in lieu of appealing to the state board of tax appeals under section 42-1253, bring an action in tax court by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final.

D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:

1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

2. The action shall not begin more than thirty days after the order or decision of the board or department becomes final. Failure to bring the action within thirty days after the order or decision of the board or department becomes final constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality in the tax, penalties and interest at issue, except that within the time limits set forth in section 42-1106, a taxpayer who fails to bring an action within thirty days may pay the tax under protest stating the grounds of objection to the legality of the tax and then file a claim for refund of the taxes paid. The refund claim shall then be governed by section 42-1119 and this section.

3. The tax court shall hear and determine the appeal as a trial de novo.

~~4. The department has the burden of proof by a preponderance of the evidence in any court proceeding regarding any factual issue relevant to ascertaining the tax liability of a taxpayer. This paragraph does not abrogate any provision of this title or title 43 that requires a taxpayer to substantiate an item of income or expense. This paragraph applies to a factual issue if a preponderance of the evidence demonstrates that:~~

~~(a) The taxpayer asserts a reasonable dispute regarding the issue.~~

~~(b) The taxpayer has fully cooperated with the department regarding the issue including providing, within a reasonable period of time, access to and inspection of all witnesses, information and documents within the taxpayer's control, as reasonably requested by the department.~~

~~(c) The taxpayer has kept and maintained records as required by this title, title 43 or the department.~~

~~5.~~ 4. Either party to such action may appeal to the court of appeals or supreme court as provided by law.

~~6.~~ 5. If a final judgment is rendered in favor of the taxpayer in the action, the amount or such portion of the judgment as may be necessary shall first be credited to any taxes, penalties and interest due from the plaintiff taxpayer, and the amount of the balance remaining due the taxpayer shall be certified by the department of revenue to the department of administration, with a certified copy of the final judgment and a claim for refund authenticated by the department of revenue. On receipt, the department of administration shall draw a warrant payable to the taxpayer in an amount equal to the amount of the tax found by the judgment to be illegal, less the amount of any taxes, penalties and interest due from the taxpayer. The department of administration shall draw a separate warrant payable to the taxpayer in an amount equal to the interest and other costs recovered against the department of revenue by the judgment, which shall be paid from the appropriate tax account.

Sec. 2. Title 42, chapter 1, article 6, Arizona Revised Statutes, is amended by adding section 42-1255, to read:

42-1255. Burden of proof

THE DEPARTMENT HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING REGARDING ANY FACTUAL ISSUE THAT IS RELEVANT TO ASCERTAINING THE TAX LIABILITY OF A TAXPAYER. THIS SECTION DOES NOT ABROGATE ANY PROVISION OF THIS TITLE OR TITLE 43 THAT REQUIRES A TAXPAYER TO SUBSTANTIATE AN ITEM OF INCOME OR EXPENSE. THIS SECTION APPLIES TO A FACTUAL ISSUE IF A PREPONDERANCE OF THE EVIDENCE DEMONSTRATES THAT:

1. THE TAXPAYER ASSERTS A REASONABLE DISPUTE REGARDING THE ISSUE.

2. THE TAXPAYER HAS FULLY COOPERATED WITH THE DEPARTMENT REGARDING THE ISSUE INCLUDING PROVIDING, WITHIN A REASONABLE PERIOD OF TIME, ACCESS TO AND INSPECTION OF ALL WITNESSES, INFORMATION AND DOCUMENTS WITHIN THE TAXPAYER'S CONTROL, AS REASONABLY REQUESTED BY THE DEPARTMENT.

3. THE TAXPAYER HAS KEPT AND MAINTAINED RECORDS AS REQUIRED BY THIS TITLE, BY TITLE 43 OR BY THE DEPARTMENT.

**APPROVED BY THE GOVERNOR APRIL 13, 2004.**

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