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ARIZONA GENERAL TAX PROCEDURE GTP 12-1

Procedure for Entering into Closing Agreements Under A.R.S. § 42-2056

(This procedure supersedes and replaces GTP 98-1)

ISSUE:

This procedure addresses the process for entering into closing agreements when it is determined that a class of taxpayers has not complied with their tax obligations as a result of the same extensive misunderstanding or misapplication of the tax laws within Arizona Revised Statutes Title 42 and Title 43.

BACKGROUND:

The Taxpayer Bill of Rights (A.R.S. Title 42, Ch. 2, Art. 2) allows the Arizona Department of Revenue ("Department") to better assist taxpayers with their tax problems. Within the Taxpayer Bill of Rights, A.R.S. § 42-2056 authorizes the Department to enter into closing agreements with members of an affected class of taxpayers if the Department determines that more than sixty percent of the affected class failed to properly account for their taxes as a result of the same extensive misunderstanding or misapplication of the tax laws.

A misunderstanding or misapplication of a tax law may occur if an affected class of taxpayers has the same erroneous understanding that results in the same misapplication of a tax law. A.R.S. § 42-2056 does not apply when taxpayers are aware that they are subject to tax and fail to comply with the tax law, or when taxpayers are aware of the Department's interpretation of the tax law but choose to interpret the tax law differently. Taxpayers have an obligation to know the tax laws that are applicable to their income and business activities. Ignorance of the law is not an excuse that is subject to relief under A.R.S. § 42-2056.

PROCEDURE:

I. REQUEST FOR RELIEF

The process of determining the existence of an affected class of taxpayers may be initiated by the Department or a taxpayer or group of taxpayers. If a taxpayer or group of taxpayers requests relief, the request must be in writing and include the following information:

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- A. A summary of the alleged extensive misunderstanding or misapplication of the tax laws. A mere assertion that the taxpayer and others have not paid tax is insufficient. The request must include the reason why the group of taxpayers did not pay tax.
- B. A proposed definition of the affected class. For Transaction Privilege or Use Tax purposes, the proposed definition may include an industry code under the North American Industrial Classification System Code or a list of taxpayers that directly compete with each other.
- C. Any evidence to support the allegation of an extensive misunderstanding or misapplication of the tax laws.

II. INITIAL REVIEW

The Department shall make an initial determination as to the existence of an affected class of taxpayers. If the Department determines that there has not been an extensive misunderstanding or misapplication of the tax laws, the Department will notify the taxpayer that the request is denied.

III. PUBLIC NOTICE AND HEARING

If the Department determines that there may be an extensive misunderstanding or misapplication of the tax law by an affected class of taxpayers, the Department will take the following steps to notify the public and hold a public hearing:

- A. The Department shall post a public hearing notice on the Department's website and in a press release to the media throughout the state.
- B. The public hearing notice shall include the following information:
 - 1. the time and location of the public hearing;
 - 2. the nature of the possible misunderstanding or misapplication of the tax laws by an affected class of taxpayers;
 - 3. the proposed definition of the affected class of taxpayers;
 - 4. the location where relevant, non-confidential documents may be obtained and reviewed during normal business hours; and
 - 5. the name, address, and telephone number of a person within the Department who may be contacted for further information.

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- C. The Department's Problem Resolution Officer ("PRO") will preside over the public hearing. The Department will keep a record of the public hearing which will be available for public inspection during normal business hours at the location specified in the public notice.
- D. Within sixty days after the conclusion of the public hearing, the Department will notify the attendees and publish a public notice on its website stating whether relief will be granted.

IV. TAX RULING ANNOUNCING DEPARTMENT'S FINDING

If the Department finds that more than sixty percent of an affected class of taxpayers failed to comply with their tax obligations because of the same misunderstanding or misapplication of the tax laws, the Department will draft a tax ruling announcing its determination.

The Department will secure the approval of the Attorney General pursuant to A.R.S. § 42-2056(C) before issuing the tax ruling and entering into any closing agreements.

The Department will make the ruling available on request, publish the ruling in a newspaper of general circulation, and post the ruling on the Department's website. The ruling may contain the following:

1. the definition of the class of affected taxpayers;
2. the terms of the closing agreements to be offered by the Department to the taxpayers in the affected class (such terms may include the extent to which the Department will or will not abate the penalties, interest, and tax due from the taxpayers in the affected class);
3. the applicable tax periods for the closing agreements;
4. a requirement that the taxpayers who enter into the closing agreements must properly account for and pay such taxes in the future; and
5. for the taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods, an offer to enter into similar closing agreements providing for pro rata credit or refund of their taxes previously paid, subject to A.R.S. § 42-1104(A) and A.R.S. § 42-1106(A).

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V. CLOSING AGREEMENTS UNDER A.R.S. § 42-2056

If the Department determines that the affected class is entitled to relief under A.R.S. § 42-2056, each member of the affected class will have the opportunity to participate in the relief. Each member must notify the Department within sixty days after the Department's publication of the tax ruling that they wish to participate in the relief through a closing agreement. 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.

For those Taxpayers in the affected class who properly accounted for their tax obligations for the tax periods specified in the closing agreements, the Department will offer the opportunity to enter into a similar closing agreement that provide a pro rata credit or refund of taxes previously paid. Any refund or credit offered in the closing agreement pursuant to A.R.S. § 42-2056(A)(6) will be subject to the statute of limitations, which provides that the Department may allow a refund within four years after the report or return is required to be filed or actually filed, whichever period expires later. (See A.R.S. §§ 42-1104(A) and 42-1106(A).)

Once a taxpayer and the Department sign a closing agreement, it is final and conclusive except on a showing of fraud, malfeasance or misrepresentation of a material fact.

VI. FAILURE TO COMPLY WITH CLOSING AGREEMENT

The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to properly account for and pay taxes in the future as specified in the closing agreement, the Department may void the closing agreement. If the Department voids a closing agreement under these circumstances, the Department may assess delinquent taxes against the taxpayer for the tax periods covered by the closing agreement. The Department may issue a proposed assessment within six months after the date of voiding the closing agreement or within the period prescribed by A.R.S. § 42-1104, whichever period expires later.

VII. APPEAL OF DEPARTMENT'S FINDING

If, after the public hearing, the Department determines that there was not an extensive misunderstanding or misapplication of the tax laws by an affected class of taxpayers, the person who filed the written request for relief may appeal the determination under the procedure provided in Title 42, Chapter 1, Article 6 (A.R.S. §§ 42-1251 through 42-1255). This appeal process applies only to determinations made after a public hearing. It does not apply if the Department denies relief after an initial determination pursuant to A.R.S. § 42-2056(A)(2).

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If the person appealing the determination under A.R.S. § 42-2056(B) (“Second Appeal”) also has another appeal (such as a protested assessment) pending pursuant to Title 42, Chapter 1, Article 6 (“First Appeal”) on a matter solely related to the matter at issue under A.R.S. § 42-2056, the person may petition the relevant appellate forum (agency, tribunal or court) to hold the First Appeal in abeyance pending the resolution of the person’s Second Appeal. A.R.S. § 42-2056 provides that the appellate forum must grant the abeyance petition for the First Appeal. If the First Appeal includes issues that are not part of the Second Appeal, the person may not request that the First Appeal be held in abeyance.

John A. Greene, Director

Signed: December 18, 2012

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.