

# ARIZONA GENERAL TAX PROCEDURE

## GTP 02-1

### Procedure for Requesting an Abatement of Tax, Interest, and/or Penalties

#### Pursuant to A.R.S. § 42-2065 of the Taxpayer Bill of Rights

#### APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-2065(A) provides that the director, in the director's discretion, may abate all or part of any assessment if additional interest has accrued on: (1) a deficiency due to any unreasonable error or delay by an officer or employee of the department acting in the employee's official capacity; or (2) any payment of tax to the extent that any error or delay in the payment is attributable to an officer or employee of the department being unreasonably erroneous or dilatory.

A.R.S. § 42-2065(B) provides that the director may consider an error or delay: (1) only if no significant aspect of the error or delay can be attributed to the taxpayer; and (2) only if the error or delay occurred after the department has contacted the taxpayer in writing with respect to the deficiency or payment.

A.R.S. § 42-2065(C) provides that the director's decision is considered to be the department's final decision or order and is subject to appeal to the state board pursuant to A.R.S. § 42-1253.

A.R.S. § 42-1253 provides for an appeal to the Arizona Board of Tax Appeals by filing a notice of appeal in writing within 30 days after the decision or order from which the appeal is taken has become final.

#### DISCUSSION:

A.R.S. § 42-2065 was enacted by Laws 1999, Ch. 250, § 13, effective August 6, 1999. This general tax procedure is being issued to set forth the procedures necessary to claim relief under the provision as well as the department's interpretation thereof.

1. When must a departmental error or delay occur in order for the director to have authority to provide discretionary relief under A.R.S. § 42-2065?

A.R.S. § 42-2065(B) provides that the director only consider error or delay which occurs after the department contacts a taxpayer with regard to an audit or, if no audit occurs, after the department contacts a taxpayer with regard to an underpayment of tax. Contacting a taxpayer with regard to an audit includes any of the following: (1) correspondence or communications to schedule the audit or gather information for the audit; (2) discussions of contested and uncontested issues of the audit between taxpayer and the auditor of the department; (3) the issuance of a deficiency assessment; and (4) the issuance of a billing notice or collection demand relating to the deficiency assessment.

2. Who must cause the error or delay in order for the director to have authority to provide discretionary relief under A.R.S. § 42-2065?

A.R.S. § 42-2065 authorizes abatement if additional interest accrues due to the unreasonable error or delay "by an employee of the department" or is "attributable to an employee of the department". Error or delay "attributable to" or "by" an employee of the department does not include: (1) acts of the Office of Administrative Hearings or any other administrative agency; (2) acts of the Attorney General's Office; (3) acts of the Arizona Courts; (4) acts of the Arizona Legislature; or (5) acts of nature. Error or delay "attributable to" or "by" an employee of the department only includes acts of employees of the department acting in their official capacity.

A.R.S. § 42-2065(B) also requires that no significant aspect of the error or delay be attributed to the taxpayer. Thus, if both the taxpayer and an employee of the department significantly delay the resolution of taxpayer's case, taxpayer is not entitled to any relief under A.R.S. § 42-2065.

3. What is an "unreasonable" error or delay, and how is a "significant aspect of" the error or delay attributed to the taxpayer?

Neither the term "unreasonable" or the phrase "significant aspect of" have been defined by statute. Because the reasonableness or significance of departmental or taxpayer action requires an examination of the total circumstances surrounding such action, the determination of whether an act was "unreasonable" or a "significant aspect of" error or delay will be made on a case-by-case basis by the director. The director's decision is subject to review by the Arizona Board of Tax Appeals, pursuant to A.R.S. § 42-2065(C).

4. When must a tax liability arise in relation to the effective date of A.R.S. § 42-2065?

The director may abate tax, interest and/or penalties relating to any tax liability arising on or after August 6, 1999, or any tax liability remaining unpaid as of August 6, 1999.

5. Examples of errors or delays of an employee of the department which

the director may consider in determining whether to grant relief under A.R. S. § 42-2065:

(A) A taxpayer is notified in writing that the department intends to audit the taxpayer's income tax return. The auditor is not familiar with the legal issues involved in the case and therefore avoids proceeding with the audit for a substantial period of time. When the audit is finally conducted, taxpayer is issued a notice of proposed assessment for additional tax, interest and penalties. The director may abate all or part of the assessment of tax, interest and/or penalties because interest has accrued due to the unreasonable delay of the department in conducting the audit.

(B) An examination of taxpayer's tax return(s) reveals a deficiency with respect to which a notice of proposed assessment will be issued. The taxpayer and the department identify all disputed issues, the notice of proposed assessment is prepared and reviewed and any other relevant prerequisites are completed. However, the file is misplaced and the notice of proposed assessment is not issued until two years later when the file is found. The director may abate all or part of the assessment of tax, interest and/or penalties because interest has accrued due to the unreasonable delay of the department in issuing the notice.

(C) During an audit, a taxpayer agrees to furnish the auditor with certain additional information within two weeks. Two days after the auditor leaves the taxpayer's business premises suffer a significant loss from fire damage. The taxpayer and the auditor agree that two months is a reasonable amount of time for the taxpayer to reconstruct the business records the auditor needs to complete the audit; the taxpayer does provide the information within that period. However, during that time period the auditor leaves the department. By the time the case is reassigned another ten months pass. Then, the auditor processes the information and issues the final audit assessment within a month. There are two distinct periods of delay. No relief may be granted for the period while the department waited for the taxpayer's information and a reasonable period thereafter to reassign and process the audit because the delay was due significantly to the actions of the taxpayer. However, the bulk of the delay by the department in reassigning the case was an unreasonable delay unrelated to the taxpayer's delay. The director may abate tax, penalties and interest for this period of delay.

(D) During an audit, a taxpayer agrees to furnish the auditor with additional information. After follow-up telephone calls and letters by the auditor, seven months later the taxpayer has still not found it convenient to furnish the auditor with the requested information. At this point the auditor leaves the department. Shortly thereafter, the taxpayer sends the requested information. The file is reassigned two months after the auditor left the department and the audit is

issued three months later, 13 months after the date the taxpayer originally agreed to furnish the additional information to the auditor. No part of the assessment of tax, penalty, or interest is eligible for abatement because a significant aspect of the delay can be attributed to the unreasonable delay by the taxpayer.

## PROCEDURE:

1. How does a taxpayer file an application for relief under A.R.S. § 42-2065?

A taxpayer's request for relief under A.R.S. § 42-2065 must be in writing and must contain:

- (1) taxpayer's name;
- (2) taxpayer's current address;
- (3) taxpayer's daytime telephone number; and
- (4) taxpayer's identification/license number.

If the abatement request is based upon an unreasonable delay of the department, the statement should set forth:

- (5) a description of the delay;
- (6) the duration of the delay;
- (7) the section of the department and/or employee responsible for the delay, if known; and
- (8) the cause of the delay, if known.

If the abatement request is based upon an unreasonable error of the department, the statement should set forth:

- (7) an explanation of the error; and
- (8) the area of the department or employee responsible for the error.

A Departmental Abatement Request Form can be obtained:

from the Arizona Department of Revenue internet site (as a form which can be filled-in and then printed) at:

[www.azdor.gov/2002/abatef.pdf](http://www.azdor.gov/2002/abatef.pdf)

by a written request to:

Arizona Department of Revenue  
Customer Service  
P.O. Box 29086  
Phoenix, AZ 85038

by calling Customer Service at:

(602) 255-3381 or  
(800) 352-4090

or by faxing a request to:

(602) 542-3756

The request for relief should be filed with the departmental employee that taxpayer is in contact with regarding the tax liability. If there is no departmental contact person, mail the abatement request to the problem resolution officer of the department at the following address:

Arizona Department of Revenue  
Problem Resolution Officer  
1600 W. Monroe  
Phoenix, AZ 85007

2. What may a taxpayer be required to do after the request for abatement is filed?

Upon the filing of a request, the department may request that the taxpayer provide additional information. Once the department obtains all the information required for the abatement request, the department will request that the section of the department responsible for the alleged error or delay respond to the taxpayer's abatement request. Taxpayer will be provided a copy of the section's response and given an opportunity to reply to the section's response. A reply from taxpayer is not mandatory.

3. What if the abatement request is related to a deficiency assessment which is being protested?

If the A.R.S. § 42-2065 abatement request relates to a protested deficiency assessment, the taxpayer should file the abatement request with the auditor that taxpayer has been in contact with regarding the assessment. Under some circumstances, the abatement request may be separated from the protested deficiency assessment and be forwarded to the problem resolution officer who will issue a decision on behalf of the director. However, the taxpayer may ask, or the director may require, that the abatement request be held in abeyance so that, in the event the formal hearing decision is appealed to the director by the taxpayer or by the audit section, the appeal of the formal hearing decision and the abatement request will be considered together by the director.

4. What can a taxpayer do if not satisfied with the abatement decision made by the director?

Pursuant to A.R.S. § 42-2065(C), a taxpayer who believes that the director has abused his discretion in denying or limiting relief may appeal the director's abatement decision to the Arizona Board of Tax Appeals. A.R.S. § 42-1253 requires that taxpayer file a written notice of appeal with the Arizona Board of Tax Appeals within 30 days after the decision or order from which the appeal is taken has become final.

PLEASE NOTE that under certain circumstances an appeal of the director's decision with regard to the abatement request must be made to the Arizona Board of Tax Appeals while the decision relating to the contested matter may also be directly appealed to Tax Court.

Mark W. Killian, Director  
Signed: June 12, 2002

#### 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.