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## ARIZONA GENERAL TAX PROCEDURE GTP 15-1

(Supersedes Arizona General Tax Procedure GTP 94-5)

### Procedure for a Taxpayer Requesting a Taxpayer Assistance Order (TAO)

#### OVERVIEW:

The office of the Problem Resolution Officer (PRO) was established under the Taxpayer Bill of Rights. The PRO has the authority to help taxpayers with tax problems in a wide variety of situations. Help from the PRO may include any of the following:

1. Provide expeditious service to taxpayers whose problems are not resolved through normal channels.
2. Negotiate with department personnel to resolve the most complex and sensitive taxpayer problems.
3. Take action to stop or prohibit the department from taking an action against a taxpayer.

The PRO can assist taxpayers in person, by telephone or in writing. In reviewing a situation, the PRO will make all efforts necessary to correct any problem before a taxpayer is subject to potential hardship. However, prior to seeking assistance from the PRO, a taxpayer should attempt to resolve tax issues through normal administrative channels.

Sometimes situations may arise where special assistance is required. In some cases, a taxpayer may experience a significant hardship due to the manner in which the department administers the tax laws. In cases where a taxpayer may experience significant hardship the taxpayer may make a written application for a TAO. In most cases, however, the PRO will not formally issue an order requiring the department to stop certain action. Typically, relief is granted informally, without an official order.

The TAO provides for the temporary suspension of departmental actions while the PRO reviews the taxpayer's case to determine whether alternatives can be found to relieve the hardship. This procedure provides guidance on the following:

1. When to apply for a TAO;
2. How to apply for a TAO;
3. PRO considerations in granting a TAO;

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4. Types of relief;
5. The TAO and the statutes of limitations; and
6. The issuance or denial of a TAO.

### **PROCEDURE:**

#### **WHEN TO APPLY FOR A TAO**

A taxpayer may apply for a TAO in cases where a taxpayer may experience significant hardship. A significant hardship includes any one of the following:

1. An immediate threat of adverse action;
2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted;
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

A significant hardship may include an economic hardship or a hardship caused by other than economic difficulties. A mere economic or personal inconvenience does not qualify as a significant hardship.

All applications for a TAO should be submitted within a reasonable time after the taxpayer becomes aware of the significant hardship or potential significant hardship.

#### **HOW TO APPLY FOR A TAO**

An application for relief can be filed by a taxpayer or the taxpayer's duly authorized representative.

The taxpayer or the taxpayer's duly authorized representative may complete Arizona Form 91, *Request for Taxpayer Assistance Order*. The department will also accept an Internal Revenue Service Form 911, *Application for Taxpayer Assistance Order*, if that form describes the significant hardship caused by the administration of Arizona tax law. Alternatively, the department will also accept a written request that is not on an Arizona Form 91, *Request for Taxpayer Assistance Order*, or federal Form 911, *Application for Taxpayer Assistance Order* if the following information is supplied by the taxpayer in that written statement:

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1. The name, identification number, telephone number and current mailing address of the taxpayer;
2. The type of tax and the tax period(s) involved;
3. A description of the action, proposed action or inaction by the department that is causing or about to cause the significant hardship;
4. A description of the significant hardship caused or about to be caused by the department and the kind of relief requested; and,
5. The signature of the taxpayer or a duly authorized representative.

A duly authorized representative is an individual who has been given a power of attorney to act on the taxpayer's behalf. The requirements for an acceptable power of attorney are contained in Arizona Department of Revenue General Tax Procedure, GTP 95-2 Procedure for Submission of a Power of Attorney.

Upon receipt of an alternative written statement, the PRO will consider the statement to be a Request for a Taxpayer Assistance Order and will process that request in the manner prescribed in this procedure.

### **PRO CONSIDERATIONS IN GRANTING A TAO**

In order to grant a TAO, the PRO must conduct an analysis of each taxpayer's situation.

The PRO may issue a TAO for either of two purposes:

1. To direct the Department to take a specific action, cease a specific action, or refrain from taking a specific action; or
2. To direct the department to review at a higher level, expedite consideration of, or reconsider a taxpayer's case.

The PRO will consider issuing a TAO only when all of the following factors are present:

1. The taxpayer is suffering or about to suffer a "significant hardship" if relief is not granted; and
2. The significant hardship results from the manner in which the department is administering the law, and
3. The department section addressing the issue does not have the authority to take the actions needed to grant relief to the taxpayer or to resolve the issue.

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The following is a list of common factors which may be considered by the PRO in a determination of a significant hardship. The list is not all inclusive but is only meant to give an indication of the types of situations which will be considered.

1. The likelihood that hardship will result before normal procedures have time to take effect;
2. The taxpayer's ability to retain housing, utilities or employment;
3. The taxpayer's ability to obtain food, clothing or medical treatment;
4. The chance of irreparable damage to the taxpayer's credit rating;
5. The likelihood of serious financial hardship, such as an imminent bankruptcy or an inability to meet payroll; and,
6. The loss of the opportunity to provide education to the taxpayer or family.

A finding of significant hardship is made on a case by case basis after reviewing the pertinent facts and circumstances of the situation. All factors will be considered subject to statutory provisions affecting a determination.

A finding that a taxpayer is suffering or about to suffer a significant hardship from the administration of the tax laws does not automatically result in the issuance of a TAO.

### **TYPES OF RELIEF**

A TAO can only grant temporary relief until the problem can be formally resolved. An Application for a TAO cannot be used to contest the merits of a tax liability or as a substitute for informal protest procedures or normal administrative or judicial proceedings for the review of a deficiency assessment, collection action or denial of refund.

The PRO only has authority to issue temporary assistance when the hardship results from the administration of the law, not the law itself. The PRO does not have authority to override any statutory law. For example, if a taxpayer is experiencing a significant hardship and asks for a refund that is barred because the statute of limitations has expired, the PRO may find that a hardship exists but a TAO cannot be issued.

Pending resolution of the issues, the PRO can grant three types of temporary relief with a TAO:

1. Release the taxpayer's property that has been levied upon;
2. Cease any action of the department; or,
3. Prevent the department from initiating further action.

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A TAO cannot order the suspension of any interest that would otherwise accrue on a tax obligation. After issuance of a TAO, either the PRO or the director may modify, reverse or rescind the TAO. Finally, a TAO is effective for a temporary period. A TAO will be effective for the time specified in the TAO or until either rescinded or revoked by the PRO or the director.

The PRO will consider modifying or rescinding the TAO if there are compelling circumstances that require immediate action by the department (e.g., situations where collection is in jeopardy may require the immediate issuance of a Notice of Levy).

### **THE TAO AND THE STATUTE OF LIMITATIONS**

A TAO suspends the applicable statute of limitations. The statute of limitations is suspended from the date the taxpayer applies for the order or the date the order is issued, whichever is earlier, until the order's expiration date, modification date or rescission date, if any. The statute of limitations is not suspended in cases where the TAO is issued in the absence of a written application for relief submitted by the taxpayer or the taxpayer's representative.

The following example will illustrate how the suspension of the statute of limitations applies to a TAO:

**Example:** On August 1, 2014, a taxpayer files a formal application for a TAO. The statute of limitations on the issue expires on April 15, 2015. The PRO determines that the department's actions cause a significant hardship to the taxpayer and that the taxpayer is due relief. A TAO is formally issued on August 15, 2014. The issue is resolved and the TAO expires on December 1, 2014. Since the statute of limitations was suspended for four months, the statute of limitations expires on August 15, 2015.

### **THE ISSUANCE OR DENIAL OF A TAO**

When the PRO grants a TAO, the PRO will indicate whether or not relief has been granted by the following:

1. In a case where the request is submitted on Arizona Form 91, the PRO will complete Part 3 of Arizona Form 91 indicating the PRO's decision and will either mail or fax a copy of the decision to the taxpayer and the taxpayer's representative.
2. In cases where the taxpayer requests relief by submitting a written request using federal Form 911, or other written format, the PRO will indicate the PRO's decision by completing Part 3 of Arizona Form 91 and attaching that Form 91 to the taxpayer's request and will either mail or fax a copy the decision to the taxpayer and the taxpayer's representative.

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#### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 42-2051 establishes the Problem Resolution Office and prescribes duties for the Problem Resolution Officer.

A.R.S. § 42-2055 provides that the Problem Resolution Officer may issue Taxpayer Assistance Orders if a taxpayer is suffering a significant hardship due to the department's administration of the tax laws.

David Raber, Director

Signed: January 22, 2015

#### 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.