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ARIZONA INDIVIDUAL INCOME TAX RULING ITR 09-1

(Effective for penalty accruals occurring on or after September 30, 2009)

(Rescinds and Supersedes Arizona Individual Income Tax Ruling ITR 07-1)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

When do late filing, late payment and extension underpayment penalties apply to an income tax return filed under an extension?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1107 authorizes the department to grant extensions of time to file income tax returns and also imposes an extension underpayment penalty if a taxpayer fails to pay at least 90% of the tax disclosed on the return. A penalty of one-half of one percent will be added to the amount shown as tax for each thirty day period or fraction of a thirty day period the failure continues. This section also provides that a taxpayer is not subject to the late payment penalty prescribed under section 42-1125(D) if the taxpayer is subject to the penalty prescribed under A.R.S. § 42-1107.

A.R.S. § 42-1125(A) provides for a late filing penalty if a taxpayer fails to make and file an income tax return on or before the due date of the return or the due date as extended by the department. The late filing penalty is four and one-half percent of the tax required to be shown on the return for each month or fraction of a month elapsing between the due date of the return, including extensions, and the date on which it is filed.

A.R.S. § 42-1125(D) provides that if a person fails to pay the amount shown as tax on any return within the time prescribed a penalty of one-half of one percent will be added to the amount shown as tax for each month or fraction of a month the failure continues.

A.R.S. § 42-1125(E) provides for a late payment penalty if a person fails to pay the amount required to be shown on any return, that is not so shown, within twenty-one days after the

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date of notice and demand. A penalty of one-half of one percent will be added to the amount shown as tax for each month or fraction of a month the failure continues.

A.R.S. § 43-501 prescribes when income taxes are payable.

DISCUSSION:

The department has the authority to grant extensions of time to file, but not for payment of the tax. Under A.R.S. § 43-501, the tax is required to be paid on the 15th day of April following the close of the calendar year or, if the return is made on the basis of a fiscal year, on the 15th day of the fourth month following the close of the taxable year.

Under A.R.S. § 42-1107, when a taxpayer is granted a filing extension, the taxpayer must pay at least 90% of the tax disclosed on the return by the return's original due date. If the taxpayer fails to pay at least 90% of the tax, the taxpayer will be subject to the extension underpayment penalty, but not the late payment penalty imposed under A.R.S. § 42-1125(D). The extension underpayment penalty will be charged on the amount unpaid from the return's original due date, until the date the tax is paid.

If a taxpayer filing under an extension pays at least 90% of the tax, but less than 100% of the tax, the taxpayer will not be subject to the extension underpayment penalty. However, the taxpayer will be subject to the late payment penalty under A.R.S. § 42-1125(D), unless the failure is due to reasonable cause.

The department will deem a taxpayer to have met the reasonable cause exception to the late payment penalty imposed under A.R.S. § 42-1125(D) when a taxpayer meets all of the following:

1. The taxpayer has a valid filing extension.
2. The taxpayer has paid at least 90% of the Arizona tax due by the return's original due date.
3. The taxpayer files the Arizona return by the extended due date.
4. The taxpayer pays the remaining amount due in full with the return.

When a taxpayer meets all of the above criteria, the department will not impose the late payment penalty when processing a return filed timely under an extension. However, if a taxpayer meets one through three above, but fails to pay the remaining amount due at the time of filing, the taxpayer would not meet the reasonable cause exception. In this case, the department would impose the late payment penalty on the amount unpaid, from the return's original due date until the tax was paid.

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If a taxpayer filing under an extension fails to file on or before the extended filing date, the taxpayer will be subject to the late filing penalty imposed under A.R.S. § 42-1125(A). The late filing penalty is imposed for each month or fraction of a month elapsing between the due date of the return, including extensions, and the date on which it is filed. When a taxpayer fails to file on or before the extended due date, the late filing penalty will be imposed from the extended due date of the return until the date the return is filed.

If a taxpayer files a return and makes a math or data error resulting in additional tax, the taxpayer will be subject to the late payment penalty imposed under A.R.S. § 42-1125(E) if the taxpayer does not pay the amount due within 21 days after the date of notice and demand. This penalty is imposed on the amount of tax shown on the notice from the 22nd day of the notice until the tax is paid. If the notice is issued more than 21 days prior to the original due date, the penalty period will begin on the day after the original due date. A taxpayer who was subject to the extension underpayment penalty may also be subject to this late payment penalty.

RULING:

Based on the foregoing, the late filing penalty, the late payment penalty and the extension underpayment penalty will apply to a return filed under an extension as noted below.

Example 1:

In a case where a taxpayer files timely under an extension and pays 100% of the tax due by the return's original due date, no penalties will be imposed.

Example 2:

In a case where a taxpayer files timely under an extension and pays at least 90% of the tax by the return's original due date and the remainder at the time the return is filed, no penalties will be imposed.

Example 3:

In a case where a taxpayer files timely under an extension and pays at least 90% of the tax due by the return's original due date but does not pay the remaining amount due at the time the return is filed, there will be no late filing penalty or extension underpayment penalty imposed. However, the department will impose the late payment penalty under

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A.R.S. § 42-1125(D) on the amount that remained unpaid. This late payment penalty would be imposed from the return's original due date to the date the tax was paid.

Example 4:

In a case where a taxpayer files timely under an extension and does not pay at least 90% of the tax due by the return's original due date, but pays the remaining amount due at the time the return is filed, there will be no late filing penalty or late payment penalty imposed. However, the department will impose the extension underpayment penalty on the amount that remained unpaid. The extension underpayment penalty would be imposed from the return's original due date to the date the tax was paid.

Example 5:

In a case where a taxpayer files under an extension, but does not file within the extended due date and has paid at least 90% of the tax by the return's original due date and the remainder at the time of filing, the taxpayer would be subject to the late filing penalty and the late payment penalty under A.R.S. § 42-1125(D), but not the extension underpayment penalty. In this case, the late payment penalty would be imposed on the unpaid tax from the return's original due date until the tax was paid. The late filing penalty would be imposed on the tax required to be shown on the return, from the return's extended due date until the filing of the return.

Example 6:

In a case where a taxpayer files under an extension, but does not file within the extended due date and has paid less than 90% of the tax by the return's original due date, but pays the remainder at the time of filing, the taxpayer would be subject to the late filing penalty and the extension underpayment penalty, but not the late payment penalty. In this case, the extension underpayment penalty would be imposed on the amount that remained unpaid, from the return's original due date until the tax was paid. The late filing penalty would be imposed on the tax required to be shown on the return, from the return's extended due date until the filing of the return.

Example 7:

In the case where a return is filed late without an extension and tax is remaining due, the late filing penalty and the late payment penalty under A.R.S. § 42-1125(D) would be imposed, but the extension underpayment penalty would not be imposed. In this case, the late payment penalty would be imposed on the amount that remained unpaid, from the

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return's original due date until the tax was paid. The late filing penalty would be imposed on the tax required to be shown on the return, from the return's original due date until the filing of the return.

In addition to the penalties imposed in the above examples, the late payment penalty imposed under A.R.S. § 42-1125(E) would also apply if a taxpayer makes a math or data error that results in additional tax due and the taxpayer fails to pay the amount due on the notice within 21 days after the date of notice and demand.

Gale Garriott, Director

Signed: February 8, 2010

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.