

YOUR RIGHTS AS AN ARIZONA INDIVIDUAL TAXPAYER

To better serve you, the Arizona Department of Revenue offers online assistance and filing of your business taxes. To file your taxes online or to register to use the website, go to www.aztaxes.gov.

This pamphlet is designed to provide general information to the taxpayer regarding the audit appeals process, specifically regarding the Notice of Proposed Assessment or Determination issued by the Arizona Department of Revenue's Individual Income Tax Audit Section. This pamphlet is **not intended** as a precise or technical analysis of the law, or of particular circumstances, nor as a substitute for legal or professional counsel.

It is important to remember that the Arizona Revised Statutes (ARS) Title 42 and Title 43 and the Arizona Administrative Code govern the performance of individual income tax audits. The purpose of the department's audit program is to bring each taxpayer into voluntary compliance with the tax laws. Department auditors are required to impartially determine whether you have reported the correct amount of tax. Auditors are responsible for performing audits in a professional and courteous manner.

While dealing with the Arizona Department of Revenue, you have the right to professional, prompt, fair, and courteous treatment by all department personnel. The following list outlines other rights you have regarding the assessment of taxes and issues involved with the compliance process:

- The right to confidentiality regarding your tax matters
- The right to pay the least amount of tax due under the law
- The right to notice of any assessments
- The right to protest a penalty or audit assessment
- The right to abatement of penalties based on reasonable cause
- The right to request a refund
- The right to protest the denial of a refund
- The right to receive a prompt refund when you have overpaid your taxes
- The right to represent yourself or to appoint a power of attorney to act on your behalf
- The right to a timely response
- The right to utilize the problem resolution services provided by the Taxpayer Assistance Office.

Notice of Audit Findings

The first step of a normal audit is to send a letter to request information or clarification. After you have responded, either a "no adjustment/thank you" letter or a proposed assessment or determination will be mailed to you, and/or your representative (if a power of attorney form is on file).

A "Notice of Proposed Assessment" shows additional tax due and a "Notice of Proposed Determination" shows a refund or credit. (ARS § 42-1108)

You should carefully review the audit. Both you and your representative should feel free to contact the auditor to ask questions regarding the audit procedures or how the Arizona statutes apply to your tax return. The auditor will courteously explain the audit adjustments and process.

Appeals Administrative Process

You have ninety (90) days from the date of the proposed assessment or determination to review it, ask any questions you may have, and decide whether or not you agree with it. If you agree with the audit, the assessment may be paid in full any time.

If no protest is filed, the audit will go on billing, and the collections system will send a bill based on the deficiency assessment. All bills which are the result of deficiency assessments are due and payable in full within 10 days from receipt of the bill. However, the taxpayer has the right to request an installment payment agreement to satisfy the liability. (ARS § 42-2057)

If you disagree with the audit findings, a protest must be filed within the 90 days in writing stating the "reasons why the redetermination should be granted and the amount in which any tax, interest and penalties should be reduced." (ARS § 42-1251.A) On the protest form, you may choose between an informal conference or a formal hearing.

The Collections Section is notified of the protest, and billing of the entire proposed assessment is postponed until the appeals process is completed. However, interest continues to accrue. Simple interest accrues during the calendar year and is compounded annually on January 1. (ARS § 42-1123) The interest rate is set by the Internal Revenue Service (IRS) and is reviewed, and possibly adjusted, on a quarterly basis. You may pay the entire audit, or portion thereof, **under protest** at any time to stop interest from accruing. Should you ultimately prevail, you will receive a refund of tax (penalties if any) plus interest through the date of the check. You are responsible for paying any tax, penalty, and interest amount not protested.

The **informal conference** is the easiest and most cost-effective method available to the taxpayer for resolving audit-related issues. The informal conference can be conducted by telephone or in the department's offices. The auditor and/or the auditor's supervisor and you and/or your representative will participate in the conference. The Section may also be represented by another auditor. You should use this opportunity to present any information or documentation which supports the protest and to discuss any remaining questions regarding the audit. On the basis

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of the conference results, the auditor may adjust the audit assessment or may request additional information in support of your claim. If the assessment is modified, you will be asked to state if you agree and withdraw the protest or disagree and request a hearing.

Many audit-related issues are resolved amicably at the informal conference. If a satisfactory resolution is not achieved, you may request a **formal hearing**. The formal hearing, conducted by an impartial hearing officer from another division of the department, consists of you and/or your representative along with a representative from the Individual Income Tax Audit Section.

The Hearing Office will give you a minimum of 20 days written notice of the time and place of the formal hearing. (ARS § 41-1061.A) Hearings are held at department offices, in person or by telephone. You may also request a hearing by written memoranda. At the formal hearing, you have the opportunity to present your case, including any additional information, to the hearing officer. Upon review of all evidence, the hearing officer will make a written decision, usually within ninety days. (ARS § 42-2063) The decision is sent to you by certified mail and by regular mail to your representative (if any).

If you disagree with the hearing officer's decision, you may appeal in writing to the **Director** of the Arizona Department of Revenue within thirty (30) days. If you choose not to appeal to the Director, you may appeal directly to the **Arizona Board of Tax Appeals (BOTA)** or, if the amount of income tax in dispute is \$5,000 or more, you may bring an action in Tax Court. The appeal to BOTA or Tax Court action must be filed within sixty (60) days after receiving the hearing officer's decision. If you choose to file a written appeal to the Director, the Director will make a decision, usually within ninety days. The decision is sent to you by certified mail and by regular mail to your representative (if any).

If you disagree with the Director's decision, you may then initiate an appeal to BOTA or, if the amount of income tax in dispute is \$5,000 or more, you may bring an action in Tax Court. The appeal to BOTA or Tax Court action must be filed within thirty (30) days of the Director's decision.

The Board of Tax Appeals consists of private citizens, appointed by the Governor, who are not connected with the Arizona Department of Revenue. The members of BOTA have diverse backgrounds and are charged with impartially resolving various taxpayer issues.

As in the formal hearing, you have the opportunity to present your case to the Board. The Board will then reach a decision.

The Board of Tax Appeals is the final step available in the administrative appeals process.

If you fail to file a formal protest within the 90 day deadline, you have not lost your right to protest. You may pay the total deficiency assessment and then file a claim for refund. If your claim for refund is denied, you may then go through the appeals process. Also, if you have information that will reduce the audit billing, you can submit it to the auditor/Department and a closing agreement may be issued.

Judicial Process

If you disagree with the decision of the Board of Tax Appeals, you may enter the judicial system by filing an action in Tax Court within 60 days of the BOTA decision.

For Additional Information

contact the Arizona Department of Revenue
Individual Income Tax Audit Section
1600 West Monroe
Phoenix AZ 85007
or call (602) 716-6463

In the Tucson area you may contact the
Individual Income Tax Audit Section
400 West Congress
Tucson AZ 85701
or call (520) 628-6400

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