

WRONGFUL INCARCERATION EXCLUSION AND REFUND CLAIMS

Pub 711
August 2016

This publication provides general information about Arizona's conformity to a federal change that exempts from taxation damages and monetary awards for wrongful incarceration. For complete details, refer to Arizona Laws 2016, Chapter 155, § 7. In case of inconsistency or omission in this publication, the language of the Arizona law will prevail.

Background

In the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114-113), the federal government added a new exclusion from income under Internal Revenue Code § 139F. Under this new exclusion, a wrongfully incarcerated individual does not include in income any civil damages, restitution, or other monetary award received that relates to his or her covered offense for which he or she was convicted. The federal change applies to all past, current and future years. For federal purposes taxpayers that included qualified income in taxable income for prior years may file amended federal returns to claim a refund. Any year which was outside of the normal federal statutes of limitations on December 18, 2015 when the law passed (generally, years prior to 2012), may still file a claim for refund, but the claim must be submitted to the Internal Revenue Service by Monday, December 19, 2016.

In Laws 2016, Chapter 155, § 7 (Senate Bill 1288), Arizona conformed to the federal change to allow the exclusion for wrongfully incarcerated individuals. However, any period for which the individual has to file their federal claim by the December 19, 2016 deadline, they will also be required to file their Arizona amended return by the December 19, 2016 deadline regardless of any other Arizona statutes of limitation provision that might have otherwise applied.

Q1: Who is a wrongfully incarcerated individual under the wrongful incarceration exclusion?

A1: A wrongfully incarcerated individual is an individual who was convicted of a covered offense, served all or part of a sentence of imprisonment relating to the covered offense, and meets one of the following requirements:

1. The individual was pardoned, granted clemency, or granted amnesty for that covered offense, because the individual was innocent of that covered offense; or

2. The judgement of conviction for the individual for that covered offense was reversed or vacated and the indictment, information, or other accusatory instrument for that covered offense was dismissed; or
3. The judgement of conviction for the individual for that covered offense was reversed or vacated and the individual was found not guilty at a new trial after the judgment of conviction for that covered offense was reversed or vacated.

Q2: What is a Covered Offense?

A2: A covered offense is any criminal offense under federal or state law, and includes any criminal offense arising from the same course of conduct as that criminal offense.

Q3: If I claim the wrongful incarceration exclusion on my original federal return for current or future years, what do I need to do on my Arizona return to claim the exclusion?

A3: You do not need to do anything additional on your Arizona return. The Arizona return starts with federal adjusted gross income. Therefore, the wrongful incarceration exclusion will have already been excluded from Arizona's starting point.

Q4: If I amended my federal returns for prior years to claim the wrongful incarceration exclusion, when do I need to amend my Arizona returns?

A4: If you were required to file your federal amended return by Monday, December 19, 2016 (generally this applies to 2011 returns and prior), you must also file your Arizona return by December 19, 2016 regardless of any other Arizona statutes of limitation provision that might have otherwise applied. Any request for a refund based on the wrongful incarceration exclusion for these years will be denied if the amendment is not filed by December 19, 2016.

If you file a federal amended return to claim the wrongful incarceration exclusion for a year in which the December 19, 2016 deadline does not apply (generally, 2012 amended returns and after), you must file your Arizona amended return within ninety days of when the Internal Revenue Service makes a final determination regarding the federal amended return.

Q5: How do I file Arizona amended returns for 2012 and forward to claim a refund for taxes paid because of the wrongful incarceration exclusion?

A5: Complete the Arizona amended return using Arizona Form 140X for the appropriate tax year. The amended return forms for prior years are available on the department's website at:

<https://www.azdor.gov/Forms/Individual.aspx>.

The amended returns are mailed to the appropriate address on the bottom of the amended return form.

Q6: How do I claim a refund for Arizona taxes paid on income from wrongful incarceration for tax years 2011 and prior?

A6: Do the following:

1. Complete the Arizona amended return using Arizona Form 140X for the appropriate tax year. If the appropriate amended return form is not available on the department's website (See A5), you can request the appropriate forms by calling one of the phone numbers listed at the end of this publication.
2. Write "Incarceration Exclusion PATH Act" across the top of the Arizona Form 140X.
3. Include a copy of the federal amended return.
4. Include with the amended return copies of the original federal and state income tax returns filed for the taxable year to which the request is related.
5. Also include copies of any federal Forms 1099-MISC, and any other retained records relating to the reported income.
6. Include documentation that the award was made on account of wrongful incarceration.

Examples of such documentation include copies of federal or state court orders awarding the compensation, signed settlement agreements accepting the amount of the award, and letters by governmental agencies or private payment sources that may have accompanied the payment of the award that include an explanation of the reason for the payment.

7. Mail the amended returns, no later than December 19, 2016, to the following address:
Arizona Department of Revenue
Attn: Incarceration Exclusion PATH Act
PO Box 29084
Phoenix, AZ 85038-9084

FOR ADDITIONAL INFORMATION:

~ **Call** ~

(602) 255-3381

Toll-free within AZ: 1-800-352-4090

~ **Write** ~

Arizona Department of Revenue
Customer Care
PO Box 29086
Phoenix AZ 85038-9086

~ **Browse** ~

www.azdor.gov

This publication is available in an alternative format upon request.