

# YOUR RIGHTS AS A BUSINESS TAXPAYER IN THE AUDIT PROCESS

To better serve you, the Arizona Department of Revenue now 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](http://www.aztaxes.gov).

This pamphlet is designed to provide general information to you, the taxpayer, regarding the results of business audits. This pamphlet, however, is not intended to be a precise or technical analysis of the law, of particular circumstances, or as a substitute for legal or professional counsel. In case of any omissions in this publication or any inconsistencies with the statutes or rules, the language of the Arizona Revised Statutes and the Arizona Administrative Code will prevail.

The performance of a business audit is governed by law and departmental policies. The department views an audit as a cooperative and educational process that promotes voluntary compliance with tax obligations by ensuring that taxpayers pay the correct amount of tax -- not more and not less. Auditors are charged with fairly determining whether the correct amount of tax has been reported and are responsible for performing audits in a professional and courteous manner with a minimum of disruption to your business.

When dealing with the Arizona Department of Revenue (the department), you have the right to professional, prompt, fair, and courteous treatment by all department personnel. The following items are additional rights you have concerning the audit process:

## YOUR RIGHTS

- The right to confidentiality regarding your tax matters.
- The right to pay the correct amount of tax due -- not more and not less.
- The right to receive notice of any proposed assessments.
- The right to appeal a proposed assessment you believe is incorrect.
- The right to waiver or abatement of penalties if reasonable cause exists.
- The right to request a refund.
- The right to appeal the denial of a refund.
- The right to receive interest on most overpayments of taxes.
- The right to represent yourself or to appoint a representative to act on your behalf.
- The right to a timely response.
- The right to utilize the problem resolution services provided by the Director's Office.

## THE AUDIT PROCESS

The purpose of the audit process is to review appropriate books and records to determine the correct amount of tax. Some audits will review all transactions, some will review a sample, and some will focus on one or more issues. The auditor will attempt to make the process as cooperative and expedient as possible. In many cases the auditor will be able to discuss the findings as the audit progresses; in most cases, before issuing the legal "Notice of Proposed Assessment," the auditor will provide you with a "tentative proposed assessment" which is a discussion draft of the Notice of Proposed Assessment that is still subject to further review. The tentative proposed assessment's purpose is to allow you to review the auditor's initial findings so you can discuss with the auditor any problems or corrections you believe are necessary before the actual Notice of Proposed Assessment is sent.

After you and the auditor have attempted to resolve any differences regarding the tentative proposed assessment, the proposed audit will be reviewed to take into account any new information obtained during the discussion. If, after this process, there remains a difference between the amount of tax reported and the amount of tax calculated by the auditor, and after review by the audit section, a Notice of Proposed Assessment will be issued. The amount of tax due may be different between the Notice of Proposed Assessment and the tentative proposed assessment. The Notice of Proposed Assessment should be reviewed carefully, and if there are any questions, you should call the auditor to clarify these areas.

You have forty-five (45) days from the receipt of the Notice of Proposed Assessment to decide whether you are in agreement with the audit findings. If you agree, you may pay the proposed assessment, or you may wait to receive a billing notice. When the 45 day period expires, the proposed assessment becomes final, and the collection system will send a bill based on the deficiency assessment, provided that the audit has not been protested. All bills that are the result of a deficiency assessment are due and payable in full within ten (10) days from your receipt of the bill. If the assessment cannot be paid in full during this time frame, you may contact the Collections Section of the department and request alternate payment arrangements.

## NO MULTIPLE AUDITS

You are entitled to be free of unnecessary audits. The taxpayer bill of rights provides that you shall not be subject to more than one audit for a given tax type and period, subject to certain exceptions. The exceptions include federal changes (which can result in refunds as well as deficiency assessments), refund claims, audits

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for cities and towns, and fraud or other instances where action by the taxpayer misled the department in its original audit.

## LIMITATIONS ON INCREASING AUDITS ONCE ISSUED

The taxpayer bill of rights provides that once the "Notice of Proposed Assessment" has been issued for Luxury, Transaction Privilege, or Use tax audits, the amount of that proposed deficiency may not be increased, except for certain exceptions. This insures that, unless you fall into one of the statutory exceptions, your audit will not be increased as you move through the appeals process.

## THE APPEALS PROCESS

### Protesting an Assessment

If you disagree with the audit findings, you have 45 days from the receipt date of the proposed assessment to file a timely appeal. An appeal form is provided with the proposed assessment. A timely protest must be filed in writing and state the reasons why you believe the assessment is wrong and to what extent the tax, interest and penalties should be reduced.

A taxpayer that fails to protest within 45 days after receipt of the proposed assessment may pay the assessment in full and then file a claim for refund. The refund claim must be filed within four years of when the return was filed or within six months of payment of the assessment.

### Collection Action

The Collections Section of the department will be notified of your protest if it is timely. They will postpone all collection activity on the portion of the proposed assessment protested until the appeals process is completed. However, you are responsible for paying any tax, penalty, and interest not protested.

### Interest

You should remember that interest on the tax assessment continues to accrue until paid per A.R.S. § 42-1123. Simple interest accrues during the calendar year and is compounded annually on January 1. Therefore, you may protest the assessment without paying the contested amount, but if all or a portion of the contested amount is finally determined to be due, you will owe that amount plus accrued interest. Alternatively, you may protest the assessment and pay the contested amount. Then, if all or a portion of the contested amount is determined to not be due, the department will pay you interest on the amount you paid over that which is finally determined to be due. The interest rates for taxes due and tax refunds are the same as those used by the Internal Revenue Service.

### Representation

You have the right to be represented by an Arizona attorney, an Arizona Certified Public Accountant, or a Federally authorized tax practitioner that is duly appointed by you in the representation authorization form that you must submit to the department. If the matter in dispute, including tax, interest and penalties, is less than \$5,000, you may be represented by any person who has been duly appointed by you in the representation authorization form that you must submit to the department. Additionally, legal entities may be represented by a full-time officer, partner or employee and in the case of limited liability companies a full-time member or manager of the LLC provided that (1) the entity has specifically authorized the person to represent the entity in the particular matter, (2) such representation is not the person's primary duty to the entity, and (3) the person is not receiving any additional compensation for the representation. A person is a federally authorized tax practitioner if the person is either authorized to practice before the Internal Revenue Service (an enrolled agent) or the person is engaged in practice with one or more federally authorized tax practitioners and is subject to the same standards of practice and ethics requirements as a federally authorized tax practitioner.

### INFORMAL CONFERENCE

When you submit an appeal of the audit, you have the option of choosing an informal conference or a formal hearing. An informal conference is a fact finding and legal discussion between yourself and the auditor, and the auditor's supervisor if you so desire, about your concerns with the proposed assessment. The informal conference may result in your proposed assessment being reduced or eliminated. Many audit issues are resolved amicably through informal conferences. This informal conference can be conducted by telephone. If you are not satisfied with the results of an informal conference, you may then request a formal hearing.

### FORMAL HEARING

If you request a formal hearing, you will be given a minimum of twenty (20) days written notice of the date, time, and location of your formal hearing. Corporate Income Tax and Withholding Tax hearings are heard in the department's Hearing Office. Transaction Privilege, Use Tax and Luxury Privilege Tax hearings are normally heard by the State Office of Administrative Hearings (OAH). Formal hearings are held in Phoenix. You may attend in person or by phone, or you may request that your protest be resolved through written memoranda. You do not need an attorney to represent you.

At the formal hearing, you have the opportunity to present your case, including any additional information,

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to the hearing officer. After reviewing all the evidence and arguments, the hearing officer or administrative law judge will issue a written decision, usually within ninety (90) days of the close of the hearing record. The decision will be sent to you by certified mail.

## **APPEAL OF HEARING OFFICER DECISION**

If you disagree with the decision of the hearing officer, you may request that the Director review your case. This request must be made within 30 days after the receipt of the hearing officer's decision. Alternatively, a hearing officer's decision may be appealed directly to the Board of Tax Appeals (BOTA) or Tax Court within 30 days after the decision becomes final. The hearing officer's decision becomes the final order of the department if you bypass the Director.

If you request a review by the Director, you and the Audit Section will submit your arguments in writing. The Director will usually issue a decision within 90 days of the close of the hearing record. This decision is the final order of the department and will be sent to you by certified mail. If you disagree with the Director's final order, you may appeal to BOTA or the Tax Court within 30 days of the decision become final.

BOTA consists of private citizens appointed by the Governor to sit as a board to review tax disputes between taxpayers and the department. BOTA is independent of the department and OAH. BOTA has its own guidelines and procedures for reviewing cases. For more information regarding BOTA and its procedures,

you should contact the Board. However, if upon receipt of a BOTA decision you are still not satisfied, you may request that they rehear or reconsider your case, or you may file a claim in Tax Court (a division of Maricopa County Superior Court) not later than 30 days after the BOTA decision becomes final.

## **For Additional Information**

If you would like additional information regarding corporate or withholding tax audits, write to the Arizona Department of Revenue, Corporate Tax Audit Section, 1600 W Monroe, Phoenix AZ 85007, or call (602) 716-6463.

For information regarding transaction privilege and use tax audits, write to the Arizona Department of Revenue, Transaction Privilege and Use Tax Division, 1600 W Monroe, Phoenix AZ 85007, or call (602) 716-6463.

For information regarding luxury tax audits, write to the Arizona Department of Revenue, Special Tax Audit Section, 1600 W Monroe, Phoenix, AZ 85007, or call (602) 716-6463.

For general information regarding business taxes you may call Taxpayer Information and Assistance at (602) 255-3381, or toll-free from area codes 928 and 520, at (800) 352-4090.

This publication is available in an alternative format upon request.