

## Enabling Legislation for Arizona Tax Recovery

Following is the text from the enabling legislation for the Tax Recovery program. If you wish to view the entire bill [click here](#) and scroll down to Section 11 of the bill to view the tax recovery portion.

### House Engrossed Senate Bill

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

### Chapter 28

### Senate Bill 1616

#### Sec. 11. **State and county tax recovery; delayed repeal; definitions**

- A. Notwithstanding title 42, chapter 1, article 3, Arizona Revised Statutes, the director of the department of revenue shall establish a tax recovery program as provided by this section.
- B. If a taxpayer complies with the requirements of this section by applying to the department for recovery during the recovery period and complying with the applicable tax requirements in the time and manner prescribed by this section, the director shall abate or waive all or part of the civil penalties and impose interest at a reduced rate for tax liabilities that have been or could be assessed or imposed for any taxable period during the applicable liability period without the need for the taxpayer to show reasonable cause or the absence of wilful neglect. For the purposes of this subsection, "liability period" means:
1. For taxpayers filing annually, any taxable period beginning from and after December 31, 2003 and ending before January 1, 2010.
  2. For taxpayers having a 52-53 week tax year, any taxable period beginning from and after January 14, 2004 and ending before January 1, 2010.
  3. For all other taxpayers, any taxable period beginning from and after December 31, 2004 and ending before January 1, 2010.
- C. The director may grant recovery only for the taxable periods and tax liabilities identified in the application and only if the taxpayer satisfies all of the recovery conditions and requirements prescribed by this section.
- D. To qualify for recovery, the taxpayer must:
- a) Submit a complete and correct application as provided by subsection F of this section during the recovery period.
  - b) Pay the tax, plus any interest due pursuant to this section on or before October 1, 2011.
- E. A taxpayer does not qualify for recovery under this section if:
- a) An audit determination has become final with respect to the taxable period for which recovery is sought.
  - b) The taxpayer is a party to any criminal investigation or to any criminal administrative proceeding or criminal litigation that is pending on January 1, 2011 in any court of the United States or of this state for failure to file or failure to pay, or for fraud with respect to, any tax imposed by any law of this state and required to be collected by the department.
  - c) The taxpayer has been the subject of a past tax-related criminal investigation, indictment or prosecution if the investigation, indictment or prosecution resulted in a conviction, a guilty plea or a plea of no contest.
  - d) The taxpayer has been convicted of a crime relating to any period or assessment of a tax that is the basis of the penalty or interest with respect to which recovery is sought.
  - e) The taxpayer is a party to a closing agreement with the department for the tax periods included in the recovery application.
- F. An application for recovery:
- a) Must be on an application form furnished by the department that requires the applicant to identify the tax, the qualifying taxable period and the tax liability for which recovery is sought and to furnish other information prescribed by the director. The taxpayer shall include any returns and reports, including amended returns and reports, for the tax and taxable periods. Any return or report filed under this section is subject to verification as provided by law. A taxpayer who has insufficient information to file a full income tax return may file a gross income return and compute the tax pursuant to established rate brackets based on average tax rates for the applicable taxable years.
  - b) Must be filed with the department as prescribed by the director during the recovery period.
- G. An application for recovery constitutes an express and absolute waiver of all administrative and judicial rights of appeal available at that time that have not run or otherwise expired as of the date of application. The state board of tax appeals and any court shall dismiss each such action or proceeding before that body on receiving a notification from the director that recovery has been granted for the taxable period for that taxpayer. If the audit determination is not final, the taxpayer must

withdraw from the proceeding or litigation before recovery is granted. A taxpayer that files an application for recovery retains all administrative and judicial rights of appeal with respect to any additional tax assessed in a subsequent audit by the department.

- H On reviewing the application and determining compliance with the requirements of the recovery program under this section:
  - a) The director shall notify the taxpayer regarding the application for recovery, waiving or abating the civil penalties and imposing a reduced interest rate for tax liabilities that were or could have been assessed for the taxable periods covered by the application.
  - b) No administrative, civil or criminal action may be brought for failure to comply with the tax requirements for the taxable periods covered by the application.
- I A grant of recovery under this section does not entitle any affected taxpayer or other person to a refund or credit of any amount previously paid.
- J The director shall deny or revoke the recovery of a person who files a false or fraudulent application, return or report for purposes of this section, or otherwise attempts to defeat or evade a tax through the recovery program. If a person who applies for recovery fails to pay all amounts due as provided by this section, any recovery granted pursuant to this section is void.
- K The director may:
  - a) Do all things necessary to provide for the timely implementation of this section.
  - b) Adopt emergency rules pursuant to section 41-1026, Arizona Revised Statutes, as necessary to administer this section.
- L The tax revenues collected pursuant to recovery payments shall be distributed by the department as provided by law on or after October 1, 2011 but before November 1, 2011.
- M On or before December 1, 2011, the department shall submit a report to the governor, the speaker of the house of representatives and the president of the senate. The report shall include:
  - a) The number of taxpayers that have applied for recovery under this section.
  - b) The number of taxpayers that have been granted recovery.
  - c) The amount of revenue received from taxpayers for the recovery period.
  - d) The amount of outstanding liability from taxpayers that have begun paying.
- N This section is repealed from and after December 31, 2011.
- O For the purposes of this section:
  - a) "Recovery period" means September 1 through October 1, 2011.
  - b) "Tax" means any tax administered or collected by the department of revenue on behalf of this state or a county except estate tax and ad valorem property taxes.
  - c) "Tax liability" includes any payment of estimated tax, withholding tax, interest and penalties required by law.
  - d) "Tax requirement" means:
    - i) Timely filing a complete and correct tax return or report required by law.
    - ii) Timely paying a tax liability.

APPROVED BY THE GOVERNOR APRIL 6, 2011.

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