



Q & A for 2011 Arizona Tax Recovery Program

GENERAL

What is the Tax Recovery Program?

The Arizona Tax Recovery Program (SB 1616) of the 1st Regular Session of 2011 Arizona Legislature was signed into law by Governor Jan Brewer and authorizes the Department of Revenue to establish a Tax Recovery Program for all taxpayers who owe any tax imposed pursuant to Arizona tax laws for any taxable period beginning after January 1, 2004 and ending prior to January 1, 2010.

Who is eligible?

- Those who failed to file a tax return
- Taxpayers who failed to report all income or all tax and associated interest and penalties that were due
- Taxpayers who claimed incorrect credits or deductions
- Taxpayers who misrepresented or omitted any tax due
- Non-residents or part-year residents who received income that may be taxable in Arizona
- Out-of-state and multi-state businesses
- Taxpayers who are under audit and that audit has not become final

Who is Not Eligible?

A taxpayer is not eligible if any of the following apply to the requested period:

- They have an existing tax liability.
- They have received a billing or tax notice from the Department.
- They currently have a payment arrangement with the Department
- The Department has audited the tax period for which you are seeking Tax Recovery and that audit has become final.
- They are a party to any criminal proceeding with respect to any tax imposed by any law of Arizona and required to be collected by the Department that is pending on January 1, 2011 for:
 - failure to file;
 - failure to pay;
 - fraud.
- They are considered a party to a criminal proceeding with respect to these items if any of the following apply:
 - They are under criminal investigation.
 - They are involved in an administrative proceeding relating to criminal activity.
 - They are a party to criminal litigation in any State including Arizona.
- They have been the subject of a past tax-related criminal investigation, indictment or prosecution that resulted in a conviction, a guilty plea or a plea of no contest.
- They have 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 Tax Recovery is sought.

- They are a party to a closing agreement with the Department for the tax periods included in the Tax Recovery Application.

What taxes are included?

- Income tax (individual, corporate and fiduciary)
- Withholding tax
- Luxury tax (liquor and tobacco)
- Transaction privilege (sales) tax and use tax (state & county only)

What tax periods are included?

All taxes that are due on an annual basis may request Tax Recovery for any tax year beginning on or after January 1, 2004 and ending prior to January 1, 2010.

For all other taxes, you may request Tax Recovery for any tax period beginning on or after January 1, 2005 and ending before January 1, 2010.

What are examples of underreported tax or income?

- Part-time employment
- In-home daycare
- Government and out-of-state pensions
- Cash transactions
- Contracting activities such as construction, landscaping, plumbing, and others
- Use tax
- Purchases by non-profit organizations
- Allocation and apportionment of income by corporations

What about penalties and interest?

If conditions of Tax Recovery are met, civil penalties will be waived and interest will be reduced to 3% per year.

Can I make an electronic payment for the taxes owed to the Tax Recovery Program?

No electronic payments will be accepted. All taxes owed must be paid by cash, check or money order made out to the Arizona Department of Revenue.

When is payment due?

Taxpayers must pay the total due for all Tax Recovery periods by October 1, 2011. Failure to pay the amount due by the deadline will result in lost Tax Recovery benefits and subject a taxpayer to full penalty and interest.

Are payment plans being allowed?

All taxes and interest must be paid in full by October 1, 2011 to be eligible for Tax Recovery. Tax Recovery Applications received with partial payments or no payments as of October 1, 2011, will be subject to full penalty and interest.

When can Tax Recovery Applications be submitted?

Applications will be accepted from September 1 through October 1, 2011.

Where do I mail the Tax Recovery Application?**Mail completed applications and payments to:**

Arizona Department of Revenue
Tax Recovery Program
PO Box 29019
Phoenix AZ 85038-9019

Can a taxpayer representative sign the Tax Recovery Application?

Yes, a taxpayer's representative may sign the Tax Recovery Application if the Department has received a valid Power Of Attorney. A copy of the Power of Attorney must be submitted to the Department along with the Tax Recovery Application.

Will faxed copies be accepted for Tax Recovery?

No, only Tax Recovery Applications with an original signature will be accepted.

Can tax returns be submitted electronically?

No, tax returns must be submitted with the Tax Recovery application and mailed to:

Arizona Department of Revenue
Tax Recovery Program
PO Box 29019
Phoenix AZ 85038-9019

How will taxpayers be notified that the Department received a Tax Recovery request?

Full payment by October 1, 2011 is required for application approval. The Department will make every effort to contact taxpayers to obtain any missing or incomplete information to ensure application acceptance. Once full payment is received and all conditions have been satisfied, the Department will notify taxpayers of application status by mail.

Can The Department Revoke Tax Recovery?

The Department will deny or revoke Tax Recovery if you do any of the following.

- File a false or fraudulent application.
- File a false or fraudulent return or report for purposes of Tax Recovery.
- Attempt to defeat or evade a tax through the Tax Recovery Program.

The Department will also deny Tax Recovery if you do not pay the amount due in the time given.

If a Tax Recovery Application is submitted with a tax payment, and the Tax Recovery Application is denied, will the money be returned to the taxpayer?

No, if a Tax Recovery Application is denied, the money will not be returned to the taxpayer but will be applied to the tax liability.

Can I take the accounting credit at the same time I apply for Tax Recovery?

No, the accounting credit is not available to taxpayers applying for the tax recovery program. In order to claim an accounting credit the tax must be paid timely. Since the tax has not been paid timely by the taxpayer seeking tax recovery, no accounting credit is available.

If a taxpayer owes various taxes, do they have to apply for Tax Recovery for each tax type?

No, even though the department will approve or deny Tax Recovery on a tax type basis, only one Tax Recovery application per taxpayer is requested.

If a taxpayer receives Tax Recovery for a taxable period and it is later determined that more tax is owed, will the Department of Revenue assess the taxpayer for the additional tax due?

Yes, if it is later determined that more tax is owed, the Department of Revenue will assess the taxpayer for the additional tax due as well as penalties and interest on the outstanding tax amount. The taxpayer will be allowed to protest the additional tax assessment pursuant to Arizona tax laws.

If a taxpayer applies for Tax Recovery, do they have to waive any rights?

If a taxpayer applies for and is granted Tax Recovery, they waive any right to a refund or credit for the total amount of the tax liability for each taxable year included in the application.

What about taxpayer appeal rights for an audit determination or refund denial?

Granting Tax Recovery terminates any appeal by the taxpayer of an audit determination or refund denial.

If a taxpayer is granted Tax Recovery, can the Arizona Department of Revenue still audit them?

Yes, the Department may audit a taxpayer for Tax Recovery periods subject to the limitations of Arizona Revised Statutes sections 42-1104 and 42-2059. The taxpayer may contest any deficiency that is determined by audit, but will not receive a credit or refund for an amount that would reduce the tax liability for any period below the amount covered by the Tax Recovery.

What if a taxpayer is in bankruptcy?

If a taxpayer is in an active bankruptcy, they will need the permission of the Court/Trustee to utilize the Tax Recovery Program.

Can I include city tax on my tax recovery application?

No, Tax Recovery is for state and county taxes only.

How can I report city tax for periods that fall within the tax recovery program?

It would be best to complete two returns for each tax recovery period. The first return would include state and county taxes only, and would be subject to the reduced interest rate under the Tax Recovery Program. The second return would include city taxes only, and would be subject to the full penalty and interest.

LICENSING

What if a taxpayer is unlicensed for Transaction Privilege Tax (TPT), Use tax or Luxury tax?

An Arizona Joint Tax Application (JT-1) or Luxury Tax Application must be completed and submitted together with the applicable fees, the Tax Recovery application, tax returns, etc. License fees vary from \$1 to \$25 depending on the number of locations where business is conducted. License fee amounts are provided on the JT-1 form and instructions.

Is a bond still required for unlicensed construction contracting business?

Yes. Contractors are still subject to the bonding requirements. Refer to Publication 539 on www.azdor.gov for additional information on bonding requirements and bond amounts.

Does a taxpayer need to continue to report and pay taxes after the last tax period filed under the Tax Recovery program?

Yes. All business and employers must report and pay applicable taxes timely in order to maintain their license with the Arizona Department of Revenue.

How long will it take to receive my Transaction Privilege Tax (TPT) license number?

Upon receipt of the Arizona Joint Tax Application (JT-1), the new license will be issued and mailed within five business days.

Does a taxpayer have to wait for their new license number before submitting the tax returns for this Tax Recovery program?

No. However, a completed Arizona Joint Tax Application (JT-1) must be submitted together with the tax returns.

AUDIT

What if a taxpayer is under audit?

A taxpayer is "under audit" if they:

- Have been contacted by the Department to conduct an audit
- Have received an assessment from the Department
- Have a protested/appealed assessment pending

A taxpayer is eligible to apply for Tax Recovery for years that are "under audit" as well as years outside of the audit period for which the statute of limitations has not ended. To receive Tax Recovery benefits, they will be required to waive all rights of appeal that have not expired. The filing of the application does not toll (stop the running) any applicable statute of limitations.

A taxpayer is not eligible to participate if they have used all appeal rights with a final decision being made.

Taxpayers should contact the auditor or appeals personnel to determine the required steps to apply for Tax Recovery.

What happens if a taxpayer files a Tax Recovery Application for an audit period that is under protest and does not pay the tax liability by the due date or does not comply with other requirements of the Tax Recovery provision?

The submission of a valid Tax Recovery Application constitutes an absolute waiver of all administrative and judicial rights of appeal. A valid Tax Recovery Application is one in which the taxpayer qualifies for Tax Recovery (i.e. the audit determination is not final; the taxpayer is not a party to any criminal investigation, etc.). Since the taxpayer qualifies but did not satisfy the conditions under the Tax Recovery law (i.e. pay the tax liability disclosed on the Tax Recovery Application by the due date), they will no longer have any administrative and judicial appeal rights.

What happens if a taxpayer files a Tax Recovery Application for an audit period and the Department disagrees with the tax liability on the Tax Recovery Application?

If a taxpayer is currently under audit by the Department, prior to filing a Tax Recovery Application they will need to contact the auditor to discuss their tax liability. If a taxpayer has an audit report from an auditor and the tax liability is different on the application, the Department shall revoke Tax Recovery if there is an attempt to defeat or evade the tax liability through the Tax Recovery Program. Therefore, since a taxpayer waives administrative and judicial appeal rights upon submission of the application, it is crucial that they contact the auditor prior to filing the Tax Recovery Application.

Does a taxpayer have to file a protest if the protest period will expire during Tax Recovery?

Yes. The Tax Recovery Application does not toll (stop the running) any statute of limitations. A taxpayer must file a timely protest to protect their appeal rights in case they do not qualify for Tax Recovery (i.e. party to a closing agreement, party to a criminal investigation, etc.). If a taxpayer does not qualify, then their administrative and judicial appeal rights will be retained.

Can a taxpayer representative sign the Tax Recovery Application?

Yes, a taxpayer's representative may sign the Tax Recovery Application if the Department has a valid Power Of Attorney. A copy of the Power of Attorney must be submitted to the Department along with the Tax Recovery Application.

Will faxed copies be accepted for Tax Recovery?

No, only Tax Recovery Applications with an original signature will be accepted.

If a taxpayer receives Tax Recovery for a taxable period and it is later determined that more tax is owed, will the Department of Revenue assess the taxpayer for the additional tax due?

Yes, if it is later determined that more tax is owed, the Department of Revenue will assess the taxpayer for the additional tax due as well as penalties and interest on the outstanding tax amount. The taxpayer will be allowed to protest the additional tax assessment pursuant to Arizona tax laws.

Who is prohibited from receiving Tax Recovery?

- Taxpayers with an audit determination that has become final with respect to the taxable period for which Tax Recovery is sought;
- Taxpayers that are a party to any criminal investigation or to any criminal administrative proceeding or criminal litigation that is pending on September 1, 2011;
- Taxpayers that have 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 Tax Recovery is sought;
- Taxpayers that are a party to a closing agreement with the Department for the tax periods included in the Tax Recovery Application.

Is a taxpayer eligible for Tax Recovery if the taxpayer has been notified that the Department will be conducting an audit or the Department is currently conducting an audit but the audit is not complete?

Yes, if the taxpayer has been notified in writing of an audit but the audit has not begun or the Department has not completed the audit, the taxpayer is eligible for Tax Recovery. The taxpayer should complete the Tax Recovery Application; attach the appropriate returns and detail explanation or supporting documentation for any potential audit issues i.e. filing methods and business/non-business subtractions. The taxpayer can use the DOR Tax Recovery interest calculator and submit the tax payment including reduced interest.

Is a taxpayer eligible for Tax Recovery if the Department has completed an audit but the audit is not resolved (appeal rights have not been exhausted)?

Yes, if the Department has completed an audit but it is unresolved, the taxpayer is eligible for Tax Recovery. The taxpayer should complete the Tax Recovery Application and attached amended returns. The taxpayer can use the DOR Tax Recovery calculator and submit the tax payment including reduced interest.

Are taxpayers with appeals pending before the Arizona Board of Tax Appeals eligible for Tax Recovery?

Yes, taxpayers with appeals pending before the Arizona Board of Tax Appeals are eligible for Tax Recovery. Taxpayer should contact the appropriate appeals employee to inquire about applying for Tax Recovery.

If a taxpayer is being audited by the IRS, can the taxpayer apply for Tax Recovery?

Yes, however if the IRS audit is not complete and the taxpayer decides to estimate the amount of the IRS change for purposes of filing Tax Recovery they should keep in mind that amounts included in Tax Recovery will not be refunded.

If a Tax Recovery Application is submitted for an amended return filed for post audit taxable periods not under audit by the Department, does the taxpayer waive any rights?

Yes, an application for Tax Recovery constitutes an express and absolute waiver of all administrative and judicial rights of appeal that have not run or otherwise expired as of the date of the application.

Can a taxpayer pay for an agreed portion of an audit and protest the un-agreed portion?

No, the taxpayer cannot pay part of an assessment under tax recovery and protest the other part. In order to qualify for tax recovery the entire period must be part of the application for tax recovery. This is why you must waive your rights to protest.

Will the tax paid with an amended return for which Tax Recovery was granted be subject to a later assessment of interest or penalties as a result of a subsequent examination or audit?

If the taxpayer files a Tax Recovery Application with an amended return, and the Tax Recovery process is successfully completed, and the Department subsequently audits the return and issues an additional tax assessment, the taxpayer will have appeal rights with regards to additional tax assessed in the subsequent audit.

If a taxpayer pays a protested audit in order to be eligible for Tax Recovery, will the payment constitute consent for the Department to treat the protested issue in the same manner for future audits?

No, the taxpayer's payment of a protested audit issue in order to be eligible for Tax Recovery does not imply that the taxpayer agrees with the Department's treatment of the protested issue for future audits.