

ATRA OPPOSES HB 2038

Elimination of taxpayer class action suits is a bad idea

Background

HB 2038 seeks to overturn *Arizona Department of Revenue v. Ladewig* by prohibiting a court from considering “a representative claim or class action . . . in any action that concerns overpayment of taxes or fees arising” under, among other portions of state law, Title 42 (transaction privilege, use, property and other taxes) and Title 43 (generally, income and estate taxes). The bill achieves this goal by amending statutes that apply to procedures governing the superior courts and the tax court.

Under the separation of powers concept, certain responsibilities are assigned to each branch of government. The power to make rules relating to court procedures is vested in the Arizona Supreme Court. Although the legislature may enter this area, it is subject to the power of the Supreme Court. HB 2038 may well violate these provisions of the Arizona Constitution.

Basis for ATRA’s Opposition

ATRA strongly supports the rights of Arizona taxpayers to join together in class actions concerning overpayment of taxes or fees. HB 2038 would take away this important right. This bill would effectively deny taxpayers, with small dollar amounts at issue, access to the courts.

In 1990, the Arizona Supreme Court observed in *Andrew S. Arena, Inc. v. Superior Court* that “class actions provide benefits to both claiming and defending parties and serve as a practical tool for resolving multiple claims on a consistent basis at the least cost and with the least disruption to an overloaded judicial system.”

In 2001, in *Arizona Department of Revenue v. Ladewig*, the Court applied these benefits to taxpayers who sought relief after the state unlawfully collected state income taxes.

HB 2038 is contrary to public policy as quoted in *Ladewig*: “As a matter of policy, we see no reason to set up unnecessary obstacles for those seeking to require the state to refund taxes collected in violation of the constitution.” It also ignores the Court’s statement that the rules governing class actions involve court procedure whose “formulation and application . . . is left to us by the constitution.”

Under Ladewig and the Arizona Constitution, the Legislature cannot prohibit Arizona taxpayers from seeking as a class to enforce their constitutional rights, which is what HB 2038 would do.



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