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House Engrossed Senate Bill

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1171

AN ACT

AMENDING SECTION 42-2059, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; RELATING TO MANAGED AUDIT AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-2059, Arizona Revised Statutes, is amended to
3 read:

4 42-2059. No additional audits or proposed assessments:
5 exceptions

6 A. When the department completes an audit **OR THE FINDINGS OF A MANAGED**
7 **AUDIT ARE ACCEPTED BY THE DIRECTOR OR APPROVED ON APPEAL** and a deficiency has
8 been completely determined under section 42-1108 or chapter 1, article 6 of
9 this title, the taxpayer's liability for the particular tax for the period
10 subjected to the audit is fixed and determined, and no additional audit may
11 be conducted except under the following circumstances:

12 1. If a taxpayer files a claim for refund under section 42-1251,
13 subsection B or any other provision authorizing a claim for refund. Any
14 departmental audit of the claim is limited to the issues presented on the
15 claim for refund.

16 2. Changes or corrections required to be reported to the department by
17 section 43-327. The department may audit any such reports or any periods for
18 which a report was required notwithstanding this section and may determine a
19 tax deficiency or a refund.

20 3. An audit of state transaction privilege or use tax does not
21 preclude a subsequent audit for a city or town. An audit of transaction
22 privilege or use tax for a city or town does not preclude a subsequent audit
23 for this state.

24 4. If the taxpayer failed to disclose material information during the
25 audit, or has falsified books or records or otherwise engaged in an action
26 that prevented the department from conducting an accurate audit, the
27 applicability of this subsection may be part of a subsequent protest and may
28 be contested by the taxpayer pursuant to chapter 1, article 6 of this title.

29 **5. IF A MANAGED AUDIT IS COMPLETED UNDER THE TERMS OF A LIMITED**
30 **MANAGED AUDIT AGREEMENT, THE DEPARTMENT MAY AUDIT THE ISSUES NOT COVERED BY**
31 **THE LIMITED MANAGED AUDIT AGREEMENT WITHIN THE STATUTE OF LIMITATIONS**
32 **PRESCRIBED BY SECTION 42-1104.**

33 B. If the department issues a notice of proposed assessment of taxes
34 imposed by chapter 5, article 1 or 4 of this title or title 43, chapter 10,
35 the department may not increase the amount of the proposed assessment except
36 in one or more of the following circumstances:

37 1. The taxpayer has made a material misrepresentation of facts.

38 2. The taxpayer has failed to disclose a material fact to the auditor.

39 3. The department has requested information and the taxpayer fails to
40 provide that information to the department.

41 4. After issuing the notice of proposed assessment but before the
42 assessment becomes final the tax court, court of appeals or supreme court
43 issues a decision, the application of which causes the tax initially proposed
44 to increase.

1 C. Subsection B of this section does not apply to changes or
2 corrections that are required to be reported to the department by section
3 43-327.

4 Sec. 2. Title 42, chapter 2, Arizona Revised Statutes, is amended by
5 adding article 7, to read:

6 ARTICLE 7. MANAGED AUDIT AGREEMENTS

7 42-2301. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "LIMITED MANAGED AUDIT AGREEMENT" MEANS A MANAGED AUDIT AGREEMENT
10 THAT IS LIMITED IN SCOPE TO CERTAIN PERIODS, ACTIVITIES, LINES OF BUSINESS,
11 GEOGRAPHIC AREAS OR TRANSACTIONS, INCLUDING TAX ON THE RECEIPTS OF CERTAIN
12 SALES, THE VALUE OF CERTAIN ASSETS, THE VALUE OF CERTAIN ITEMS OR SERVICES
13 AND OTHER CATEGORIES SPECIFIED IN THE AGREEMENT.

14 2. "MANAGED AUDIT" MEANS A REVIEW AND ANALYSIS BY A TAXPAYER OR THE
15 TAXPAYER'S AUTHORIZED REPRESENTATIVE OF THE INVOICES, CHECKS, ACCOUNTING
16 RECORDS OR OTHER DOCUMENTS AND INFORMATION TO DETERMINE A TAXPAYER'S
17 LIABILITY UNDER CHAPTERS 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11.

18 3. "MANAGED AUDIT AGREEMENT" MEANS A WRITTEN AGREEMENT BETWEEN THE
19 DIRECTOR AND TAXPAYER THAT CONSISTS OF AN AUDIT PLAN THAT REQUIRES THE
20 TAXPAYER TO REVIEW SELECTED REVENUE, EXPENSE AND FACT RECORDS TO DETERMINE
21 THE PROPER FILING METHOD AND TO CALCULATE THE TAXPAYER'S LIABILITY UNDER
22 CHAPTER 3, 5 OR 6 OF THIS TITLE OR TITLE 43, CHAPTER 11. MANAGED AUDIT
23 AGREEMENT INCLUDES A LIMITED MANAGED AUDIT AGREEMENT.

24 4. "TAXPAYER'S AUTHORIZED REPRESENTATIVE" MEANS A REPRESENTATIVE WHO
25 IS SELECTED BY THE TAXPAYER TO CONDUCT THE MANAGED AUDIT AND WHO IS APPROVED
26 BY THE DIRECTOR.

27 42-2302. Managed audit agreements

28 A. ON APPLICATION BY A TAXPAYER, THE DIRECTOR, IN THE DIRECTOR'S SOLE
29 DISCRETION, MAY AGREE TO A MANAGED AUDIT WITH THE TAXPAYER. THE MANAGED
30 AUDIT AGREEMENT SHALL:

31 1. BE SIGNED BY THE TAXPAYER AND THE DIRECTOR.

32 2. CONTAIN A DECLARATION BY THE TAXPAYER THAT ALL STATEMENTS OF FACT
33 IN THE TAXPAYER'S APPLICATION AND AGREEMENT ARE TRUE AND CORRECT FOR EVERY
34 MATERIAL MATTER.

35 3. SPECIFY THE TYPES OF TAXES, THE REPORTING PERIODS, ANY LIMITATIONS
36 ON THE SCOPE OF THE MANAGED AUDIT, THE NAME OF THE TAXPAYER'S AUTHORIZED
37 REPRESENTATIVE, IF ANY, AND THE AUDIT PLAN, INCLUDING THE PROCEDURES TO
38 PERFORM THE MANAGED AUDIT.

39 B. THE MANAGED AUDIT AGREEMENT MAY BE MODIFIED IN WRITING IF THE
40 AGREEMENT IS SIGNED BY THE TAXPAYER AND DIRECTOR AND THE AGREEMENT COMPLIES
41 WITH SUBSECTION A OF THIS SECTION.

42 C. THE DIRECTOR MAY CONSIDER ALL RELEVANT FACTORS WHEN DETERMINING
43 WHETHER TO AGREE TO A MANAGED AUDIT AGREEMENT, INCLUDING:

44 1. THE TAXPAYER'S HISTORY OF TAX COMPLIANCE.

45 2. THE AMOUNT OF THE TAXPAYER'S TIME AND QUALITY OF RESOURCES THAT THE
46 TAXPAYER CAN DEDICATE TO THE AUDIT.

1 3. THE EXTENT AND AVAILABILITY OF THE TAXPAYER'S RECORDS.

2 4. THE NATURE AND SCOPE OF ANY LEGAL DISPUTE WITH THE DEPARTMENT AND
3 ITS RELEVANCE TO THE MANAGED AUDIT PROPOSAL.

4 D. A MANAGED AUDIT AGREEMENT FOR TAXES UNDER CHAPTER 5 OF THIS TITLE
5 SHALL INCLUDE COUNTY EXCISE TAXES. A TAXPAYER MAY REQUEST THAT THE MANAGED
6 AUDIT AGREEMENT INCLUDE CITY AND TOWN EXCISE TAXES AND THE DEPARTMENT SHALL
7 NOTIFY THE CITIES OR TOWNS IN WHICH THE TAXPAYER CONDUCTS BUSINESS. IF A
8 CITY OR TOWN DOES NOT AGREE TO PARTICIPATE IN THE MANAGED AUDIT AGREEMENT,
9 THE CITY OR TOWN SHALL NOT CONDUCT AN AUDIT OF THE TAXPAYER FOR FORTY-TWO
10 MONTHS FROM THE END OF THE LAST TAX PERIOD THAT IS COVERED BY THE MANAGED
11 AUDIT AGREEMENT UNLESS AN EXCEPTION APPLIES PURSUANT TO SECTION 42-2059.

12 42-2303. Managed audit operations; appeal

13 A. THE TAXPAYER OR THE TAXPAYER'S REPRESENTATIVE SHALL FURNISH WRITTEN
14 FINDINGS OF THE MANAGED AUDIT TO THE DIRECTOR.

15 B. THE DIRECTOR SHALL REVIEW THE WRITTEN FINDINGS AND MAY EXAMINE
16 RECORDS AND PERFORM OTHER REVIEWS THAT THE DIRECTOR DEEMS NECESSARY TO VERIFY
17 THAT THE MANAGED AUDIT SUBSTANTIALLY CONFORMED TO THE TERMS OF THE MANAGED
18 AUDIT AGREEMENT. AFTER PERFORMING THE REVIEW UNDER THIS SUBSECTION, THE
19 DIRECTOR SHALL ACCEPT OR REJECT THE FINDINGS OF THE MANAGED AUDIT AND ISSUE A
20 NOTICE OF DETERMINATION.

21 C. IF THE DIRECTOR ACCEPTS THE MANAGED AUDIT FINDINGS, THE DIRECTOR
22 SHALL ASSESS ANY DEFICIENCY OR ISSUE ANY REFUND THAT RESULTS FROM THE MANAGED
23 AUDIT PURSUANT TO SECTION 42-2304 IN THE MANNER DESCRIBED BY SECTIONS 42-1108
24 AND 42-1118.

25 D. IF THE MANAGED AUDIT RESULTS IN A NOTICE OF DETERMINATION THAT THE
26 TAXPAYER DISPUTES OR IF THE DIRECTOR REJECTS THE FINDINGS OF THE MANAGED
27 AUDIT, THE TAXPAYER MAY APPEAL THE NOTICE OF DETERMINATION. THE TAXPAYER HAS
28 THE SAME APPEAL RIGHTS UNDER THIS SECTION AS IF THE DEPARTMENT CONDUCTED THE
29 AUDIT.

30 E. THE TAXPAYER AND DIRECTOR MAY AGREE TO A CLOSING AGREEMENT UNDER
31 SECTION 42-1113 TO RESOLVE ANY ISSUES OR AMOUNTS THAT ARE DISPUTED.

32 42-2304. Interest and penalties; refunds

33 A. NOTWITHSTANDING SECTION 42-1125, THE DIRECTOR SHALL NOT ASSESS ANY
34 PENALTIES UNLESS THE MANAGED AUDIT DISCLOSES THAT THE TAXPAYER COMMITTED
35 FRAUD OR WILFUL TAX EVASION OR THAT THE TAXPAYER COLLECTED MONIES THAT WERE
36 REPRESENTED AS TAX BUT WERE NOT REMITTED TO THE STATE.

37 B. NOTWITHSTANDING SECTION 42-1123, THE DIRECTOR SHALL NOT ASSESS
38 INTEREST IF THE MANAGED AUDIT RESULTS IN A DEFICIENCY, IF THE TAXPAYER PAYS
39 THE TAX WITHIN FORTY-FIVE DAYS OF RECEIPT OF THE NOTICE OF DETERMINATION AND
40 THE TAXPAYER DID NOT COMMIT THE ACTIVITIES DESCRIBED IN SUBSECTION A OF THIS
41 SECTION. IF THE ENTIRE ASSESSMENT IS PAID AFTER FORTY-FIVE DAYS OF THE
42 TAXPAYER'S DATE OF RECEIPT OF THE NOTICE OF DETERMINATION, THE TAXPAYER SHALL
43 PAY INTEREST PURSUANT TO SECTION 42-1123.

44 C. IF THE FINDINGS OF A MANAGED AUDIT DETERMINE THAT A REFUND IS DUE
45 TO THE TAXPAYER, THE DEPARTMENT SHALL NOT PAY INTEREST TO THE TAXPAYER IF THE
46 REFUND IS ISSUED WITHIN FORTY-FIVE DAYS OF THE TAXPAYER'S DATE OF RECEIPT OF

1 THE NOTICE OF DETERMINATION. IF THE REFUND IS PAID AFTER FORTY-FIVE DAYS OF
2 THE TAXPAYER'S DATE OF RECEIPT OF THE NOTICE OF DETERMINATION, THE DEPARTMENT
3 SHALL PAY INTEREST PURSUANT TO SECTION 42-1123.

4 D. FOR THE PURPOSES OF SUBSECTIONS B AND C OF THIS SECTION, 'NOTICE OF
5 DETERMINATION' MEANS EITHER:

6 1. THE DIRECTOR'S NOTICE OF DETERMINATION, IF NOT APPEALED.

7 2. THE FINAL DECISION AT THE HIGHEST LEVEL OF APPEAL TO WHICH THE
8 MATTER IS TAKEN, IF A NOTICE OF DETERMINATION OR REJECTION IS APPEALED.

9 Sec. 3. Applicability

10 Except for the taxes imposed under title 43, chapter 11, Arizona
11 Revised Statutes, this act applies for managed audit applications submitted
12 to the director from and after December 31, 2005. For the taxes imposed
13 under title 43, chapter 11, Arizona Revised Statutes, this act applies for
14 managed audit applications submitted to the director from and after
15 December 31, 2006.