

Senate Engrossed House Bill

~~conformity; internal revenue code; exception~~
(now: DOR; procedures; administrative rulings)

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 342
HOUSE BILL 2879

AN ACT

AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 42-2080; AMENDING SECTION 42-2101, ARIZONA REVISED
STATUTES; RELATING TO THE DEPARTMENT OF REVENUE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 42, chapter 2, article 2, Arizona Revised
3 Statutes, is amended by adding section 42-2080, to read:

4 42-2080. Rulings, procedures, notices and other
5 administrative announcements; notice; public
6 comment; records; confidentiality; exceptions

7 A. THE DEPARTMENT MAY ISSUE DRAFT RULINGS, PROCEDURES, NOTICES AND
8 ADMINISTRATIVE ANNOUNCEMENTS THAT APPLY TO TAX LAWS AND REGULATIONS,
9 EITHER GENERALLY OR FOR A SPECIFIC SET OF FACTS, AND THAT OTHERWISE DO NOT
10 CHANGE THE SUBSTANCE AND MEANING OF A STATUTE OR RULE. EXCEPT FOR PRIVATE
11 TAXPAYER RULINGS ISSUED PURSUANT TO SECTION 42-2101, THE DEPARTMENT SHALL
12 ALLOW FOR AND ACCEPT WRITTEN PUBLIC COMMENTS ON THE DRAFT RULING,
13 PROCEDURE, NOTICE OR ADMINISTRATIVE ANNOUNCEMENT AS PRESCRIBED BY THIS
14 SECTION. A RULING, PROCEDURE, NOTICE OR ADMINISTRATIVE ANNOUNCEMENT
15 BECOMES FINAL AND EFFECTIVE THIRTY DAYS AFTER THE RULING, PROCEDURE,
16 NOTICE OR ADMINISTRATIVE ANNOUNCEMENT IS ISSUED FOR PUBLIC COMMENT AND
17 REVIEW UNLESS THE DEPARTMENT WITHDRAWS THE RULING, PROCEDURE, NOTICE OR
18 ADMINISTRATIVE ANNOUNCEMENT. THE DEPARTMENT MAY AMEND THE DRAFT RULING,
19 PROCEDURE, NOTICE OR ADMINISTRATIVE ANNOUNCEMENT IN RESPONSE TO PUBLIC
20 COMMENTS RECEIVED DURING THE THIRTY-DAY PERIOD.

21 B. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN ON ITS WEBSITE A
22 PUBLICLY ACCESSIBLE RECORD OF ALL DRAFT AND FINAL RULINGS, PROCEDURES,
23 NOTICES AND ADMINISTRATIVE ANNOUNCEMENTS AND SHALL PROMINENTLY ANNOUNCE
24 ADDITIONS, MODIFICATIONS AND OTHER CHANGES TO THIS RECORD ON THE
25 DEPARTMENT WEBSITE'S HOME PAGE.

26 C. A DRAFT RULING, PROCEDURE, NOTICE OR ADMINISTRATIVE ANNOUNCEMENT
27 THAT APPLIES TO TAX LAWS AND REGULATIONS IS NOT CONSIDERED FINAL AND
28 EFFECTIVE UNLESS THE RULING, PROCEDURE, NOTICE OR ADMINISTRATIVE
29 ANNOUNCEMENT CONTAINS ALL OF THE FOLLOWING:

30 1. THE SUBJECT MATTER OF THE DRAFT RULING, PROCEDURE, NOTICE OR
31 ADMINISTRATIVE ANNOUNCEMENT.

32 2. A CITATION TO ALL STATUTES, RULES AND PUBLISHED ADMINISTRATIVE
33 RULINGS RELATING TO THE DRAFT RULING, PROCEDURE, NOTICE OR ADMINISTRATIVE
34 ANNOUNCEMENT.

35 3. THE NAME AND CONTACT INFORMATION OF DEPARTMENT PERSONNEL WITH
36 WHOM PERSONS MAY COMMUNICATE REGARDING THE DRAFT RULING, PROCEDURE, NOTICE
37 OR ADMINISTRATIVE ANNOUNCEMENT.

38 4. THE DATE ON WHICH THE DRAFT RULING, PROCEDURE, NOTICE OR
39 ADMINISTRATIVE ANNOUNCEMENT WAS PROPOSED.

40 5. THE DATE ON WHICH THE DRAFT RULING, PROCEDURE, NOTICE OR
41 ADMINISTRATIVE ANNOUNCEMENT WILL BECOME FINAL AND EFFECTIVE.

42 6. A STATEMENT OF WHETHER PUBLIC COMMENTS ON THE DRAFT RULING,
43 PROCEDURE, NOTICE OR ADMINISTRATIVE ANNOUNCEMENT WERE RECEIVED AND WHERE
44 THE WRITTEN COMMENTS AND THE DEPARTMENT'S RESPONSE TO THOSE COMMENTS ARE
45 AVAILABLE FOR INSPECTION.

1 of a taxpayer or potential taxpayer shall be considered a request for a
2 taxpayer information ruling instead of a private taxpayer ruling.

3 C. A private taxpayer ruling or taxpayer information ruling may be
4 revoked or modified by either:

5 1. A change or clarification in the law that was applicable at the
6 time the ruling was issued, including changes or clarifications caused by
7 legislation, adopted administrative rules and court decisions.

8 2. Actual written notice by the department to the last known
9 address of the taxpayer or potential taxpayer of the revocation or
10 modification of the private taxpayer ruling or taxpayer information ruling
11 if the taxpayer identifying information has been disclosed to the
12 department pursuant to subsection E of this section. If taxpayer
13 identifying information has not been disclosed, written notice by the
14 department to the last known address of the taxpayer representative who
15 requested the ruling ~~will constitute~~ CONSTITUTES notice to the taxpayer or
16 potential taxpayer.

17 D. With respect to the taxpayer or prospective taxpayer to whom the
18 private taxpayer ruling was issued, the revocation or modification of a
19 private taxpayer ruling shall not be applied retroactively to tax periods
20 or tax years before the effective date of the revocation or modification,
21 and the department shall not assess any penalty or tax attributable to
22 erroneous advice that it furnished to the taxpayer or potential taxpayer
23 in the private taxpayer ruling if:

24 1. The taxpayer reasonably relied on the private taxpayer ruling.

25 2. The penalty or tax did not result either from a failure by the
26 taxpayer to provide adequate or accurate information or from a change in
27 the information.

28 E. Subsection D of this section applies to a taxpayer information
29 ruling if the taxpayer or potential taxpayer provides its name, address,
30 identifying number, if applicable, and authorization pursuant to section
31 42-2003, subsection A, paragraph 1 for the representative of the taxpayer
32 or potential taxpayer before the date the department publishes the ruling.
33 The department shall notify the representative of the taxpayer or
34 potential taxpayer of the proposed publication date. If the director has
35 determined that the taxpayer information ruling should not be published
36 pursuant to subsection ~~+~~ M of this section, subsection D of this section
37 applies if the taxpayer or potential taxpayer provides the identifying
38 information before the date specified by the department on issuing the
39 taxpayer information ruling to the representative. If the taxpayer or
40 potential taxpayer does not provide the department with the identifying
41 information and representative authorization before the proposed
42 publication date, or for an unpublished ruling, the date specified by the
43 department, the taxpayer information ruling is not binding on the
44 department for the purpose of abating interest, penalty or tax.

1 F. A private taxpayer ruling or taxpayer information ruling may not
2 be relied ~~upon~~ ON, cited or introduced into evidence in any proceeding by
3 a taxpayer other than the taxpayer who has received the private taxpayer
4 ruling.

5 G. A taxpayer may apply for an administrative hearing to determine
6 the propriety of a retroactive application of a revoked or modified
7 private taxpayer ruling by filing a written petition with the department
8 pursuant to section 42-1251 within forty-five days after receiving written
9 notice of the department's intent to retroactively apply a revoked or
10 modified private taxpayer ruling. This subsection applies to a taxpayer
11 information ruling if the taxpayer has disclosed the taxpayer's
12 identifying information pursuant to subsection E of this section.

13 H. A private taxpayer ruling or taxpayer information ruling
14 constitutes the department's interpretation of the law or rules only as
15 they apply to the taxpayer making, and the particular facts contained in,
16 the request.

17 I. A private taxpayer ruling or taxpayer information ruling may be
18 issued only if no tax has accrued with respect to the transactions, events
19 or facts contained in the request. The department may issue a private
20 taxpayer ruling or taxpayer information ruling addressing a taxpayer's
21 ongoing business activities, except that the ruling applies only to
22 transactions that occur or tax liabilities that accrue from and after the
23 date the taxpayer receives the ruling.

24 J. WITHIN THIRTY DAYS AFTER RECEIVING A WRITTEN REQUEST PURSUANT TO
25 SUBSECTION A OF THIS SECTION, THE DEPARTMENT SHALL MEET WITH THE REQUESTOR
26 TO DISCUSS THE FACTS AND CIRCUMSTANCES PERTAINING TO THE REQUEST, AT A
27 TIME AND PLACE DESIGNATED BY THE DEPARTMENT, UNLESS THE REQUESTOR WAIVES
28 THIS MEETING. The department shall ~~attempt to~~ issue private taxpayer
29 rulings or taxpayer information rulings within ~~forty-five~~ NINETY days
30 after receiving the written request, ~~and on receiving the facts that are~~
31 ~~relevant to the ruling~~ UNLESS THE DEPARTMENT AND THE REQUESTOR AGREE TO
32 DELAY THE RULING. If the ruling is expected to be delayed, the department
33 shall notify the requestor of the BASIS FOR THE PROPOSED delay and the
34 proposed date of issuance. PURSUANT TO SUBSECTION A OF THIS SECTION, THE
35 DEPARTMENT MAY DECLINE TO ISSUE A RULING, AND THIS SUBSECTION DOES NOT
36 REQUIRE THE DEPARTMENT TO ISSUE A RULING. IF THE DEPARTMENT DECLINES TO
37 ISSUE A RULING, THE DEPARTMENT SHALL ISSUE APPROPRIATE WRITTEN ASSISTANCE
38 OR ADVICE THAT EXPLAINS THE REASON THE DEPARTMENT IS DECLINING TO ISSUE A
39 RULING AND PROVIDE A GENERAL DISCUSSION OF RELEVANT TAX PRINCIPLES OR
40 APPLICATIONS.

41 K. THE DEPARTMENT SHALL PROVIDE THE REQUESTOR WITH A DRAFT OF THE
42 PRIVATE TAXPAYER RULING OR TAXPAYER INFORMATION RULING AT LEAST THIRTY
43 DAYS BEFORE ISSUING THE RULING PURSUANT TO SUBSECTION J OF THIS SECTION.
44 IF REQUESTED BY THE REQUESTOR, THE DEPARTMENT SHALL MEET WITH THE
45 REQUESTOR WITHIN FOURTEEN DAYS AFTER PROVIDING THE DRAFT RULING, AT A TIME

1 AND PLACE DESIGNATED BY THE DEPARTMENT, TO DISCUSS THE CONTENTS OF THE
2 DRAFT RULING.

3 ~~K.~~ L. The department shall maintain the private taxpayer ruling or
4 taxpayer information RULING as a public record and make it available at a
5 reasonable cost for public inspection and copying. The text of private
6 taxpayer or taxpayer information rulings is open to public inspection
7 subject to the confidentiality requirements prescribed by article 1 of
8 this chapter.

9 ~~L.~~ M. At the time of making a private taxpayer RULING or taxpayer
10 information ruling request, a taxpayer or potential taxpayer may submit a
11 written request that the ruling not be published due to concerns about
12 confidentiality or other disclosed reasons. If the director determines
13 that the ruling should not be published AND THE TAXPAYER REQUESTS THAT THE
14 RULING BE KEPT CONFIDENTIAL, the ruling shall be deemed confidential for
15 the purpose of section 39-121.01, subsection D, paragraph 2. If the
16 director determines that the ruling should be published AND THE TAXPAYER
17 REQUESTS THAT THE RULING BE KEPT CONFIDENTIAL, the taxpayer may withdraw
18 the ruling request, and the department shall not proceed with a ruling if
19 the request is withdrawn. Notwithstanding section 41-1092.02, the
20 decision of the director to publish is not an appealable agency action as
21 defined in section 41-1092 and is not subject to appeal by the taxpayer.

22 ~~M.~~ N. For the purposes of this section:

23 1. "Private taxpayer ruling" means a written determination by the
24 department issued on or after September 21, 1991 that interprets and
25 applies one or more statutes contained in this title or title 43 and any
26 applicable administrative rules that the department has adopted to the
27 specific prospective facts described in the request for a private taxpayer
28 ruling.

29 2. "Taxpayer information ruling" means a written determination by
30 the department issued on or after ~~the effective date of this amendment to~~
31 ~~this section~~ SEPTEMBER 26, 2008 that interprets and applies one or more
32 statutes contained in this title or title 43 and any applicable
33 administrative rules that the department has adopted to the specific
34 prospective facts described in a request for a taxpayer information
35 ruling.

APPROVED BY THE GOVERNOR MAY 7, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2021.