



## A Dash of SALT

# Arizona is Increasing the Limits on Fee Awards in Tax Cases

This month's state and local tax (SALT) column addresses the increased limits on fee awards for tax cases that go into effect on July 3, 2015.

The Arizona Department of Revenue (Department) permits CPAs to represent taxpayers at administrative proceedings involving tax disputes, and CPAs are permitted to represent taxpayers in small claims actions before the Arizona Tax Court. Small claims actions involve disputes less than \$5,000 in tax, penalties and interest as of the time of the assessment and property tax appeals involving residential properties or properties with an assessed full cash value of less than \$2 million.

Arizona Governor Doug Ducey recently signed HB 2131, which increases the amount of fees taxpayers may recover when they prevail in tax disputes with state, county, or municipal taxing authorities. The bill increases both the cap on hourly rates and the cap on overall recoveries of costs and fees in each proceeding.

Beginning in 2016, HB 2131 also requires Arizona's Attorney General to adjust such limits based on the annual change in the metropolitan Phoenix consumer price index.

### The New Fee Award Limits for Administrative Proceedings Involving the Arizona Department of Revenue

For administrative proceedings involving tax cases brought by or against the Department, taxpayers may recover "reasonable fees and other costs," which are defined as "fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses, the cost of any study, analysis, report, test or project that is found to be necessary

to prepare the party's case and necessary fees for attorneys or other representatives."

Once the changes go into effect on July 3, 2015, Arizona's hourly cap on such fees will increase from \$100 per hour to \$350 per hour and the overall cap on fees in such administrative proceedings will increase from \$20,000 to \$75,000.

### Significant Obstacles Remain to Recovering Fees Expended in Administrative Proceedings

In order to recover such fees and costs, taxpayers must apply to the Department's Problem Resolution Officer (PRO) within 30 days after the conclusion of the administrative proceeding and the PRO must determine that: (1) the Department's position was not substantially justified; and (2) the taxpayer prevailed as to the most significant issue or set of issues.

The PRO may deny a fee award if the taxpayer unduly and unreasonably protracted the final resolution of the matter, or if the taxpayer prevailed only because of an intervening change in the law.

Unsatisfied taxpayers may appeal the PRO's determination to the State Board of Tax Appeals.

### The New Fee Award Limits for Tax Cases that Go to Court

Arizona law permits courts to award "fees and other expenses" to taxpayers who prevail in tax disputes with state, county, or municipal taxing authorities. "Fees and other expenses" are defined as "the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test



or project which the court finds to be directly related to and necessary for the presentation of the party's case and reasonable and necessary attorney fees."

When the changes go into effect on July 3, 2015, Arizona's hourly cap on such fees will increase from \$175 per hour to \$350 per hour and the overall cap on fees in each court level will increase from \$30,000 to \$75,000.

Courts may deny or reduce such awards if the taxpayer unduly and unreasonably protracted the final resolution of the matter, if the taxpayer prevailed only because of an intervening change in the law, or if the taxpayer refused an offer of settlement that was at least as favorable as the relief ultimately granted.

**Practice Tip!** – Savvy CPAs help their clients determine whether it is prudent to appeal tax assessments, denials of refund claims, and property tax valuations and classifications. When doing so, they should take into consideration the upcoming increases in potential fee awards. Given these changes, taxpayers may not feel compelled to give in to or accept unreasonable settlement offers from taxing authorities quite as often as they did in the past. **AZ CPA**

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