Legislation to Fix Arizona's Power of Attorney Problems

by James G. Busby, Jr., CPA

In this month's state and local tax (SALT) column, Busby describes how recent legislation (S.B. 1385) should resolve the Department of Revenue's (DOR) concerns — and the problems taxpayers have been having — with the forms DOR requires taxpayer representatives to provide before it will communicate with them regarding their corporate clients' tax issues. The author helped draft Senate Bill 1385 that went into effect on August 3, 2018 and is retroactive to May 23, 2015 – the date DOR's interpretation of the prior law was issued.

For years taxpayers and their representatives have complained about the DOR's narrow interpretation of the law regarding who may sign POA forms for corporate taxpayers. The DOR, on the other hand, believed that it was being as flexible as it could under the law. The problem got so bad that the DOR recently claimed that a seven-figure tax refund claim was invalid because it was submitted by a practitioner whose POA form was not signed by someone authorized to sign it.

The Arizona Legislature unanimously passed S.B. 1385 to fix this vexing problem, and Gov. Doug Ducey signed it on April 12, 2018.

How the Problem Began

Like most states, Arizona has strict laws that prohibit DOR officials from releasing confidential taxpayer information to unauthorized individuals. It is a felony for DOR officials to knowingly disclose confidential information and a misdemeanor if they do so mistakenly.

Accordingly, when the DOR took an official position on who "principal officers" are for purposes of Arizona's statute that permits the agency to release confidential information to the principal officers of corporate taxpayers, they played it safe and limited the term to CEO, president, secretary, treasurer and vice president. Of course, taxpayer representatives for large corporate taxpayers have had a difficult time getting such high-level corporate officers to sign the POA forms.

Who May Sign POAs Now?

S.B. 1385 defines "principal officer" to include "chief executive officer, president, secretary, treasurer, vice president of tax, chief financial officer, chief operating officer or chief tax officer or any other corporate officer who has the authority to bind the taxpayer on matters related to state taxes." Essentially, the legislature tried to list all of the titles of individuals that the DOR claims normally sign POA documents for corporate taxpayers.

Then to be safe, the legislature added that, "[i]f a corporate officer signs a statement under penalty of perjury representing that the officer is a principal officer, the department may rely on the statement until the statement is shown to be false." Based on this provision, the DOR recently modified its POA forms to include such a statement so it now accepts POA forms signed by any authorized corporate officer regardless of title. ■

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