

## Arizona Increasing Limits on Attorney Fee Awards In Tax Cases

by James G. Busby Jr.



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James G. Busby Jr. is a state and local tax attorney at the Cavanagh Law Firm in Phoenix. Before entering private practice in 1999, Busby was the chief auditor in charge of transaction privilege (sales) tax audits at the Arizona Department of Revenue.

In this edition of SALT From My Saddle, Busby addresses the increased limits on fee awards for tax cases in Arizona that go into effect on July 3, 2015. Busby, who worked closely with the National Federation of Independent Business to get these changes through the Legislature, says that given these changes, Arizona taxpayers may not feel compelled to give in to or accept unreasonable settlement offers from tax authorities quite as often as they did in the past.

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Taxpayers who prevail in disputes with Arizona tax authorities are entitled to seek reimbursement of fees paid to attorneys and other professionals they engage to assist them with the disputes.

Arizona Gov. Doug Ducey (R) recently signed HB 2131, which increases the amount of fees taxpayers may recover when they prevail in tax disputes with state, county, or municipal tax authorities. The new law 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 will also require the Arizona attorney general to adjust those limits based on the annual change in the metropolitan Phoenix consumer price index.

### New Fee Award Limits for Administrative Proceedings

For administrative proceedings involving tax cases brought by or against the Department of Revenue, taxpayers may recover “reasonable fees and other costs.” The latter 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, Arizona’s hourly cap on those fees will increase from \$100 per hour to \$350 per hour, and the overall cap on fees in administrative proceedings will increase from \$20,000 to \$75,000.

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

To recover those fees and costs, taxpayers must apply to the DOR’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 on 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’s Board of Tax Appeals.

### New Fee Award Limits for Court Cases

Arizona law permits courts to award “fees and other expenses” to taxpayers who prevail in tax disputes with state, county, or municipal tax 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 regarding 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, Arizona’s hourly cap on those fees will increase from \$175 per hour to \$350 per hour, and the overall cap on fees at each court level will increase from \$30,000 to \$75,000.

Courts may deny or reduce the 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 tax professionals 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 consider the upcoming increases in potential fee awards. Given those changes, Arizona taxpayers may not feel compelled to give in to or accept unreasonable settlement offers from tax authorities quite as often as they did in the past. ☆

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