

More Taxpayers May Soon Appeal Directly to the Arizona Tax Court

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In this edition of SALT From My Saddle, Busby describes how and why some taxpayers may soon opt to bypass all or part of the administrative appeals process in Arizona to challenge some audit assessments and refund denials at the Board of Tax Appeals or in the Arizona Tax Court instead. The author helped draft S.B. 1385.

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Many years ago, the Arizona Legislature granted property owners the option to bypass all or part of the administrative appeals process to appeal property valuation and property classification determinations directly to court instead. Now that Gov. Doug Ducey (R) signed S.B. 1385,¹ taxpayers may soon choose to bypass all or part of the administrative appeals process for disputes

involving some audit assessments and refund denials.

Applicable Tax Types

S.B. 1385 allows taxpayers to bypass the administrative hearing process before the Office of Administrative Hearings (OAH) for disputes involving audit assessments and refund denials issued by the Department of Revenue, except cases involving individual income taxes.²

The OAH is authorized to adjudicate all disputes involving audit assessments and refund denials issued by the DOR,³ except disputes involving income and withholding taxes, which are adjudicated by the department's internal hearing office because of strict confidentiality provisions in the information sharing agreement between the DOR and the IRS. Accordingly, S.B. 1385 will not permit taxpayers to bypass the administrative hearing process for disputes involving corporate income taxes or withholding issues.

Thus, S.B. 1385 typically will apply to cases involving state and local tax assessments and refund denials involving sales and use tax issues. Also, the bill could apply to disputes involving severance tax, telecommunication services excise tax, and other taxes administered by the DOR, including luxury tax, the taxes on water use, and the jet fuel excise and use tax,⁴ as well as to disputes

² See Laws 2018, Chapter 218, section 1 and Ariz. Rev. Stat. section 42-1119.

³ See Ariz. Rev. Stat. section 41-1092.02(A).

⁴ See Ariz. Rev. Stat. section 42-1101.

¹ Laws 2018, Chapter 218.

involving seizures and forfeitures of tobacco products caused by luxury tax stamp issues.⁵

Why S.B. 1385 Is Important

Before S.B. 1385 took effect, taxpayers that challenged Arizona audit assessments or refund denials could not proceed to court until an administrative hearing officer issued a written decision. The administrative hearing process slowed and increased the cost of resolving important, complex issues and large-stakes controversies that generally get resolved at the Arizona Court of Appeals.

Worse, many Arizona taxpayers and tax practitioners have long felt that the OAH administrative hearing process is stacked against them because its hearing officer decisions almost always uphold the DOR's assessments and refund denials. Accordingly, many taxpayers view OAH hearings as a waste of time and money even for smaller cases.

Options and Procedure

Under S.B. 1385, after a taxpayer has protested a qualifying audit assessment or refund denial and conferred with a "designated appeals officer" at the DOR to clarify any fact or legal issue in dispute and to discuss the availability of additional documentation that may assist in resolving any outstanding issues, the taxpayer may bypass the hearing process before the OAH and appeal either to the Board of Tax Appeals⁶ or directly to the Arizona Tax Court.⁷

If the DOR fails to schedule a meeting within 45 days of a taxpayer filing a written request to confer with a designated appeals officer about bypassing the hearing process before the OAH, the taxpayer may bypass the meeting and appeal directly to the Board of Tax Appeals or to the Arizona Tax Court.⁸

Retroactivity Clause

Once the provisions in S.B. 1385 that permit taxpayers to bypass all or part of the administrative appeals process go into effect on August 3, they will apply retroactively to all applicable tax disputes pending on or arising after December 31, 2016.⁹ ■

⁵ See Ariz. Rev. Stat. section 42-1124(H).

⁶ Board of Tax Appeals decisions may, in turn, be appealed to the Arizona Tax Court. Ariz. Rev. Stat. section 42-1253(C).

⁷ Laws 2018, Chapter 218, section 1.

⁸ *Id.*

⁹ Laws 2018, Chapter 218, section 7.