



More Taxpayers May Soon Appeal Directly to the Arizona Tax Court

In this month's state and local tax (SALT) column, 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 Senate Bill 1385.

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 signed SB 1385, taxpayers may soon choose to bypass part or all of the administrative appeals process for disputes involving some audit assessments and refund denials.

Applicable Tax Types

Senate Bill 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 DOR, except cases involving individual income taxes.

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

Thus, SB 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 DOR, including luxury tax, the taxes on water use, and the jet fuel excise and use tax, as well as to disputes involving seizures and forfeitures of tobacco products caused by luxury tax stamp issues.

Why SB 1385 is Important

Before SB 1385 took effect, taxpayers that challenged Arizona audit assessments or refund denials could not proceed to court to resolve their dispute 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.



by James G. Busby, Jr., CPA

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Worse, many Arizona taxpayers and tax practitioners have long felt that the administrative hearing process at the OAH is stacked against them because the OAH 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 SB 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 choose to

bypass the hearing process before the OAH and appeal either to the Board of Tax Appeals (BOTA) or directly to the Arizona Tax Court.

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 BOTA or to the Arizona Tax Court.

Retroactivity Clause

Once the provisions in SB 1385 that permit taxpayers to bypass all or part of the administrative appeals process go into effect on August 3, 2018, they will apply retroactively to all applicable tax disputes pending on or arising from and after December 31, 2016. ■