

Legislation to Fix Arizona's Power of Attorney Problems

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In this edition of SALT From My Saddle, Busby says recent legislation (S.B. 1385) should resolve the DOR's concerns — and the problems taxpayers have been having — with the forms the department requires taxpayer representatives to provide before it will communicate with them regarding their corporate clients' tax issues.

The author helped draft the bill.

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For years taxpayers and their representatives have complained about the Arizona Department of Revenue's narrow interpretation of the law regarding who may sign power of attorney (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 department recently held 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 approved S.B. 1385 to fix this vexing problem, and Gov. Doug Ducey (R) signed it April 12.¹

How the Problem Began

Like most states, Arizona has strict laws that prohibit DOR officials from releasing confidential taxpayer information to unauthorized individuals.² It is a felony for department officials to knowingly disclose confidential information and a misdemeanor if they do so mistakenly.³

Accordingly, when the DOR took an official position on who "principal officers" are for purposes of the Arizona statute that permits the agency to release confidential information to the principal officers of corporate taxpayers, it played it safe and limited the definition to CEO, president, secretary, treasurer, and vice president.⁴ Of course, taxpayer representatives for large corporate taxpayers have had difficulty getting those high-level corporate officers to sign the POA forms that the DOR requires.

Who May Sign POAs Now?

S.B. 1385 defines principal officers 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."⁵ Essentially, the Legislature tried to list all the titles of individuals that the DOR claims

¹ S.B. 1385, Laws 2018, Chapter 218.

² Ariz. Rev. Stat. section 42-2003.

³ Ariz. Rev. Stat. section 42-2004.

⁴ Arizona General Tax Procedure GTP 15-2.

⁵ Laws 2018, Chapter 218, section 4.

normally sign POA documents for corporate taxpayers.

And to be safe, the Legislature added that “if 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.”⁶ Based on this provision, presumably the DOR will modify its POA forms to include such a statement so it can accept POA forms signed by any authorized corporate officer regardless of title.

Retroactivity Clause

Once the relevant provisions of S.B. 1385 go into effect on August 3, 2018, they will be retroactive to May 23, 2015⁷ — the date the DOR’s interpretation of the prior law was issued.⁸ ■

⁶ *Id.*

⁷ Laws 2018, Chapter 218, section 7(B).

⁸ Arizona General Tax Procedure GTP 15-2.

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