

REFERENCE TITLE: TPT; municipalities; customer refund claims

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SB 1133

Introduced by
Senator Lesko

AN ACT

AMENDING SECTIONS 42-1101.01 AND 42-1118, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1118.01; AMENDING SECTIONS 42-1119, 42-1123, 42-1251, 42-1253, 42-1254, 42-2003, 42-2064 AND 42-5008, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6009; AMENDING SECTION 44-1263, ARIZONA REVISED STATUTES; RELATING TO TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-1101.01, Arizona Revised Statutes, is amended to
3 read:

4 42-1101.01. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CUSTOMER" MEANS A PERSON THAT PURCHASES GOODS OR SERVICES FROM ANY
7 VENDOR.

8 ~~1.~~ 2. "Electronic return preparer" means a person who for
9 compensation prepares an electronic return, statement or other document or
10 prepares a substantial portion of an electronic return, statement or other
11 document or transforms a paper version of a completed return, statement or
12 other document to an electronic version of the same return, statement or
13 other document for filing with the department. Electronic return preparer
14 does not include a person who for compensation provides only computational
15 and informational software used to prepare and file taxes.

16 ~~2.~~ 3. "Electronic return transmitter" means a person who receives the
17 electronic return, statement or other document from a taxpayer or electronic
18 return preparer for ultimate transmittal to the department.

19 ~~3.~~ 4. "Return preparer":

20 (a) Means any person that prepares a return, statement or other
21 document or substantial portion of a return, statement or other document for
22 compensation, regardless of the media used to prepare the return.

23 (b) Does not include a person because the person:

24 (i) Furnishes typing, reproducing or other mechanical assistance.

25 (ii) Prepares a return, statement or other document for an employer
26 and is regularly and continuously employed by the employer.

27 (iii) Prepares as a fiduciary a return, statement or other document
28 for any person.

29 (iv) Prepares a claim for refund or a return, statement or other
30 document for a taxpayer in response to any notice of deficiency issued to the
31 taxpayer or in response to any waiver of restriction after the commencement
32 of an audit of the taxpayer.

33 (v) Furnishes computational and informational software used by the
34 taxpayer to prepare the taxpayer's return, statement or other document.

35 (vi) Only prepares payment documents for payment made to the
36 department pursuant to section 42-1129.

37 ~~4.~~ 5. "Return, statement or other document" means any return, claim
38 for refund, statement or other document that is required or authorized to be
39 filed with the department pursuant to this title or title 43, including
40 returns for any political subdivision of this state for which the department
41 collects taxes.

42 6. "VENDOR" MEANS ANY TAXPAYER THAT EITHER IS LIABLE FOR FILING AND
43 REMITTING TRANSACTION PRIVILEGE TAX TO THE DEPARTMENT UNDER ANY TAX
44 CLASSIFICATION PURSUANT TO CHAPTER 5, ARTICLE 2 OF THIS TITLE OR IS

1 REGISTERED WITH THE DEPARTMENT TO REMIT USE TAX TO THE DEPARTMENT ON BEHALF
2 OF ITS PURCHASERS.

3 Sec. 2. Section 42-1118, Arizona Revised Statutes, is amended to read:

4 ~~42-1118.~~ Refunds, credits, offsets and abatelements

5 A. If the department determines that any amount of tax, penalty or
6 interest has been paid in excess of the amount actually due, the department
7 shall credit the excess amount against any tax administered pursuant to this
8 article, including any penalty, interest or other amounts owed by the
9 taxpayer to the department. If it is determined that the amount cannot be
10 credited against a tax or installment of taxes due from the taxpayer, the
11 department may:

12 1. Refund the entire amount of tax, interest and penalty, in a lump
13 sum or in not more than five annual installments, to the taxpayer from whom
14 it was collected.

15 2. Issue to the taxpayer a credit voucher for the entire amount of
16 tax, interest and penalty collected, to be carried forward and applied
17 against future tax liabilities until exhausted.

18 3. Refund part, and issue a credit voucher for the balance, of the
19 tax, interest and penalties as provided in paragraphs 1 and 2 of this
20 subsection.

21 B. IN THE CASE OF A TRANSACTION PRIVILEGE TAX, A VENDOR MAY CLAIM A
22 REFUND UNDER THIS CHAPTER EXCEPT AS PROVIDED IN SECTION 42-1118.01 OR
23 SUBSECTION K OF THIS SECTION.

24 ~~B.~~ C. If the total amount withheld from income under section 43-401
25 exceeds the amount of the tax on the employee's entire taxable income as
26 computed under title 43, the department shall refund the amount of the excess
27 deducted without requiring a filing of a refund claim as provided in this
28 section. The failure of the department to make the refund does not limit the
29 right of the taxpayer to file a claim for a refund pursuant to this section
30 if the claim is not barred under section 42-1106. The department shall not
31 refund amounts less than one dollar unless specifically requested by the
32 taxpayer at the time the return or claim for refund is filed.

33 ~~C.~~ D. Any overpayment that may result from withholdings or estimates
34 pursuant to section 43-401, 43-581 or 43-582 shall not be credited or
35 refunded unless an Arizona income tax return has been filed for the tax year
36 for which the withholdings or estimates were made.

37 ~~D.~~ E. The department shall give a vendor who has a duty to collect
38 use tax pursuant to chapter 5, article 4 of this title and who has not
39 collected that tax full credit or offset for any use tax, interest and
40 penalty paid to the department by the purchaser when issuing a determination
41 of a deficiency pursuant to section 42-1108. This credit or offset shall be
42 computed from the date of the use tax payment by the purchaser. If the
43 purchaser has been audited by the department for use tax for the period of
44 the purchase, the purchaser is considered to have paid the use tax to the
45 department. For other purchases, the vendor may submit an affirmation by a

1 purchaser on a form prescribed by the department that use tax was paid on the
2 purchase. A fully completed certificate, taken in good faith by the vendor,
3 constitutes proof that the vendor is entitled to this credit or offset. The
4 department may require a purchaser who has submitted the certificate to
5 establish the accuracy and completeness of the information contained in the
6 certificate. If the purchaser cannot establish the accuracy and completeness
7 of the information, the purchaser is liable for a penalty equal to the amount
8 of tax and interest that would have been paid by the seller and for the
9 additional penalties pursuant to section 42-1125. Payment of the penalty
10 relieves the purchaser of any responsibility for paying the use tax. The
11 department may require this proof and may assess the purchaser within the
12 later of the period of limitations set forth in section 42-1104 or one year
13 from the date the notice of proposed deficiency is issued to the vendor if
14 the purchaser does not establish the accuracy of the information contained in
15 the certificate.

16 ~~F.~~ F. Each claim for refund shall be filed with the department in
17 writing and shall identify the claimant by name, address and tax
18 identification number. Each claim shall provide the amount of refund
19 requested, the specific tax period involved and the specific grounds on which
20 the claim is founded. Refunds are subject to setoff for debts pursuant to
21 section 42-1122.

22 ~~F.~~ G. A motor vehicle manufacturer that repurchases a vehicle
23 pursuant to section 44-1263 or for reasons of consumer satisfaction may apply
24 for a refund of the taxes paid under chapter 5 of this title if that
25 manufacturer has refunded the amount of tax to the consumer. A refund is
26 allowed under this subsection only if the manufacturer provides satisfactory
27 proof to the department that tax amounts attributed to the sale of the
28 vehicle were collected from the consumer and that the manufacturer refunded
29 an amount of tax to the consumer. Any refund provided under this subsection
30 is in lieu of any refund on the vehicle that the dealer may otherwise be
31 entitled to receive. A manufacturer must apply for a refund under this
32 subsection within four years after repurchasing the vehicle. For the
33 purposes of this subsection:

- 34 1. "Consumer" has the same meaning prescribed in section 44-1261.
- 35 2. "Motor vehicle manufacturer" means a corporation engaged in the
36 business of producing passenger cars, trucks and multipurpose passenger
37 vehicles as described in 49 Code of Federal Regulations section 571.3.
- 38 3. "Satisfactory proof" includes copies of checks and a purchase or
39 lease agreement that lists the vehicle identification number and that
40 itemizes the amount that was collected as tax from the consumer.

41 ~~G.~~ H. The department shall not imprint the full social security
42 number or other taxpayer identifier used pursuant to section 42-1105 on any
43 taxpayer refund check, voucher or other credit documentation issued to the
44 taxpayer under this section.

1 ~~H.~~ I. If any amount has been erroneously determined to be due from
2 any person but not yet collected, the department shall cancel the amount or
3 amounts on its records.

4 ~~I.~~ J. If, with or after the filing of a protest or an appeal with the
5 department, the state board of tax appeals or the court, a taxpayer pays the
6 tax protested or appealed before the department, board or court acts ~~upon~~ ON
7 the protest or the appeal, such body shall treat the protest or the appeal as
8 a claim for refund or an appeal from the denial of a claim for refund filed
9 under this section.

10 K. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT MAY DENY A
11 CLAIM FOR THE REFUND OF TRANSACTION PRIVILEGE TAX FILED BY A VENDOR THAT
12 ARISES FROM THE SAME TRANSACTION OR TRANSACTIONS FOR WHICH THE DEPARTMENT HAS
13 PAID A CLAIM FILED UNDER SECTION 42-1118.01.

14 Sec. 3. Title 42, chapter 1, article 3, Arizona Revised Statutes, is
15 amended by adding section 42-1118.01, to read:

16 42-1118.01. Customer refund claims; transaction privilege or
17 use tax; assignment by vendor; payment or denial
18 of claim

19 A. A CUSTOMER WHO PAID TO A VENDOR AN AMOUNT EQUAL TO A TRANSACTION
20 PRIVILEGE TAX THAT WAS PASSED ON BY THE VENDOR TO THE CUSTOMER OR WHO PAID A
21 USE TAX TO A VENDOR MAY FILE A CLAIM PURSUANT TO THIS SECTION IF THE VENDOR
22 ASSIGNS UNDER SUBSECTION B OR C OF THIS SECTION TO THE CUSTOMER ITS RIGHT TO
23 CLAIM AN AMOUNT EQUAL TO ANY TAX AND INTEREST THAT THE VENDOR COULD OTHERWISE
24 CLAIM UNDER SECTION 42-1118.

25 B. ANY CLAIM BY A CUSTOMER UNDER THIS SECTION IS IN LIEU OF THE VENDOR
26 CLAIMING A REFUND FOR THE UNDERLYING TAX UNDER SECTION 42-1118. IF A CLAIM
27 IS PAID UNDER THIS SECTION, ONLY THE CUSTOMER AND NOT THE VENDOR MAY BE HELD
28 LIABLE FOR ANY AMOUNT ERRONEOUSLY PAID OR CREDITED TO THE CUSTOMER.
29 CUSTOMERS MAY FILE CLAIMS UNDER THIS SECTION AS FOLLOWS:

30 1. THROUGH AN AFFIRMATIVE ASSIGNMENT OF RIGHTS BY THE VENDOR TO THE
31 CUSTOMER USING A FORM AND IN THE MANNER PRESCRIBED BY THE DEPARTMENT. THE
32 FORM PRESCRIBED BY THE DEPARTMENT SHALL REQUIRE ALL OF THE FOLLOWING:

33 (a) THE VENDOR'S TRANSACTION PRIVILEGE TAX LICENSE NUMBER OR USE TAX
34 REGISTRATION NUMBER.

35 (b) A DESCRIPTION OF TRANSACTIONS COVERED BY THE ASSIGNMENT AND THE
36 TOTAL AMOUNT OF TRANSACTION PRIVILEGE OR USE TAX PAID BY THE VENDOR FOR THOSE
37 TRANSACTIONS.

38 (c) THE TAX PERIODS FOR WHICH THE VENDOR REPORTED AND REMITTED THE TAX
39 TO THE DEPARTMENT.

40 (d) A LIST OF ANY LOCAL JURISDICTIONS TO WHICH THE VENDOR REPORTED AND
41 REMITTED LOCAL PRIVILEGE TAXES ARISING FROM THE TRANSACTIONS COVERED BY THE
42 ASSIGNMENT.

43 (e) THE VENDOR'S AUTHORIZATION FOR THE DEPARTMENT TO AMEND THE
44 VENDOR'S RETURNS OR ACCOUNT TO REFLECT THE AMOUNT PAID TO THE CUSTOMER
45 PURSUANT TO A CLAIM FILED UNDER THIS SECTION.

1 (f) A STATEMENT EXECUTED BY THE VENDOR AFFIRMING, UNDER PENALTY OF
2 PERJURY, THAT THE VENDOR HAS NOT REQUESTED OR RECEIVED A REFUND OR CREDIT AND
3 WILL NOT CLAIM A REFUND OR CREDIT FOR THE TAX REMITTED ON THE TRANSACTIONS
4 COVERED BY THE ASSIGNMENT. IF THE VENDOR IS A LEGAL ENTITY, THE STATEMENT
5 SHALL BE EXECUTED BY A FULL-TIME OFFICER, PARTNER, MEMBER OR MANAGER OF A
6 LIMITED LIABILITY COMPANY OR AN EMPLOYEE OF THE VENDOR WHO IS AUTHORIZED TO
7 EXECUTE THE FORM ON BEHALF OF THE VENDOR.

8 2. IF THE VENDOR FAILS OR REFUSES TO PROPERLY ASSIGN ITS RIGHT TO A
9 CLAIM AS PROVIDED IN PARAGRAPH 1 OF THIS SUBSECTION WITHIN SIXTY DAYS AFTER
10 THE DATE OF THE CUSTOMER'S WRITTEN REQUEST TO THE VENDOR OR IF THE VENDOR IS
11 NO LONGER IN BUSINESS, THE CUSTOMER MAY PROVIDE THE DEPARTMENT WITH A
12 STATEMENT ON A FORM PRESCRIBED BY THE DEPARTMENT EXPLAINING THE EFFORTS MADE
13 TO OBTAIN AN ASSIGNMENT FROM THE VENDOR. THE STATEMENT SHALL CONTAIN ALL OF
14 THE FOLLOWING:

15 (a) THE VENDOR'S TRANSACTION PRIVILEGE TAX LICENSE NUMBER OR USE TAX
16 REGISTRATION NUMBER, IF KNOWN BY THE CUSTOMER.

17 (b) A DESCRIPTION OF TRANSACTIONS SOUGHT TO BE COVERED BY THE
18 ASSIGNMENT AND EITHER THE TOTAL AMOUNT OF TRANSACTION PRIVILEGE TAX DUE FOR
19 THE TRANSACTIONS OR THE TOTAL AMOUNT OF USE TAX COLLECTED BY THE VENDOR FOR
20 THE TRANSACTIONS.

21 (c) THE TAX PERIODS FOR WHICH THE VENDOR SHOULD HAVE REPORTED AND
22 REMITTED THE TAX TO THE DEPARTMENT.

23 C. IF A CLAIM IS FILED WITH THE DEPARTMENT PURSUANT TO SUBSECTION B,
24 PARAGRAPH 2 OF THIS SECTION, THE DEPARTMENT SHALL ATTEMPT TO NOTIFY THE
25 VENDOR OF THE CLAIM AT THE VENDOR'S LAST KNOWN ADDRESS. THE DEPARTMENT SHALL
26 CONTINUE PROCESSING THE CLAIM ON RECEIVING WRITTEN ACKNOWLEDGMENT FROM THE
27 VENDOR AFFIRMING THE ACCURACY OF THE INFORMATION REGARDING THE TRANSACTIONS
28 PROVIDED BY THE CUSTOMER. ON PAYING OR CREDITING MONIES TO THE CUSTOMER
29 PURSUANT TO THE CLAIM, THE DEPARTMENT SHALL AMEND THE VENDOR'S RETURNS OR
30 ACCOUNT TO REFLECT THE AMOUNT PAID OR CREDITED TO THE CUSTOMER. IF THE
31 VENDOR OBJECTS TO THE CLAIM BY THE CUSTOMER OR FAILS TO RESPOND WITHIN THIRTY
32 DAYS AFTER THE DATE OF THE NOTICE, THE DEPARTMENT MAY CONTINUE TO PROCESS THE
33 CLAIM, AND ON PAYING OR CREDITING MONIES TO THE CUSTOMER PURSUANT TO THE
34 CLAIM, THE DEPARTMENT SHALL AMEND THE VENDOR'S RETURNS OR ACCOUNT TO REFLECT
35 THE AMOUNT PAID OR CREDITED TO THE CUSTOMER AND NOTIFY THE VENDOR OF THE
36 ADJUSTMENT. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT AND THE
37 VENDOR MAY COMMUNICATE REGARDING THE CUSTOMER'S CLAIM.

38 D. A CLAIM SUBMITTED BY A CUSTOMER UNDER THIS SECTION IS SUBJECT TO
39 ANY OFFSET, DEFENSE OR OTHER CLAIM THAT THE DEPARTMENT WOULD OTHERWISE HAVE
40 AGAINST EITHER THE CUSTOMER OR THE VENDOR.

41 E. THE DEPARTMENT MAY NOT REQUIRE THE VENDOR OR THE CUSTOMER TO SUBMIT
42 AMENDED RETURNS FOR A CLAIM SUBMITTED UNDER THIS SECTION.

43 F. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT MAY
44 DISALLOW A CLAIM FILED BY A CUSTOMER FOR AN AMOUNT UNDER THIS SECTION IF THE
45 DEPARTMENT ALREADY PAID OR CREDITED A REFUND OF TRANSACTION PRIVILEGE OR USE

1 TAX ARISING FROM THE SAME TRANSACTION OR TRANSACTIONS PURSUANT TO SECTION
2 42-1118.

3 Sec. 4. Section 42-1119, Arizona Revised Statutes, is amended to read:
4 42-1119. Denial of refund

5 A. If the department disallows any claim for refund, it shall notify
6 the taxpayer accordingly. The department's action on the claim is final
7 unless the taxpayer appeals to the department in writing within the time and
8 in the manner prescribed by section 42-1123. If the department disallows
9 interest on any claim for refund, it shall notify the taxpayer accordingly
10 and the claim shall be treated as a claim for refund.

11 B. IF THE DEPARTMENT DISALLOWS ANY CLAIM UNDER SECTION 42-1118.01, THE
12 DEPARTMENT SHALL NOTIFY THE CUSTOMER AND THE VENDOR. THE DEPARTMENT'S ACTION
13 ON THE CLAIM IS FINAL UNLESS THE CUSTOMER APPEALS TO THE DEPARTMENT IN
14 WRITING WITHIN THE TIME AND IN THE MANNER PRESCRIBED BY SECTION 42-1251. IF
15 THE DEPARTMENT DISALLOWS INTEREST ON ANY CLAIM UNDER SECTION 42-1123, THE
16 DEPARTMENT SHALL NOTIFY THE CUSTOMER AND THE CLAIM SHALL BE TREATED AS A
17 CLAIM UNDER SECTION 42-1118.01.

18 ~~B-~~ C. If the department fails to mail notice of action on any claim
19 for refund of tax or interest within six months after the claim is filed, the
20 taxpayer OR A CUSTOMER WITH RIGHTS TO A CLAIM UNDER SECTION 42-1118.01, prior
21 to mailing of notice of action on the refund claim, may consider the claim
22 disallowed. The taxpayer OR THE CUSTOMER may appeal to the department for a
23 hearing pursuant to section 42-1251.

24 Sec. 5. Section 42-1123, Arizona Revised Statutes, is amended to read:
25 42-1123. Interest

26 A. If it is provided by law that interest applies as determined
27 pursuant to this section, the department shall apply interest, compounded
28 annually, in the same manner and at the same times as prescribed by section
29 6621 of the United States internal revenue code, except that the rate of
30 interest for both overpayments and underpayments for all taxpayers is the
31 federal short-term rate, determined pursuant to section 6621(b) of the
32 internal revenue code, plus three percentage points.

33 B. On January 1 of each year the department shall add any interest
34 outstanding as of that date to the principal amount of the tax. For purposes
35 of this section, the amount added to the principal is thereafter considered a
36 part of the principal amount of the tax and accrues interest pursuant to this
37 section.

38 C. If the tax, whether determined by the department or the taxpayer,
39 or any portion of the tax is not paid on or before the date prescribed for
40 its payment, the department shall collect, as a part of the tax, interest on
41 the unpaid amount at the rate determined pursuant to this section from the
42 date prescribed for its payment until it is paid.

43 D. Interest on the amount assessed as a deficiency shall be assessed
44 and paid at the same time as the deficiency at the rate determined pursuant
45 to this section from the date prescribed for the payment of the tax to the

1 date the deficiency is assessed. If any portion of the deficiency is paid
2 before the date it is assessed, interest shall accrue on that portion only to
3 the date paid.

4 E. If the time for filing a return is extended, the department shall
5 collect, as part of such tax, interest on any unpaid balance at the rate
6 determined pursuant to this section from the date on which the payment should
7 have been made if no extension had been granted until the date the tax is
8 paid.

9 F. Except in the case of a jeopardy assessment, collection of which
10 has been stayed by the posting of a bond, if a deficiency or any interest is
11 not paid in full within ten days from the date of notice and demand from the
12 department, the department shall collect as a part of the tax interest on the
13 unpaid tax or interest at the rate determined pursuant to this section from
14 the date of the notice and demand until it is paid.

15 G. If an original return filed with the department shows that the
16 taxpayer is entitled to a refund, interest is not allowed on the amount to be
17 refunded if the refund is paid within sixty days of the last day for filing
18 the return or sixty days from the filing of the return, whichever is
19 later. If the department does not pay the amount of the refund due within
20 sixty days after the date established in this subsection, the department
21 shall pay the interest on the amount at the rate prescribed in this section
22 from the sixty-first day to the issued date of the refund warrant. The
23 department's annual budget shall separately state the amount necessary to
24 satisfy the requirements of this subsection.

25 H. In the case of an amended return, claim for refund or refund
26 determined through audit, interest shall be allowed and paid, with respect to
27 any tax, from the date prescribed for the payment of that tax to the issue
28 date of the refund warrant, but in the case of an original return of tax
29 ~~which~~ THAT is filed after the last date prescribed for filing the return and
30 paying such tax, determined with regard to extensions, no interest may be
31 allowed or paid for any day before the date on which the return is filed or
32 the tax paid, whichever is later. A payment not made incident to a bona fide
33 and orderly discharge of an actual liability or one reasonably assumed to be
34 imposed by law is not an overpayment for the purposes of this subsection and
35 interest is not payable on the payment.

36 I. IN THE CASE OF A CUSTOMER CLAIM UNDER SECTION 42-1118.01, INTEREST
37 SHALL BE ALLOWED AND PAID WITH RESPECT TO ANY AMOUNT FROM THE DATE PRESCRIBED
38 FOR THE PAYMENT OF THAT AMOUNT TO THE DATE OF THE CREDIT OR PAYMENT OF THE
39 CLAIM TO THE CUSTOMER. A PAYMENT NOT MADE INCIDENT TO A BONA FIDE AND
40 ORDERLY DISCHARGE OF AN ACTUAL LIABILITY OR ONE REASONABLY ASSUMED TO BE
41 IMPOSED BY LAW IS NOT AN OVERPAYMENT FOR THE PURPOSES OF THIS SUBSECTION, AND
42 INTEREST IS NOT PAYABLE ON THE PAYMENT.

43 ~~I.~~ J. If a credit or refund of any part of an overpayment would be
44 barred under section 42-1106, subsection A, except for the provisions of
45 section 42-1104, subsection B, paragraph 4, interest shall not be allowed or

1 paid with respect to such part of the overpayment for any period beginning
2 after the expiration of the period of limitation provided in section 42-1106,
3 subsection A for filing a claim for credit or refund of such part of the
4 overpayment and ending at the expiration of six months after the date on
5 which the claim was filed or, if no claim was filed and the overpayment was
6 found by the department, ending at the time the appeal was filed with the
7 board.

8 ~~J~~ K. In any judgment of any court rendered for any overpayment,
9 interest shall be allowed at the rate determined pursuant to this section on
10 the amount of the overpayment from the date of the payment or collection to
11 the date of allowance of credit on account of such judgment or to a date
12 determined by the department preceding the date of the refund warrant by not
13 more than thirty days.

14 Sec. 6. Section 42-1251, Arizona Revised Statutes, is amended to read:
15 42-1251. Appeal to the department; hearing

16 A. Except in the case of individual income taxes, a person from whom
17 an amount is determined to be due under article 3 of this chapter may apply
18 to the department by a petition in writing within forty-five days after the
19 notice of a proposed assessment made pursuant to section 42-1109, subsection
20 B or the notice required by section 42-1108, subsection B is received, or
21 within such additional time as the department may allow, for a hearing,
22 correction or redetermination of the action taken by the department. In the
23 case of individual income taxes, the period is ninety days from the date the
24 notice is mailed. The petition shall set forth the reasons why the hearing,
25 correction or redetermination should be granted and the amount in which any
26 tax, interest and penalties should be reduced. If only a portion of the
27 deficiency assessment is protested, all unprotested amounts of tax, interest
28 and penalties must be paid at the time the protest is filed. The department
29 shall consider the petition and grant a hearing, if requested. To represent
30 the ~~taxpayer~~ PERSON at the hearing or to appear on the ~~taxpayer's~~ PERSON'S
31 behalf is deemed not to be the practice of law.

32 B. If the ~~taxpayer~~ PERSON does not file a petition for hearing,
33 correction or redetermination within the period provided by this section, the
34 amount determined to be due becomes final at the expiration of the period.
35 The ~~taxpayer~~ PERSON is deemed to have waived and abandoned the right to
36 question the amount determined to be due, unless the ~~taxpayer~~ PERSON pays the
37 total deficiency assessment, including interest and penalties. The ~~taxpayer~~
38 PERSON may then file a claim for refund pursuant to section 42-1118 within
39 six months of payment of the deficiency assessment or within the time limits
40 prescribed by section 42-1106, whichever period expires later.

41 C. All orders or decisions made on the filing of a petition for a
42 hearing, correction or redetermination become final thirty days after notice
43 has been received by the petitioner, unless the petitioner appeals the order
44 or decision to the state board of tax appeals.

1 Sec. 7. Section 42-1253, Arizona Revised Statutes, is amended to read:
2 42-1253. Appeal to state board of tax appeals: definition

3 A. Except as provided in section 42-1254, subsection C, a person
4 aggrieved by a final decision or order of the department under section
5 42-1251, article 3 of this chapter or section 42-2065, 42-2068, 42-2069,
6 42-2074, 42-2201 or 42-2202 may appeal to the state board of tax appeals by
7 filing a notice of appeal in writing within thirty days after the decision or
8 order from which the appeal is taken has become final.

9 B. The board shall take testimony and examine documentary evidence as
10 necessary to determine the appeal, all pursuant to administrative rules to
11 govern such appeals.

12 C. On determining the appeal the board shall issue a decision
13 consistent with its determination. The board's decision is final on the
14 expiration of thirty days from the date when notice of its action is received
15 by the ~~taxpayer~~ PERSON, unless either the department or the ~~taxpayer~~ PERSON
16 brings an action in tax court as provided in section 42-1254.

17 D. If the amount in any single dispute before the board is less than
18 twenty-five thousand dollars, a ~~taxpayer~~ PERSON may be represented in that
19 dispute before the board by:

20 1. A certified public accountant.

21 2. A person who is enrolled to practice before the United States
22 internal revenue service and is recognized as an enrolled agent.

23 3. Any other ~~person~~ INDIVIDUAL who is authorized by the ~~taxpayer~~
24 PERSON under a properly executed power of attorney and who was previously or
25 is currently retained by the ~~taxpayer~~ PERSON for purposes other than
26 representation in a hearing before the board.

27 E. If a practitioner who represents a ~~taxpayer~~ PERSON before the board
28 pursuant to subsection D of this section fails to comply with an order or
29 rule of the board, the board may impose sanctions including one or both of
30 the following:

31 1. Order that the stipulation of the facts proposed by the department
32 of revenue be accepted.

33 2. Suspend the practitioner from further practice before the board
34 either for a specific period of time or until the board removes the
35 suspension.

36 F. For the purposes of this section, "practitioner" means a person,
37 other than a party, who files documents with or appears before the board in
38 connection with a matter before the board.

39 Sec. 8. Section 42-1254, Arizona Revised Statutes, is amended to read:
40 42-1254. Appeal to tax court

41 A. The department or a ~~taxpayer~~ PERSON aggrieved by a decision of the
42 state board of tax appeals may bring an action in tax court.

43 B. If the department is aggrieved by a decision of the board and the
44 amount in dispute is less than five thousand dollars, the department may not
45 bring an action in tax court unless the department determines that the

1 decision of the board involves an issue of substantial significance to the
2 state. A ~~taxpayer~~ PERSON aggrieved by a determination of the department that
3 an issue is of substantial significance to the state may file a motion with
4 the tax court to dismiss the action brought by the department on the grounds
5 that the determination constitutes an abuse of discretion.

6 C. Except in the case of individual income tax cases in which the
7 amount in dispute is less than five thousand dollars, a person who is
8 aggrieved by a final decision or order of the department under section
9 42-1251 or article 3 of this chapter ~~may~~, in lieu of appealing to the state
10 board of tax appeals under section 42-1253, MAY bring an action in tax court
11 by filing a notice of appeal in writing within thirty days after the decision
12 or order from which the appeal is taken has become final.

13 D. Any appeal that is taken to tax court pursuant to this section is
14 subject to the following provisions:

15 1. No injunction, writ of mandamus or other legal or equitable process
16 may issue in an action in any court in this state against an officer of this
17 state to prevent or enjoin the collection of any tax, penalty or interest.

18 2. The action shall not begin more than thirty days after the order or
19 decision of the board or department becomes final. Failure to bring the
20 action within thirty days after the order or decision of the board or
21 department becomes final constitutes a waiver of the protest and a waiver of
22 all claims against this state arising from or based on the illegality in the
23 tax, penalties and interest at issue, except that within the time limits set
24 forth in section 42-1106, a ~~taxpayer~~ PERSON who fails to bring an action
25 within thirty days may pay the tax under protest stating the grounds of
26 objection to the legality of the tax and then file a claim for refund of the
27 taxes paid. The refund claim shall then be governed by section 42-1119 and
28 this section.

29 3. The tax court shall hear and determine the appeal as a trial de
30 novo.

31 4. Either party to such action may appeal to the court of appeals or
32 supreme court as provided by law.

33 5. If a final judgment is rendered in favor of the ~~taxpayer~~ PERSON in
34 the action, the amount or such portion of the judgment as may be necessary
35 shall first be credited to any taxes, penalties and interest due from the
36 plaintiff ~~taxpayer~~ PERSON, and the amount of the balance remaining due the
37 ~~taxpayer~~ PERSON shall be certified by the department of revenue to the
38 department of administration, with a certified copy of the final judgment and
39 a claim for refund authenticated by the department of revenue. On receipt,
40 the department of administration shall draw a warrant payable to the ~~taxpayer~~
41 PERSON in an amount equal to the amount of the tax found by the judgment to
42 be illegal, less the amount of any taxes, penalties and interest due from the
43 ~~taxpayer~~ PERSON. The department of administration shall draw a separate
44 warrant payable to the ~~taxpayer~~ PERSON in an amount equal to the interest and

1 other costs recovered against the department of revenue by the judgment,
2 which shall be paid from the appropriate tax account.

3 Sec. 9. Section 42-2003, Arizona Revised Statutes, is amended to read:
4 42-2003. Authorized disclosure of confidential information

5 A. Confidential information relating to:

6 1. A taxpayer may be disclosed to the taxpayer, its successor in
7 interest or a designee of the taxpayer who is authorized in writing by the
8 taxpayer. A principal corporate officer of a parent corporation may execute
9 a written authorization for a controlled subsidiary.

10 2. A corporate taxpayer may be disclosed to any principal officer, any
11 person designated by a principal officer or any person designated in a
12 resolution by the corporate board of directors or other similar governing
13 body.

14 3. A partnership may be disclosed to any partner of the partnership.
15 This exception does not include disclosure of confidential information of a
16 particular partner unless otherwise authorized.

17 4. An estate may be disclosed to the personal representative of the
18 estate and to any heir, next of kin or beneficiary under the will of the
19 decedent if the department finds that the heir, next of kin or beneficiary
20 has a material interest which will be affected by the confidential
21 information.

22 5. A trust may be disclosed to the trustee or trustees, jointly or
23 separately, and to the grantor or any beneficiary of the trust if the
24 department finds that the grantor or beneficiary has a material interest that
25 will be affected by the confidential information.

26 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
27 to confidentiality either in writing or on the record in any administrative
28 or judicial proceeding.

29 7. The name and taxpayer identification numbers of persons issued
30 direct payment permits may be publicly disclosed.

31 8. THE VENDOR AS DEFINED IN SECTION 42-1101.01 OF A CUSTOMER AS
32 DEFINED IN SECTION 42-1101.01 WITH RIGHTS TO A CLAIM UNDER SECTION 42-1118.01
33 OR 42-1119 MAY BE DISCLOSED TO THE CUSTOMER IN ORDER FOR THE CUSTOMER TO
34 PURSUE A CLAIM IN LIEU OF A CLAIM FOR REFUND OF TRANSACTION PRIVILEGE TAX OR
35 USE TAX REPORTED AND REMITTED BY THE CUSTOMER'S VENDOR.

36 B. Confidential information may be disclosed to:

37 1. Any employee of the department whose official duties involve tax
38 administration.

39 2. The office of the attorney general solely for its use in
40 preparation for, or in an investigation that may result in, any proceeding
41 involving tax administration before the department or any other agency or
42 board of this state, or before any grand jury or any state or federal court.

43 3. The department of liquor licenses and control for its use in
44 determining whether a spirituous liquor licensee has paid all transaction
45 privilege taxes and affiliated excise taxes incurred as a result of the sale

1 of spirituous liquor, as defined in section 4-101, at the licensed
2 establishment and imposed on the licensed establishments by this state and
3 its political subdivisions.

4 4. Other state tax officials whose official duties require the
5 disclosure for proper tax administration purposes if the information is
6 sought in connection with an investigation or any other proceeding conducted
7 by the official. Any disclosure is limited to information of a taxpayer who
8 is being investigated or who is a party to a proceeding conducted by the
9 official.

10 5. The following agencies, officials and organizations, if they grant
11 substantially similar privileges to the department for the type of
12 information being sought, pursuant to statute and a written agreement between
13 the department and the foreign country, agency, state, Indian tribe or
14 organization:

15 (a) The United States internal revenue service, alcohol and tobacco
16 tax and trade bureau of the United States treasury, United States bureau of
17 alcohol, tobacco, firearms and explosives of the United States department of
18 justice, United States drug enforcement agency and federal bureau of
19 investigation.

20 (b) A state tax official of another state.

21 (c) An organization of states, federation of tax administrators or
22 multistate tax commission that operates an information exchange for tax
23 administration purposes.

24 (d) An agency, official or organization of a foreign country with
25 responsibilities that are comparable to those listed in subdivision (a), (b)
26 or (c) of this paragraph.

27 (e) An agency, official or organization of an Indian tribal government
28 with responsibilities comparable to the responsibilities of the agencies,
29 officials or organizations identified in subdivision (a), (b) or (c) of this
30 paragraph.

31 6. The auditor general, in connection with any audit of the department
32 subject to the restrictions in section 42-2002, subsection D.

33 7. Any person to the extent necessary for effective tax administration
34 in connection with:

35 (a) The processing, storage, transmission, destruction and
36 reproduction of the information.

37 (b) The programming, maintenance, repair, testing and procurement of
38 equipment for purposes of tax administration.

39 (c) The collection of the taxpayer's civil liability.

40 8. The office of administrative hearings relating to taxes
41 administered by the department pursuant to section 42-1101, but the
42 department shall not disclose any confidential information:

43 (a) Regarding income tax or withholding tax.

44 (b) On any tax issue relating to information associated with the
45 reporting of income tax or withholding tax.

- 1 9. The United States treasury inspector general for tax administration
2 for the purpose of reporting a violation of internal revenue code section
3 7213A (26 United States Code section 7213A), unauthorized inspection of
4 returns or return information.
- 5 10. The financial management service of the United States treasury
6 department for use in the treasury offset program.
- 7 11. The United States treasury department or its authorized agent for
8 use in the state income tax levy program and in the electronic federal tax
9 payment system.
- 10 12. The Arizona commerce authority for its use in:
11 (a) Qualifying renewable energy operations for the tax incentives
12 under sections 42-12006, 43-1083.01 and 43-1164.01.
13 (b) Qualifying businesses with a qualified facility for income tax
14 credits under sections 43-1083.03 and 43-1164.04.
15 (c) Fulfilling its annual reporting responsibility pursuant to section
16 41-1511, subsections U and V and section 41-1512, subsections U and V.
17 (d) Certifying computer data centers for tax relief under section
18 41-1519.
- 19 13. A prosecutor for purposes of section 32-1164, subsection C.
- 20 14. The state fire marshal for use in determining compliance with and
21 enforcing title 41, chapter 16, article 3.1.
- 22 15. The department of transportation for its use in administering
23 taxes, surcharges and penalties prescribed by title 28.
- 24 16. The Arizona health care cost containment system administration for
25 its use in administering nursing facility provider assessments.
- 26 C. Confidential information may be disclosed in any state or federal
27 judicial or administrative proceeding pertaining to tax administration
28 pursuant to the following conditions:
29 1. One or more of the following circumstances must apply:
30 (a) The taxpayer is a party to the proceeding.
31 (b) The proceeding arose out of, or in connection with, determining
32 the taxpayer's civil or criminal liability, or the collection of the
33 taxpayer's civil liability, with respect to any tax imposed under this title
34 or title 43.
35 (c) The treatment of an item reflected on the taxpayer's return is
36 directly related to the resolution of an issue in the proceeding.
37 (d) Return information directly relates to a transactional
38 relationship between a person who is a party to the proceeding and the
39 taxpayer and directly affects the resolution of an issue in the proceeding.
- 40 2. Confidential information may not be disclosed under this subsection
41 if the disclosure is prohibited by section 42-2002, subsection C or D.
- 42 D. Identity information may be disclosed for purposes of notifying
43 persons entitled to tax refunds if the department is unable to locate the
44 persons after reasonable effort.

1 E. The department, on the request of any person, shall provide the
2 names and addresses of bingo licensees as defined in section 5-401, verify
3 whether or not a person has a privilege license and number, a tobacco product
4 distributor's license and number or a withholding license and number or
5 disclose the information to be posted on the department's website or
6 otherwise publicly accessible pursuant to section 42-1124, subsection F and
7 section 42-3201, subsection A.

8 F. A department employee, in connection with the official duties
9 relating to any audit, collection activity or civil or criminal
10 investigation, may disclose return information to the extent that disclosure
11 is necessary to obtain information that is not otherwise reasonably
12 available. These official duties include the correct determination of and
13 liability for tax, the amount to be collected or the enforcement of other
14 state tax revenue laws.

15 G. If an organization is exempt from this state's income tax as
16 provided in section 43-1201 for any taxable year, the name and address of the
17 organization and the application filed by the organization on which the
18 department made its determination for exemption together with any papers
19 submitted in support of the application and any letter or document issued by
20 the department concerning the application are open to public inspection.

21 H. Confidential information relating to transaction privilege tax, use
22 tax, severance tax, jet fuel excise and use tax and any other tax collected
23 by the department on behalf of any jurisdiction may be disclosed to any
24 county, city or town tax official if the information relates to a taxpayer
25 who is or may be taxable by a county, city or town or who may be subject to
26 audit by the department pursuant to section 42-6002. Any taxpayer
27 information released by the department to the county, city or town:

28 1. May only be used for internal purposes, including audits.

29 2. May not be disclosed to the public in any manner that does not
30 comply with confidentiality standards established by the department. The
31 county, city or town shall agree in writing with the department that any
32 release of confidential information that violates the confidentiality
33 standards adopted by the department will result in the immediate suspension
34 of any rights of the county, city or town to receive taxpayer information
35 under this subsection.

36 I. The department may disclose statistical information gathered from
37 confidential information if it does not disclose confidential information
38 attributable to any one taxpayer. The department may disclose statistical
39 information gathered from confidential information, even if it discloses
40 confidential information attributable to a taxpayer, to:

41 1. The state treasurer in order to comply with the requirements of
42 section 42-5029, subsection A, paragraph 3.

43 2. The joint legislative income tax credit review committee and the
44 joint legislative budget committee staff in order to comply with the
45 requirements of section 43-221.

1 J. The department may disclose the aggregate amounts of any tax
2 credit, tax deduction or tax exemption enacted after January 1, 1994.
3 Information subject to disclosure under this subsection shall not be
4 disclosed if a taxpayer demonstrates to the department that such information
5 would give an unfair advantage to competitors.

6 K. Except as provided in section 42-2002, subsection C, confidential
7 information, described in section 42-2001, paragraph 1, subdivision (a), item
8 (ii), may be disclosed to law enforcement agencies for law enforcement
9 purposes.

10 L. The department may provide transaction privilege tax license
11 information to property tax officials in a county for the purpose of
12 identification and verification of the tax status of commercial property.

13 M. The department may provide transaction privilege tax, luxury tax,
14 use tax, property tax and severance tax information to the ombudsman-citizens
15 aide pursuant to title 41, chapter 8, article 5.

16 N. Except as provided in section 42-2002, subsection D, a court may
17 order the department to disclose confidential information pertaining to a
18 party to an action. An order shall be made only upon a showing of good cause
19 and that the party seeking the information has made demand upon the taxpayer
20 for the information.

21 O. This section does not prohibit the disclosure by the department of
22 any information or documents submitted to the department by a bingo licensee.
23 Before disclosing the information the department shall obtain the name and
24 address of the person requesting the information.

25 P. If the department is required or permitted to disclose confidential
26 information, it may charge the person or agency requesting the information
27 for the reasonable cost of its services.

28 Q. Except as provided in section 42-2002, subsection D, the department
29 of revenue shall release confidential information as requested by the
30 department of economic security pursuant to section 42-1122 or 46-291.
31 Information disclosed under this subsection is limited to the same type of
32 information that the United States internal revenue service is authorized to
33 disclose under section 6103(1)(6) of the internal revenue code.

34 R. Except as provided in section 42-2002, subsection D, the department
35 of revenue shall release confidential information as requested by the courts
36 and clerks of the court pursuant to section 42-1122.

37 S. To comply with the requirements of section 42-5031, the department
38 may disclose to the state treasurer, to the county stadium district board of
39 directors and to any city or town tax official that is part of the county
40 stadium district confidential information attributable to a taxpayer's
41 business activity conducted in the county stadium district.

42 T. The department shall release to the attorney general confidential
43 information as requested by the attorney general for purposes of determining
44 compliance with or enforcing any of the following:

1 1. Any public health control law relating to tobacco sales as provided
2 under title 36, chapter 6, article 14.

3 2. Any law relating to reduced cigarette ignition propensity standards
4 as provided under title 41, chapter 16, article 3.1.

5 3. Sections 44-7101 and 44-7111, the master settlement agreement
6 referred to in those sections and all agreements regarding disputes under the
7 master settlement agreement.

8 U. For proceedings before the department, the office of administrative
9 hearings, the board of tax appeals or any state or federal court involving
10 penalties that were assessed against a return preparer, an electronic return
11 preparer or a payroll service company pursuant to section 42-1103.02,
12 42-1125.01 or 43-419, confidential information may be disclosed only before
13 the judge or administrative law judge adjudicating the proceeding, the
14 parties to the proceeding and the parties' representatives in the proceeding
15 prior to its introduction into evidence in the proceeding. The confidential
16 information may be introduced as evidence in the proceeding only if the
17 taxpayer's name, the names of any dependents listed on the return, all social
18 security numbers, the taxpayer's address, the taxpayer's signature and any
19 attachments containing any of the foregoing information are redacted and if
20 either:

21 1. The treatment of an item reflected on such return is or may be
22 related to the resolution of an issue in the proceeding.

23 2. Such return or return information relates or may relate to a
24 transactional relationship between a person who is a party to the proceeding
25 and the taxpayer which directly affects the resolution of an issue in the
26 proceeding.

27 3. The method of payment of the taxpayer's withholding tax liability
28 or the method of filing the taxpayer's withholding tax return is an issue for
29 the period.

30 V. The department and attorney general may share the information
31 specified in subsection T of this section with any of the following:

32 1. Federal, state or local agencies for the purposes of enforcement of
33 corresponding laws of other states.

34 2. A court, arbitrator, data clearinghouse or similar entity for the
35 purpose of assessing compliance with or making calculations required by the
36 master settlement agreement or agreements regarding disputes under the master
37 settlement agreement, and with counsel for the parties or expert witnesses in
38 any such proceeding, if the information otherwise remains confidential.

39 W. The department may provide the name and address of qualifying
40 hospitals and qualifying health care organizations, as defined in section
41 42-5001, to a business classified and reporting transaction privilege tax
42 under the utilities classification.

43 X. The department may disclose to an official of any city, town or
44 county in a current agreement or considering a prospective agreement with the
45 department as described in section 42-5032.02, subsection F any information

1 relating to amounts subject to distribution required by section 42-5032.02.
2 Information disclosed by the department under this subsection:

- 3 1. May only be used by the city, town or county for internal purposes.
- 4 2. May not be disclosed to the public in any manner that does not
5 comply with confidentiality standards established by the department. The
6 city, town or county must agree with the department in writing that any
7 release of confidential information that violates the confidentiality
8 standards will result in the immediate suspension of any rights of the city,
9 town or county to receive information under this subsection.

10 Sec. 10. Section 42-2064, Arizona Revised Statutes, is amended to
11 read:

12 42-2064. Reimbursement of fees and other costs; definitions

13 A. A ~~taxpayer~~ PERSON who is a prevailing party may be reimbursed for
14 reasonable fees and other costs related to an administrative proceeding that
15 is brought by or against the department in connection with an assessment,
16 determination, collection or refund of any tax listed in section 42-1101 OR
17 IN CONNECTION WITH A CLAIM UNDER SECTION 42-1118.01. For THE purposes of
18 this subsection, a ~~taxpayer~~ PERSON is considered to be a prevailing party
19 only if both of the following are true:

- 20 1. The department's position was not substantially justified.
- 21 2. The ~~taxpayer~~ PERSON prevails as to the most significant issue or
22 set of issues.

23 B. Reimbursement under this section may be denied if any of the
24 following circumstances apply:

- 25 1. During the course of the proceeding the ~~taxpayer~~ PERSON unduly and
26 unreasonably protracted the final resolution of the matter.
- 27 2. The reason that the ~~taxpayer~~ PERSON prevailed is due to an
28 intervening change in the applicable law.

29 C. The ~~taxpayer~~ PERSON shall present an itemization of the reasonable
30 fees and other costs to the taxpayer problem resolution officer within thirty
31 days after the conclusion of the administrative proceedings. The taxpayer
32 problem resolution officer shall determine the validity of the fees and other
33 costs within thirty days after receiving the itemization. The taxpayer
34 problem resolution officer's decision is considered the department's final
35 decision or order and is subject to appeal to the state board under section
36 42-1253.

37 D. The department of revenue shall pay the fees and other costs
38 awarded as provided in this section from any monies appropriated for such
39 purpose. If the department of revenue does not pay the fees and other costs
40 within thirty days after demand by a person who has received an award
41 pursuant to this section, and if no further review or appeals of the award
42 are pending, the person may file a claim for the fees and other costs with
43 the department of administration, which shall pay the claim within thirty
44 days, in the same manner as an uninsured property loss under title 41,
45 chapter 3.1, article 1. If, at the time the department of revenue failed to

1 pay the award, it had appropriated monies either designated or assignable for
2 the purpose of paying such awards, the legislature shall reduce the
3 department of revenue's operating appropriation for the following year by the
4 amount of the award and appropriate the amount of the reduction to the
5 department of administration, risk management division, as reimbursement for
6 the loss.

7 E. Reimbursement to a ~~taxpayer~~ PERSON under this section shall not
8 exceed twenty thousand dollars or actual monies spent, whichever is less.
9 The reimbursable attorney or other representative fees shall not exceed one
10 hundred dollars per hour or actual monies spent, whichever is less, unless
11 the state board of tax appeals determines that an increase in the cost of
12 living or a special factor such as the limited availability of qualified
13 attorneys for the proceeding involved justifies a higher fee.

14 F. The department shall adopt administrative rules to implement this
15 section.

16 G. Notwithstanding any provision of title 12, chapter 3, article 5, a
17 ~~taxpayer~~ PERSON who is a prevailing party may only be reimbursed pursuant to
18 this section.

19 H. For THE purposes of this section:

20 1. "Administrative proceeding" means any review proceeding or appeal
21 pursuant to section 42-1251 that is conducted under the authority of section
22 42-1003 and an appeal to the state board of tax appeals pursuant to section
23 42-1253.

24 2. "Reasonable fees and other costs" means fees and other costs that
25 are based on prevailing market rates for the kind and quality of the
26 furnished services, but not exceeding the amounts actually spent for expert
27 witnesses, the cost of any study, analysis, report, test or project that is
28 found to be necessary to prepare the party's case and necessary fees for
29 attorneys or other representatives.

30 Sec. 11. Section 42-5008, Arizona Revised Statutes, is amended to
31 read:

32 42-5008. Levy of tax; purposes; distribution

33 A. There is levied and there shall be collected by the department, for
34 the purpose of raising public money, privilege taxes measured by the amount
35 or volume of business transacted by persons on account of their business
36 activities, and in the amounts to be determined by the application of rates
37 against values, gross proceeds of sales or gross income, as the case may be,
38 as prescribed by this article and article 2 of this chapter.

39 B. If any monies remain after the payments are made for state
40 purposes, as provided for by subsection A OF THIS SECTION, the remainder of
41 the monies shall be paid into the state school fund for educational purposes.

42 C. The tax levied by and collected pursuant to this article and
43 article 2 of this chapter is designated the "transaction privilege tax".

1 D. VENDORS AS DEFINED IN SECTION 42.1101.01 ARE RESPONSIBLE FOR
2 PAYMENT OF TRANSACTION PRIVILEGE TAX TO THE DEPARTMENT AND, EXCEPT AS
3 PROVIDED IN SECTIONS 42-1118.01 AND 42-1119, ONLY VENDORS MAY PURSUE A REFUND
4 OF TRANSACTION PRIVILEGE TAX PAID TO THE DEPARTMENT.

5 Sec. 12. Title 42, chapter 6, article 1, Arizona Revised Statutes, is
6 amended by adding section 42-6009, to read:

7 42-6009. Municipal refund claims; valid claim; notice of
8 denial; limitations period; conditions or
9 requirements; interest; recovery of fees;
10 definitions

11 A. A CUSTOMER WHO PAID TO A VENDOR AN AMOUNT EQUAL TO A MUNICIPAL
12 TRANSACTION PRIVILEGE TAX THAT WAS PASSED ON BY THE VENDOR TO THE CUSTOMER OR
13 WHO PAID A USE TAX TO A VENDOR MAY FILE A CLAIM PURSUANT TO THIS SECTION IF
14 THE VENDOR ASSIGNS TO THE CUSTOMER ITS RIGHT TO CLAIM AN AMOUNT EQUAL TO ANY
15 TAX AND INTEREST THAT THE VENDOR COULD OTHERWISE CLAIM.

16 B. CLAIMS UNDER THIS SECTION SHALL BE MADE TO THE TAX COLLECTOR OF THE
17 CITY OR TOWN TO WHICH THE TAX WAS ORIGINALLY PAID.

18 C. ANY CLAIM BY A CUSTOMER UNDER THIS SECTION IS IN LIEU OF THE VENDOR
19 CLAIMING A REFUND FOR THE UNDERLYING TAX. IF A CLAIM IS PAID UNDER THIS
20 SECTION, ONLY THE CUSTOMER AND NOT THE VENDOR MAY BE HELD LIABLE FOR ANY
21 AMOUNT ERRONEOUSLY PAID OR CREDITED TO THE CUSTOMER. CUSTOMERS MAY FILE
22 CLAIMS UNDER THIS SECTION AS FOLLOWS:

23 1. THROUGH AN AFFIRMATIVE ASSIGNMENT OF RIGHTS BY THE VENDOR TO THE
24 CUSTOMER USING A FORM AND IN THE MANNER PRESCRIBED BY THE DEPARTMENT. THE
25 FORM PRESCRIBED BY THE DEPARTMENT SHALL REQUIRE ALL OF THE FOLLOWING:

26 (a) THE VENDOR'S MUNICIPAL TRANSACTION PRIVILEGE TAX LICENSE NUMBER OR
27 USE TAX REGISTRATION NUMBER.

28 (b) A DESCRIPTION OF TRANSACTIONS COVERED BY THE ASSIGNMENT AND THE
29 TOTAL AMOUNT OF MUNICIPAL TRANSACTION PRIVILEGE OR USE TAX PAID BY THE VENDOR
30 FOR SUCH TRANSACTIONS.

31 (c) THE TAX PERIODS FOR WHICH THE VENDOR REPORTED AND REMITTED THE TAX
32 TO THE TAX COLLECTOR.

33 (d) THE VENDOR'S AUTHORIZATION FOR THE TAX COLLECTOR TO AMEND THE
34 VENDOR'S RETURNS OR ACCOUNT TO REFLECT THE AMOUNT PAID TO THE CUSTOMER
35 PURSUANT TO A CLAIM FILED UNDER THIS SECTION.

36 (e) A STATEMENT EXECUTED BY THE VENDOR AFFIRMING, UNDER PENALTY OF
37 PERJURY, THAT THE VENDOR HAS NOT REQUESTED OR RECEIVED A REFUND OR CREDIT AND
38 WILL NOT CLAIM A REFUND OR CREDIT FOR THE TAX REMITTED ON THE TRANSACTIONS
39 COVERED BY THE ASSIGNMENT. IF THE VENDOR IS A LEGAL ENTITY, THE STATEMENT
40 SHALL BE EXECUTED BY A FULL-TIME OFFICER, PARTNER, MEMBER OR MANAGER OF A
41 LIMITED LIABILITY COMPANY OR AN EMPLOYEE OF THE VENDOR WHO IS AUTHORIZED TO
42 EXECUTE THE FORM ON BEHALF OF THE VENDOR.

43 2. IF THE VENDOR FAILS OR REFUSES TO PROPERLY ASSIGN ITS RIGHT TO A
44 CLAIM UNDER THIS SECTION WITHIN SIXTY DAYS AFTER THE DATE OF THE CUSTOMER'S
45 WRITTEN REQUEST TO THE VENDOR OR IF A VENDOR IS NO LONGER IN BUSINESS, THE

1 CUSTOMER MAY PROVIDE THE TAX COLLECTOR WITH A STATEMENT ON A FORM PRESCRIBED
2 BY THE DEPARTMENT EXPLAINING THE EFFORTS MADE TO OBTAIN AN ASSIGNMENT FROM
3 THE VENDOR. THE STATEMENT SHALL CONTAIN ALL OF THE FOLLOWING:

4 (a) THE VENDOR'S MUNICIPAL TRANSACTION PRIVILEGE TAX LICENSE NUMBER OR
5 USE TAX REGISTRATION NUMBER, IF KNOWN BY THE CUSTOMER.

6 (b) A DESCRIPTION OF TRANSACTIONS SOUGHT TO BE COVERED BY THE
7 ASSIGNMENT AND EITHER THE TOTAL AMOUNT OF MUNICIPAL TRANSACTION PRIVILEGE TAX
8 DUE FOR THE TRANSACTIONS OR THE TOTAL AMOUNT OF USE TAX COLLECTED BY THE
9 VENDOR FOR THE TRANSACTIONS.

10 (c) THE TAX PERIODS FOR WHICH THE VENDOR SHOULD HAVE REPORTED AND
11 REMITTED THE TAX TO THE TAX COLLECTOR.

12 D. IF A CLAIM IS FILED WITH THE TAX COLLECTOR PURSUANT TO SUBSECTION
13 C, PARAGRAPH 2 OF THIS SECTION, THE TAX COLLECTOR SHALL ATTEMPT TO NOTIFY THE
14 VENDOR OF THE CLAIM AT THE VENDOR'S LAST KNOWN ADDRESS. THE TAX COLLECTOR
15 SHALL CONTINUE PROCESSING THE CLAIM ON RECEIVING WRITTEN ACKNOWLEDGMENT FROM
16 THE VENDOR AFFIRMING THE ACCURACY OF THE INFORMATION REGARDING THE
17 TRANSACTIONS PROVIDED BY THE CUSTOMER. ON PAYING OR CREDITING MONIES TO THE
18 CUSTOMER PURSUANT TO THE CLAIM, THE TAX COLLECTOR SHALL AMEND THE VENDOR'S
19 RETURNS OR ACCOUNT TO REFLECT THE AMOUNT PAID OR CREDITED TO THE CUSTOMER.
20 IF THE VENDOR OBJECTS TO THE CLAIM BY THE CUSTOMER OR FAILS TO RESPOND WITHIN
21 THIRTY DAYS AFTER THE DATE OF THE NOTICE, THE TAX COLLECTOR MAY CONTINUE TO
22 PROCESS THE CLAIM, AND ON PAYING OR CREDITING MONIES TO THE CUSTOMER PURSUANT
23 TO THE CLAIM, THE TAX COLLECTOR SHALL AMEND THE VENDOR'S RETURNS OR ACCOUNT
24 TO REFLECT THE AMOUNT PAID OR CREDITED TO THE CUSTOMER AND NOTIFY THE VENDOR
25 OF THE ADJUSTMENT. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE TAX
26 COLLECTOR AND THE VENDOR MAY COMMUNICATE REGARDING THE CUSTOMER'S CLAIM.

27 E. A CLAIM SUBMITTED BY A CUSTOMER UNDER THIS SECTION IS SUBJECT TO
28 ANY OFFSET, DEFENSE OR OTHER CLAIM THAT THE TAX COLLECTOR WOULD OTHERWISE
29 HAVE AGAINST EITHER THE CUSTOMER OR THE VENDOR.

30 F. THE TAX COLLECTOR MAY NOT REQUIRE THE VENDOR OR THE CUSTOMER TO
31 SUBMIT AMENDED RETURNS FOR A CLAIM SUBMITTED UNDER THIS SECTION.

32 G. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE TAX COLLECTOR MAY DENY
33 A CLAIM FILED BY A CUSTOMER FOR AN AMOUNT UNDER THIS SECTION IF THE TAX
34 COLLECTOR ALREADY PAID OR CREDITED A REFUND OF MUNICIPAL TRANSACTION
35 PRIVILEGE TAX ARISING FROM THE SAME TRANSACTION OR TRANSACTIONS.

36 H. IF A CLAIM IS VALID UNDER THIS SECTION, THE TAX COLLECTOR MAY NOT
37 REFUSE TO PROCESS THE CLAIM OR REQUIRE THE CUSTOMER TO REFILE THE CLAIM. IF
38 THE TAX COLLECTOR REFUSES TO PROCESS OR REQUIRES REILING OF A CLAIM THAT IS
39 VALID UNDER THIS SECTION:

40 1. FOR THE PURPOSES OF THE LIMITATIONS PERIOD, THE CLAIM IS DEEMED
41 RECEIVED ON THE DATE THE ORIGINAL FILING WAS RECEIVED BY THE TAX COLLECTOR
42 NOTWITHSTANDING THE TAX COLLECTOR'S REFUSAL TO PROCESS THE CLAIM OR
43 REQUIREMENT TO REFILE THE CLAIM.

1 2. THE CUSTOMER MAY TREAT THE TAX COLLECTOR'S REFUSAL TO PROCESS OR
2 REQUIREMENT TO REFILE THE CLAIM AS A DENIAL OF THE CLAIM AND THE CUSTOMER MAY
3 FILE A PETITION FOR HEARING REGARDING THE REFUSAL TO PROCESS OR REQUIREMENT
4 TO REFILE UNDER THE ADMINISTRATIVE REVIEW PROVISIONS OF THE MODEL CITY TAX
5 CODE OR STATE LAW, AS APPLICABLE. THE CUSTOMER MAY FILE A PETITION FOR
6 HEARING AT ANY TIME AFTER THE REFUSAL TO PROCESS OR REQUIREMENT TO REFILE THE
7 CLAIM.

8 I. EXCEPT AS PROVIDED IN SUBSECTION H, PARAGRAPH 2 OF THIS SECTION, A
9 DENIAL OF A CLAIM DOES NOT OCCUR UNTIL THE TAX COLLECTOR NOTIFIES THE
10 CUSTOMER IN WRITING THAT:

11 1. THE CLAIM HAS BEEN DENIED AND PROVIDES THE REASONING FOR THE
12 DENIAL.

13 2. THE NOTICE CONSTITUTES A DENIAL OF THE CLAIM THAT TRIGGERS THE
14 DEADLINE FOR FILING A PETITION FOR HEARING UNDER THE ADMINISTRATIVE REVIEW
15 PROVISIONS OF THE MODEL CITY TAX CODE OR STATE LAW, AS APPLICABLE.

16 J. THE TIME LIMITATION FOR FILING AN ADMINISTRATIVE APPEAL DOES NOT
17 BEGIN UNTIL THE TAX COLLECTOR ISSUES THE NOTIFICATIONS REQUIRED BY SUBSECTION
18 I OF THIS SECTION.

19 K. ANY REQUEST BY THE TAX COLLECTOR FOR ADDITIONAL INFORMATION TO
20 PROCESS THE CLAIM SHALL BE REASONABLY RELATED TO THE CLAIM. THE TAX
21 COLLECTOR MAY NOT REQUIRE A CUSTOMER MAKING A CLAIM UNDER THIS SECTION TO
22 PROVIDE ANY REPORT OR INFORMATION THAT IS NOT REQUIRED TO BE MAINTAINED IN
23 THE NORMAL COURSE OF BUSINESS UNDER THE RECORDKEEPING REQUIREMENTS OF THE
24 MODEL CITY TAX CODE. THE TAX COLLECTOR MAY NOT IMPOSE UNREASONABLE TIME
25 LIMITS FOR A CUSTOMER MAKING A CLAIM UNDER THIS SECTION TO RESPOND TO ANY
26 VALID REQUEST FOR A REPORT OR INFORMATION. THE TAX COLLECTOR SHALL GRANT A
27 CUSTOMER'S REASONABLE REQUEST FOR ONE OR MORE EXTENSIONS TO PROVIDE ANY
28 REQUESTED REPORT OR INFORMATION.

29 L. ANY DENIAL OF A REQUEST FOR CLAIM UNDER THIS SECTION SHALL STATE IN
30 WRITING THAT:

31 1. THE CLAIM HAS BEEN DENIED AND PROVIDE THE REASON FOR THE DENIAL.

32 2. THE NOTICE CONSTITUTES A DENIAL OF THE CLAIM THAT TRIGGERS THE
33 DEADLINE FOR FILING A PETITION FOR HEARING UNDER THE ADMINISTRATIVE REVIEW
34 PROVISIONS OF THE MODEL CITY TAX CODE OR STATE LAW, AS APPLICABLE.

35 M. TAX PAID ON AN ACTIVITY THAT IS NOT SUBJECT TO TAX OR THAT
36 QUALIFIES FOR AN EXEMPTION, DEDUCTION, EXCLUSION OR CREDIT IS NOT EXCESS
37 COLLECTED TAX.

38 N. INTEREST ON A CLAIM SHALL BE PAID TO THE CUSTOMER MAKING A CLAIM
39 UNDER THIS SECTION AT THE RATE AND IN THE MANNER PRESCRIBED BY SECTION
40 42-1123, SUBSECTION A. INTEREST ON A CLAIM SHALL BE COMPUTED FROM THE DATE
41 THE CLAIM IS FILED.

42 O. A CUSTOMER THAT IS ULTIMATELY DETERMINED TO BE ENTITLED TO A CLAIM
43 MAY BE AWARDED, BY ORDER OF A COURT, BOARD OR HEARING OFFICER, REASONABLE
44 FEES AND OTHER COSTS RELATING TO THE ADMINISTRATIVE PROCESSING OR
45 ADMINISTRATIVE APPEAL OF THE CLAIM, IF THE TAX COLLECTOR'S POSITION WAS NOT

1 SUBSTANTIALLY JUSTIFIED OR WAS BROUGHT FOR THE PURPOSE OF HARASSING THE
2 CUSTOMER, FRUSTRATING THE CLAIM PROCESS OR DELAYING THE CLAIM.

3 P. IF A DISCREPANCY OCCURS BETWEEN THIS SECTION AND ANY PROVISION OF
4 THE MODEL CITY TAX CODE, THIS SECTION APPLIES.

5 Q. FOR THE PURPOSES OF THIS SECTION:

6 1. "CUSTOMER" MEANS A PERSON THAT PURCHASES GOODS OR SERVICES FROM ANY
7 VENDOR.

8 2. "MODEL CITY TAX CODE" MEANS THE MODEL CITY TAX CODE AS DEFINED IN
9 SECTION 42-6051, AND ITS APPENDICES AND REGULATIONS, AS ADOPTED IN THE CITY
10 OR TOWN, AND INCLUDES THE SPECIFIC STATE LAW INCORPORATED IN THE MODEL CITY
11 TAX CODE AND THE INTERPRETATION OF STATE LAW.

12 3. "MUNICIPAL TRANSACTION PRIVILEGE TAX" MEANS A MUNICIPAL TRANSACTION
13 PRIVILEGE TAX, MUNICIPAL PRIVILEGE LICENSE TAX OR MUNICIPAL TRANSACTION
14 PRIVILEGE LICENSE TAX, MUNICIPAL USE TAX OR SIMILAR EXCISE TAX THAT IS
15 IMPOSED BY THE TAX COLLECTOR.

16 4. "REASONABLE FEES AND OTHER COSTS" MEANS FEES AND OTHER COSTS THAT
17 ARE BASED ON PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE
18 FURNISHED SERVICES AND THAT DO NOT EXCEED THE AMOUNTS ACTUALLY PAID FOR
19 EXPERT WITNESSES, THE COST OF ANY STUDY, ANALYSIS, REPORT, TEST, PROJECT OR
20 COMPUTER PROGRAM FOUND TO BE NECESSARY TO PREPARE THE CLAIMANT'S CASE AND
21 NECESSARY FEES FOR ATTORNEYS OR OTHER REPRESENTATIVES.

22 5. "TAX COLLECTOR" MEANS THE MUNICIPAL TAX COLLECTOR OR THE DEPARTMENT
23 WHEN IT IS ACTING AS THE TAX COLLECTOR FOR THOSE CITIES AND TOWNS IN THE
24 STATE COLLECTION PROGRAM, AS APPLICABLE UNDER THE MODEL CITY TAX CODE AND ITS
25 APPENDICES.

26 6. "VENDOR" MEANS ANY TAXPAYER THAT EITHER IS LIABLE FOR FILING AND
27 REMITTING MUNICIPAL TRANSACTION PRIVILEGE TAX TO THE TAX COLLECTOR OR THAT IS
28 REGISTERED WITH THE TAX COLLECTOR TO REMIT USE TAX TO THE TAX COLLECTOR ON
29 BEHALF OF ITS PURCHASERS.

30 Sec. 13. Section 44-1263, Arizona Revised Statutes, is amended to
31 read:

32 44-1263. Inability to conform motor vehicle to express
33 warranty; replacement of vehicle or refund of
34 monies; affirmative defenses; tax refund

35 A. If the manufacturer, its agents or its authorized dealers are
36 unable to conform the motor vehicle to any applicable express warranty by
37 repairing or correcting any defect or condition ~~which~~ THAT substantially
38 impairs the use and value of the motor vehicle to the consumer after a
39 reasonable number of attempts, the manufacturer shall replace the motor
40 vehicle with a new motor vehicle or accept return of the motor vehicle from
41 the consumer and refund to the consumer the full purchase price, including
42 all collateral charges, less a reasonable allowance for the consumer's use of
43 the vehicle. The manufacturer shall make refunds to the consumer and
44 lienholder, if any, as their interests appear. A reasonable allowance for
45 use is that amount directly attributable to use by the consumer before ~~his~~

1 THE CONSUMER'S first written report of the nonconformity to the manufacturer,
2 agent or dealer and during any subsequent period when the vehicle is not out
3 of service by reason of repair.

4 B. It is an affirmative defense to any claim under this article that
5 either:

6 1. An alleged nonconformity does not substantially impair the use and
7 market value of the motor vehicle.

8 2. A nonconformity is the result of abuse, neglect or unauthorized
9 modifications or alterations of the motor vehicle.

10 C. In the case of taxes paid pursuant to title 42, chapter 5, if the
11 manufacturer:

12 1. Accepts return of a motor vehicle from a consumer without replacing
13 the motor vehicle, the manufacturer shall refund the amount of tax attributed
14 to the sale of the vehicle to that consumer.

15 2. Replaces a motor vehicle with a new motor vehicle of lesser value,
16 the manufacturer shall refund the difference between the original amount of
17 tax attributed to the sale of that vehicle and the amount of tax attributed
18 to the sale of the replacement vehicle, excluding the value of the motor
19 vehicle being replaced.

20 3. Replaces a motor vehicle with a new motor vehicle of greater value,
21 the manufacturer shall calculate the gross proceeds of sales pursuant to
22 section 42-5001, paragraph 6.

23 D. Pursuant to section 42-1118, subsection ~~F~~ G, the manufacturer may
24 apply to the department of revenue for a refund for the amount of tax that
25 the manufacturer properly refunds to the consumer.