MATTHEW T. FOLEY, Esq. #023212
LAW OFFICES OF MATTHEW FOLEY, PLC
4400 E. Broadway, Ste. 811
Tucson, AZ 85711
Direct Line: (520) 404-0529
Email: Matt@TucLaw.com
Attorney for Debtor.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In Re: FRANCISCO JAVIER VILLAESCUSA, Debtor.	In Proceedings Under Chapter 13 Case No.: 4:24-bk-08168-BMW **DEBTOR'S BRIEF IN SUPPORT OF OBJECTION TO THE ARIZONA DEPARTMENT OF REVENUE'S PROOF OF CLAIM**

COMES NOW Debtor, Francisco Villaescusa ("Debtor"), by and through his attorney of record, Matthew Foley, PLC, and hereby submits this brief in support of his objection to the Arizona Department of Revenue's ("AZDOR") proof of claim ("POC"), and as grounds therefore, represents as follows:

I. INTRODUCTION

The bankruptcy code requires a Debtor be compliant with certain specified duties, including their obligation to file certain state and federal tax returns. Specifically, § 1308 <u>only</u> requires Chapter 13 debtors to file their tax returns for the four-year period ending on the petition date, while § 521(e) mandates <u>only</u> providing copies of tax returns for the most recent 2 years to the Chapter 13 Trustee (*See* Fed. R. Bankr. P. 4002(b)(3)-(4)).

The AZDOR routinely files proof of claims for alleged unfiled returns for tax years that are well beyond the four-year window. This places an onus on a Debtor to cure an often meritless proof of claim. The Debtor may resolve the POC by providing the AZDOR with a copy of the alleged missing return, draft an affidavit that the Debtor was not a resident of Arizona, or even acquiesce to the claim and pay an arbitrary accessed claim amount.

In this case, Debtor avers that he filed his 2015 Arizona State return and does not possess a copy of this 10-year-old document. Debtor therefore objects to AZDOR's amended POC.

II. STATEMENT OF FACTS & LAW

1. Debtor filed a chapter 13 proceeding on September 26, 2024.

2. AZDOR filed its initial claim on October 2, 2024, which assessed tax liabilities for unfiled tax returns, including the tax year 2015.

3. The Debtor and the AZDOR were able to resolve 2 of the 3 assessed liabilities. However, there remains one tax assessment in dispute – a priority claim of $1,436 for tax year 2015. The claim is an estimated liability assessed for "non-filing."

4. On July 30, 2025, Debtor objected to the AZDOR's claim and he carries the initial burden of proof with his objection. To satisfy the burden, Debtor provided a sworn declaration that he has filed the return and no longer possess the document, as permissible under Federal Bankruptcy Rule 4002.

5. On August 18, 2025, the AZDOR amended its POC. However, the 2015 assessed tax remains contested and Debtor's objection remains outstanding.

6. On January 8, 2026, a hearing was held and the Court heard arguments from Debtor's counsel and counsel for the AZDOR. During the hearing, the Court expressed

concern that the claim was potentially time barred; and requested clarification on how long must a debtor retain a copy of his or her tax returns.

Albeit in reverse order, the Debtor submits this brief to respond to the Court's request.

III. What is the tax record retention requirements for a Debtor?

How long should a Debtor retain copies of their filed tax returns? Both the Internal Revenue Service ("IRS") and the Arizona Department of Revenue suggest that a taxpayer should retain their tax records for a sufficient period to coincide with any statute of limitations that would apply to that return. Specifically, the IRS's website states:

> *"The length of time you should keep a document depends on the action, expense, or event which the document records. Generally, you must keep your records that support an item of income, deduction or credit shown on your tax return until the period of limitations for that tax return runs out."*[1]

The AZDOR's website has a page dedicated to *Record Keeping.* Identical to the IRS, the AZDOR instructs a tax payer to retain records equivalent to the underlying statues of limitations. Specifically, the AZDOR's website states:

> *"For tax purposes, the statute of limitations refers to the designated period of time during which a taxpayer can file a tax return and receive a refund or file an amended tax return. The statute of limitations also governs the amount of time that ADOR is able to issue an assessment for a tax deficiency. You must*

---

[1] https://www.irs.gov/businesses/small-businesses-self-employed/how-long-should-i-keep-records#:~:text=Here%20are%20some%20other%20guidelines%20for%20record,to%20keep%20them%20longer%20for%20other%20purposes

> *keep records, such as receipts, W-2s, 1099s, and other documents relating to an income source, deduction, or credit, generally until the statute of limitations expires."*[2]

This instruction to retain records is codified under A.R.S. § 42-1105(D), which states:

> *[E]very person who is subject to the taxes administered pursuant to this article shall keep and preserve copies of filed tax returns, including any attachments to the tax return, any signature documents used for the tax return, suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in section 42-1104…*

Ostensibly, based on A.R.S. § 42-1105(D) and using guidance from both the IRS and AZDOR's websites, debtors must retain their tax records equivalent to any statute of limitation that would be applicable to that return. The applicable statute of limitation for an Arizona state return is generally 4 years, with several exceptions that would require a 7-year retention period.

As such, Mr. Villaescusa, would only have an obligation to maintain a copy of his tax returns for a maximum of 7 years.

IV. Does A.R.S. § 42-1104(b)(10) bar the AZDOR for asserting a claim for tax years that exceed 7 years?

Yes, the AZDOR is barred from assessing a tax for on an unfiled return after 7 years. A.R.S. § 42-1104(b)(10), clearly states "If a taxpayer fails to file a report or return for income

---

[2] https://azdor.gov/individuals/record-keeping

tax or withholding tax, the department may assess the tax within seven years after the date the report or return was required to be filed."

To circumvent this bar date, AZDOR argues that all tax returns must be filed by a Chapter 13 Debtor. This blanket statement is made without any citation to the bankruptcy code or case law. Debtor is unaware of any published decision that supports this position. Rather, existing case law supports statutory compliance with 11 U.S.C. §§ 521 & 1308 (as discussed above).

V. **Conclusion**

WHEREFORE, the Debtor prays that the Court find that that Debtor does not have a statutory duty to retain tax records for more than 7 years under A.R.S. § 42-1105(D), and that the AZDOR is barred from assessing a claim for unfiled tax returns after 7 years, pursuant to A.R.S. § 42-1104(b)(10). As such, the Debtor further pray that the Court enter an order granting Debtor's objection to AZDOR's proof of claim for the specific portion attributable to tax year 2015.

Respectfully submitted February 9, 2026.

/s/ *Matthew T. Foley*

Matthew T. Foley #023212
Matthew Foley, PLC
4400 E. Broadway, Ste 811
Tucson, AZ 85711
(520) 404-0529
Matt@TucLaw.com

Original of the foregoing filed
electronically on February 9, 2026, with:

United States Bankruptcy Court
District of Arizona
Tucson Division

Copy of the foregoing via CM/ECF on February 9, 2026, to:

Dianne C. Kerns, Chapter 13 Trustee: mail@dcktrustee.com
Office of the U.S. Trustee: ustpregion14.px.ecf@usdoj.gov
Arizona Attorney General's Office: karianne.feltes@azag.gov
Bradley Stevens, Counsel to AZDOR: Bradley.Stevens@azag.gov

/s/ JDL
Jennifer D. Linden, Legal Assistant