

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 58

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WITHDRAWAL OF STATE LIENS; AMENDING SECTION 45-1902, IDAHO
2 CODE, TO DEFINE THE TERM WITHDRAWAL; AMENDING CHAPTER 19, TITLE 45,
3 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-1907A, IDAHO CODE, TO
4 ESTABLISH A PROCEDURE FOR WITHDRAWAL OF A NOTICE OF LIEN; AND AMENDING
5 SECTION 63-3055, IDAHO CODE, TO ESTABLISH PROCEDURES FOR THE STATE TAX
6 COMMISSION TO WITHDRAW A NOTICE OF LIEN, TO PROVIDE PROCEDURES AND TO
7 MAKE TECHNICAL CORRECTIONS.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 45-1902, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 45-1902. DEFINITIONS. (1) "Debtor" means a taxpayer or other person
13 against whom there is a final unpaid tax assessment collectible by the state
14 tax commission, a person against whom the department of labor has a lien for
15 a wage claim, unpaid contributions or overpayment of benefits, an individual
16 who is subject to a lien for child support delinquency, or an individual who
17 is subject to a lien for medical assistance.

18 (2) "Delivered" means transmission to and receipt by the secretary of
19 state of a notice of lien or other notice in any medium to which the filing
20 agency and the secretary of state have agreed.

21 (3) "Filing agency" means the state tax commission, the department of
22 labor or the department of health and welfare.

23 (4) "Person" means an individual, organization or legal entity.

24 (5) "Withdrawal" means an amendment to a notice of state lien releasing
25 the lien and stating that the lien is considered to have never been filed.

26 SECTION 2. That Chapter 19, Title 45, Idaho Code, be, and the same is
27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
28 ignated as Section 45-1907A, Idaho Code, and to read as follows:

29 45-1907A. WITHDRAWAL OF NOTICE OF LIEN. (1) Pursuant to section
30 63-3055, Idaho Code, and any other statute providing withdrawal authority to
31 a state agency, a certificate of withdrawal may be filed with the secretary
32 of state.

33 (2) The withdrawal will be delivered to and receipt acknowledged by
34 the secretary of state in a medium and format to which the filing agency and
35 the secretary of state have agreed and shall be authenticated by the filing
36 agency in a manner to which the filing agency and the secretary of state have
37 agreed.

38 SECTION 3. That Section 63-3055, Idaho Code, be, and the same is hereby
39 amended to read as follows:

1 63-3055. RELEASE, OR SUBORDINATION OR WITHDRAWAL OF INCOME TAX
2 LIEN. (1) The state tax commission may at any time release all or any portion
3 of the property subject to the lien from the lien, or it may subordinate the
4 lien to other liens if it determines:

5 (a) That the taxes, penalties or interests are sufficiently secured by
6 a lien on other property of the taxpayer; or

7 (b) That the release or subordination of the lien will not endanger or
8 jeopardize the collection of such taxes, penalties or interest; or

9 (c) That a surety bond or securities satisfactory to secure deposits of
10 public funds have been posted, deposited or pledged with the state tax
11 commission in an amount sufficient to secure the payment of such taxes,
12 penalties, or interest; or

13 (d) All or a part of such taxes, penalties or interest have been paid.

14 A certificate by the state tax commission to the effect that any prop-
15 erty has been released from the lien herein provided for, or that such lien
16 has been subordinated to other liens, shall be conclusive evidence that the
17 property has been released or that the lien has been subordinated, as pro-
18 vided in the certificate.

19 (2) If the state tax commission determines that the filing of the notice
20 of any lien was erroneous, the state tax commission shall expeditiously,
21 and, to the extent practicable, within fourteen (14) days after such deter-
22 mination, issue a certificate of release of such lien and shall include in
23 such certificate a statement that such filing was erroneous. A lien is not an
24 erroneous lien if it is accurate at the time the lien is filed.

25 (3) If a taxpayer has met the criteria for lien withdrawal as estab-
26 lished by the state tax commission, the state tax commission may withdraw a
27 notice of lien filed under this chapter by recording a certificate of with-
28 drawal pursuant to chapter 19, title 45, Idaho Code. Such withdrawal shall
29 affect the original notice of lien in such a way that the lien is considered
30 to have never been filed. Such withdrawal shall be confirmed by issuance of
31 a certificate by the state tax commission to the secretary of state stating
32 that the named lien has been withdrawn and shall be conclusive evidence that
33 the lien has been withdrawn as provided in the certificate. A copy of such
34 notice of withdrawal shall be provided to the taxpayer.

35 (4) Where an officer or employee of the state tax commission knowingly
36 or negligently fails to release a notice of lien, a taxpayer may bring an
37 action against the state tax commission pursuant to section 63-3074, Idaho
38 Code, in district court seeking direct economic damages and costs. A tax-
39 payer must first notify the state tax commission that a release was not is-
40 sued timely.