

IN THE SENATE

SENATE BILL NO. 1047, As Amended

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

1
2 RELATING TO GARNISHMENT FOR PAYMENT OF STATE TAXES; AMENDING CHAPTER 30, TI-
3 TLE 63, BY THE ADDITION OF A NEW SECTION 63-3060A, IDAHO CODE, TO PROVIDE
4 THAT EXECUTION ON INDIVIDUAL EARNINGS MAY BE CONTINUOUS AND TO PROVIDE A
5 MAXIMUM PERCENTAGE THAT MAY BE COLLECTED FROM ANY CERTAIN PERIOD OF IN-
6 COME; AND AMENDING SECTION 63-3068, IDAHO CODE, TO ALLOW A LONGER PERIOD
7 FOR COLLECTION OF STATE TAXES AND TO MAKE A TECHNICAL CORRECTION.

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

9 SECTION 1. That Chapter 30, Title 63, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
11 ignated as Section 63-3060A, Idaho Code, and to read as follows:

12 63-3060A. CONTINUOUS EXECUTION ON INDIVIDUAL EARNINGS. Where an exe-
13 cution or garnishment against earnings for a state tax liability is served
14 upon any person or upon the state of Idaho, and there is in possession of such
15 person or the state of Idaho any such earnings of the individual debtor, the
16 execution and the garnishment shall operate continuously and shall require
17 such person or the state of Idaho to withhold the nonexempt portion of earn-
18 ings at each succeeding earnings disbursement interval until released by the
19 state tax commission or until the dollar amount specifically set forth on the
20 record of assessment, identified in section 63-3045A, Idaho Code, and sub-
21 ject to garnishment as of the date the tax warrant is issued, is discharged
22 or satisfied in full. The proportion of earnings subject to garnishment pur-
23 suant to this section, as compared to total gross taxable earnings, shall
24 be limited to twenty-five percent (25%), except if the federal government
25 is also garnishing the earnings of such person then the garnishment shall be
26 limited to ten percent (10%). All garnishment or execution against earnings
27 for the payments of any tax owed to the state of Idaho shall be governed by
28 this section. For purposes of this section, earnings are gross taxable earn-
29 ings from sources identified in section 11-206(1), Idaho Code.

30 SECTION 2. That Section 63-3068, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 63-3068. PERIOD OF LIMITATIONS FOR ISSUING A NOTICE OF DEFICIENCY AND
33 COLLECTION OF TAX. (a) Except as otherwise provided in this section, a notice
34 of deficiency, as provided in section 63-3045, Idaho Code, for the tax im-
35 posed in this chapter shall be issued within three (3) years from either the
36 due date of the return, without regard to extensions, or from the date the re-
37 turn was filed, whichever is later.

38 (b) If an assessment has been made as provided in this chapter, then
39 such tax shall be collected either by levy, or by a proceeding brought in

1 court, within a period of ~~six~~ twelve (612) years from the date of entry of the
2 record of assessment required by section 63-3045A, Idaho Code, of the tax and
3 provided, further, that this shall not be in derogation of any of the reme-
4 dies elsewhere provided in this chapter.

5 (c) In the case of a fraudulent return or a false return with the intent
6 to evade the tax imposed in this chapter, or a willful attempt in any manner
7 to defeat or evade the tax imposed in this chapter, a notice of deficiency may
8 be issued, the tax may be assessed, or a proceeding in court for collection of
9 such tax may be begun without assessment, at any time.

10 (d) In the case of a failure to file a return, for any reason, a notice of
11 deficiency may be issued, the tax imposed in this chapter may be assessed, or
12 a proceeding in court for collection of such tax may be begun without assess-
13 ment, at any time.

14 (e) In the case of income received during the lifetime of a decedent,
15 or by his estate during the period of administration, a notice of deficiency
16 shall be issued, a claim shall be made, the tax shall be assessed or any pro-
17 ceeding in court without assessment for the collection of such tax shall be
18 begun, within twelve (12) months after written request for prompt action is
19 filed with the state tax commission by the executor, administrator, or other
20 fiduciary representing the estate of such decedent. This subsection shall
21 not apply if the return for which the request for prompt action relates has
22 not been filed with the state tax commission.

23 (f) When Idaho taxable income or tax credits for any taxable year have
24 been adjusted as a result of a final federal determination, the period of
25 limitation for issuing a notice of deficiency shall be reopened and shall not
26 expire until the later of one (1) year from the date of delivery of the fi-
27 nal federal determination to the state tax commission by the taxpayer, three
28 (3) years from the due date of the return, without regard to extensions, or
29 three (3) years from the date the return was filed. For purposes of this sub-
30 section the term "final federal determination" shall mean the final resolu-
31 tion of all issues which were adjusted by the internal revenue service. When
32 the final federal determination is submitted, the taxpayer shall also submit
33 copies of all schedules and written explanations provided by the internal
34 revenue service. Upon the expiration of the period of limitations as pro-
35 vided in subsections (a) and (m) of this section, only those specific items
36 of income, deductions, gains, losses, or credits which were adjusted in the
37 final federal determination shall be subject to adjustment for purposes of
38 recomputing Idaho income, deductions, gains, losses, credits, and the ef-
39 fect of such adjustments on Idaho allocations and apportionments.

40 (g) If an adjustment, which was made within the period of limitations
41 as provided in this section, affects the amount of tax credit, net operating
42 loss, or capital loss, claimed in a taxable year other than the tax year in
43 which the adjustment is made, then adjustments to the credit, net operating
44 loss, or capital loss claimed in such other tax year may be made and a result-
45 ing notice of deficiency may be issued even though such notice of deficiency
46 would otherwise be barred under the provisions of this section.

47 (h) Notwithstanding any other provisions of this section, when an
48 amended Idaho return is filed within the period of limitations as provided in
49 subsections (a) and (m) of this section, the period of limitations for issu-
50 ing a notice of deficiency shall be three (3) years from the date the amended

1 return was filed. However, upon the expiration of the period of limitations
2 as provided in subsections (a) and (m) of this section, only those specific
3 items of income, deductions, gains, losses, or credits, which were adjusted
4 in the amended Idaho return shall be subject to adjustment for purposes of
5 recomputing Idaho income, deductions, gains, losses, credits, and the ef-
6 fect of such adjustments on Idaho allocations and apportionments.

7 (i) If a taxpayer has filed an amended federal return, and no corre-
8 sponding Idaho amended return has been filed with the state tax commission,
9 then the period of limitations for issuing a notice of deficiency shall be
10 reopened and shall not expire until three (3) years from the date of deliv-
11 ery to the tax commission by the taxpayer of the amended federal return. How-
12 ever, upon the expiration of the period of limitations as provided in subsec-
13 tions (a) and (m) of this section, then only those specific items of income,
14 deductions, gains, losses, or credits, which were adjusted in the amended
15 federal return shall be subject to adjustment for purposes of recomputing
16 Idaho income, deductions, gains, losses, credits, and the effect of such ad-
17 justments on Idaho allocations and apportionments.

18 (j) Notwithstanding any other provisions of this section, a notice of
19 deficiency, related to items on the return of any pass-through entity, as de-
20 fined in this section, which other taxpayers are required by law to report,
21 shall be issued to such other taxpayers within the later of three (3) years
22 from the due date of the other taxpayers' return, without regard to exten-
23 sions, three (3) years from the date the other taxpayers' returns were filed,
24 or three (3) years from the date of filing of the pass-through entity's re-
25 turn. If the pass-through entity files an amended return, notices of defi-
26 ciency may be issued to the other taxpayers within three (3) years from the
27 date the amended return for the pass-through entity was filed with the state
28 tax commission. If the pass-through entity files an amended return with the
29 internal revenue service, or the internal revenue service issues a final de-
30 termination to the pass-through entity, then the period of limitations for
31 issuing a notice of deficiency to the other taxpayers shall be reopened and
32 shall not expire until three (3) years from the date of delivery to the tax
33 commission by the pass-through entity of the amended federal return or the
34 later of one (1) year from the date of delivery to the state tax commission by
35 the pass-through entity of the final federal determination, three (3) years
36 from the due date of the pass-through entity's return, without regard to ex-
37 tensions, or three (3) years from the date the pass-through entity's return
38 was filed.

39 (k) For purposes of this section, "pass-through entity" means a part-
40 nership, ~~S-corporation~~ S corporation, trust, limited liability company or
41 any other entity whose items of income, deductions, gains, losses and cred-
42 its must be reported by other taxpayer(s). For further purposes of this sec-
43 tion, the term "other taxpayer" shall include, by way of unlimiting example,
44 such taxpayers as partners, shareholders, beneficiaries, joint venturers or
45 investors.

46 (l) In the case of a duplicate return filed under section 63-217(1) (b),
47 Idaho Code, the limitation under this section shall be the later of one (1)
48 year from the filing of the duplicate return or the date otherwise applicable
49 under this section.

1 (m) Prior to the expiration of the time prescribed in this section for
2 the issuance of a notice of deficiency for the tax imposed in this chapter,
3 both the state tax commission, its delegate or deputy, and the taxpayer may
4 consent in writing to extend the period of time within which a notice of defi-
5 ciency may be issued. The period so agreed upon may be extended by subsequent
6 agreements in writing made before the expiration of the period previously
7 agreed upon. When a pass-through entity extends the period of limitations
8 in accordance with this subsection, the period of limitations for the other
9 taxpayers is automatically extended for the same period for the purpose of
10 issuing a notice of deficiency to the other taxpayers reflecting the adjust-
11 ments to the pass-through entity's return.

12 (n) The expiration of the period of limitations as provided in this sec-
13 tion shall be suspended for the time period during which the state tax com-
14 mission is prohibited from issuing a notice of deficiency, making the as-
15 sessment, or from collecting by levy or a proceeding in court, and for thirty
16 (30) days thereafter.

17 (o) For the purposes of this section, "return" includes a notice of de-
18 ficiency determination issued by the state tax commission when no return was
19 filed by the taxpayer. Such a return is deemed filed on the date the taxes de-
20 termined by the state tax commission are assessed.