

House Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 36

HOUSE BILL 2206

AN ACT

AMENDING SECTIONS 23-724, 23-732 AND 23-743, ARIZONA REVISED STATUTES;
REPEALING SECTION 23-746.01, ARIZONA REVISED STATUTES; AMENDING TITLE 23,
CHAPTER 4, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION
23-746.01; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-724, Arizona Revised Statutes, is amended to
3 read:

4 23-724. Liability determinations; review; finality

5 A. When the department makes a determination, which determination
6 shall be made either on the motion of the department or ~~upon~~ ON application
7 of an employing unit, that an employing unit constitutes an employer as
8 defined in section 23-613 or that services performed for or in connection
9 with the business of an employing unit constitute employment as defined in
10 section 23-615 ~~which~~ THAT is not exempt under section 23-617 or that
11 remuneration for services constitutes wages as defined in section 23-622, the
12 determination shall become final with respect to the employing unit fifteen
13 days after written notice is served personally, BY ELECTRONIC TRANSMISSION or
14 by ~~certified~~ mail addressed to the last known address of the employing unit,
15 unless within such time the employing unit files a written request for
16 reconsideration.

17 B. When a request for reconsideration is filed as prescribed in
18 subsection A of this section, a reconsidered determination shall be made. The
19 reconsidered determination shall become final with respect to the employing
20 unit thirty days after written notice ~~thereof~~ OF THE RECONSIDERED
21 DETERMINATION is served personally, BY ELECTRONIC TRANSMISSION or by
22 ~~certified~~ mail addressed to the last known address of the employing unit,
23 unless within such time the employing unit files with the appeals board a
24 written petition for hearing or review. The department may for good cause
25 extend the period within which the written petition is to be submitted. If
26 the reconsidered determination is appealed to the appeals board and the
27 decision by the appeals board is that the employing unit is liable, the
28 employing unit shall submit all required contribution and wage reports to the
29 department within forty-five days after the decision by the appeals board.

30 C. On an employer's written request and the submission of pertinent
31 information to the department, the department shall, or on its own motion
32 may, consider whether a determination, reconsidered determination or decision
33 which has become final should be revised. Revision shall be granted if
34 either:

35 1. There has been a substantial and material change in the facts on
36 which the determination, reconsidered determination or decision relied.

37 2. There has been a change in the law or interpretation of the law
38 which warrants a revised determination, reconsidered determination or
39 decision.

40 D. The effective date of a revision under subsection C of this section
41 is either:

42 1. The date on which the change occurred if the employer's request
43 with the pertinent information is filed no later than the last day of the
44 month immediately subsequent to the calendar quarter in which the change
45 occurred.

1 2. The first day of the calendar quarter in which the employer files
2 the request and submits the pertinent information unless the employer
3 demonstrates to the satisfaction of the department that good cause exists for
4 the failure to notify the department within the period prescribed by
5 paragraph 1 of this subsection of the occurrence of the change warranting the
6 revision. In the event such good cause is demonstrated, the effective date
7 shall be the date of the change.

8 E. A refusal to grant relief under subsection C of this section may
9 not be appealed unless within fifteen days the employer appeals the refusal
10 to the appeals board. Notwithstanding any other provision of law and
11 pursuant to such an appeal, the appeals board may initiate hearings to obtain
12 information and issue a decision as to whether the relief requested in
13 subsection C of this section should be granted. Thereafter, the appeals
14 board shall issue a decision in the matter. The decision may not be appealed
15 with respect to the employing unit unless petition for review and request for
16 review are filed within the time and in the manner provided in section
17 23-672.

18 F. The determination of the department or decision of the appeals
19 board, together with the record, shall be admissible in any subsequent
20 judicial proceeding involving liability for contributions. A determination
21 or decision that an employing unit is liable ~~which~~ THAT has become final
22 shall be conclusive and binding ~~upon~~ ON the employing unit and shall not be
23 reconsidered in proceedings brought before the department or a hearing
24 officer.

25 G. Any reconsidered determination issued pursuant to subsection B of
26 this section and any contribution rate redetermination or denial issued
27 pursuant to section 23-732, subsection A shall contain the following:

28 1. The facts considered and the facts relied on in making the
29 determination.

30 2. The specific statutes, regulations or other authority relied on in
31 making the determination.

32 3. The reasoning applied in making the determination.

33 4. The appeal rights related to the determination and the time period
34 after which the determination becomes final.

35 H. If any determination covered by subsection G of this section is
36 defective because it fails to meet the requirements of subsection G of this
37 section, the defect may be cured by issuance of a corrected, amended or new
38 determination. If a defect is alleged and specified in writing within the
39 period for appeal, all time periods applicable to the determination are
40 suspended pending the curative action.

41 I. This section does not preclude the department from at any time
42 correcting clerical errors that have occurred in the administration of this
43 chapter.

1 J. A DETERMINATION, RECONSIDERED DETERMINATION, REVISION OR REFUSAL TO
2 GRANT RELIEF UNDER THIS SECTION MAY BE SERVED BY ELECTRONIC MEANS IF THE
3 PARTY BEING SERVED CONSENTS IN WRITING TO SERVICE BY ELECTRONIC MEANS.
4 SERVICE BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.

5 Sec. 2. Section 23-732, Arizona Revised Statutes, is amended to read:
6 23-732. Annual notice to employer of contribution rate;
7 procedure for review and redetermination; quarterly
8 notification; notification by electronic means

9 A. The department shall promptly notify each employer of ~~his~~ THE
10 EMPLOYER'S rate of contributions as determined for any calendar year. The
11 determination shall become conclusive and binding ~~upon~~ ON the employer
12 unless, within fifteen days after the mailing of notice ~~thereof~~ OF THE
13 DETERMINATION to ~~his~~ THE EMPLOYER'S last known address or in the absence of
14 mailing, within fifteen days after delivery of the notice, the employer files
15 an application for review and redetermination, setting forth ~~his~~ THE
16 EMPLOYER'S reasons ~~therefore~~ FOR APPLICATION FOR REVIEW AND REDETERMINATION.
17 The department shall reconsider the rate, but no employer shall in any
18 proceeding involving ~~his~~ THE EMPLOYER'S rate of contributions or contribution
19 liability contest the chargeability to ~~his~~ THE EMPLOYER'S account of any
20 benefits paid in accordance with a determination, redetermination or decision
21 pursuant to section 23-773, and determined to be chargeable to the employer's
22 account pursuant to section 23-727, except ~~upon~~ ON the ground that the
23 services on the basis of which the benefits were found to be chargeable did
24 not constitute services performed in employment for ~~him~~ THE EMPLOYER and only
25 in the event that ~~he~~ THE EMPLOYER was not a party to the determination,
26 redetermination or decision or to any other proceedings under this chapter in
27 which the character of the services was determined. The employer shall be
28 promptly notified of the department's denial of ~~his~~ THE EMPLOYER'S
29 application, or of the department's redetermination, both of which shall
30 become final unless within fifteen days after mailing or delivery of
31 notification an appeal is filed with the appeals board.

32 B. The department may give quarterly notification to employers of
33 benefits paid and chargeable to their accounts or of the status of such
34 accounts, and such notification, in the absence of an application for
35 redetermination filed within fifteen days after mailing, shall become
36 conclusive and binding ~~upon~~ ON the employer for all purposes. A
37 redetermination or denial of an application by the department shall become
38 final unless within fifteen days after mailing or delivery ~~thereof~~ OF THE
39 REDETERMINATION OR DENIAL an appeal is filed with the appeals board. The
40 redeterminations may be introduced in any subsequent administrative or
41 judicial proceedings involving the determination of the rate of contributions
42 of any employer for any calendar year.

43 C. A NOTICE UNDER THIS SECTION MAY BE DELIVERED BY ELECTRONIC MEANS IF
44 THE PARTY BEING NOTIFIED CONSENTS IN WRITING TO NOTIFICATION BY ELECTRONIC
45 MEANS. NOTIFICATION BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.

1 Sec. 3. Section 23-743, Arizona Revised Statutes, is amended to read:
2 23-743. Limitations

3 A. ~~Except for the provisions of subsection G AS PROVIDED IN~~
4 SUBSECTIONS D AND E OF THIS SECTION, additional contributions, payments in
5 lieu of contributions, interest or penalties shall not be determined by the
6 department to be due after three years from the date the contributions,
7 payments in lieu of contributions, interest or penalties became delinquent.

8 B. ~~If additional contributions, interest or penalties have been~~
9 ~~determined to be due pursuant to this chapter and rules prescribed by the~~
10 ~~department within the statutory time limits, there is no time limit for~~
11 ~~collecting contributions, payments in lieu of contributions, interest or~~
12 ~~penalties.~~

13 B. AN EMPLOYER'S OBLIGATION FOR ANY CONTRIBUTIONS, PAYMENTS IN LIEU OF
14 CONTRIBUTIONS, INTEREST OR PENALTIES THAT ARE REQUIRED TO BE COLLECTED BY THE
15 DEPARTMENT FOR ANY PERIOD ARE EXTINGUISHED, IF NOT PREVIOUSLY SATISFIED, SIX
16 YEARS AFTER THE AMOUNTS WERE DETERMINED DUE UNLESS ONE OF THE FOLLOWING
17 CIRCUMSTANCES APPLIES:

18 1. THE DEPARTMENT HAS COMMENCED CIVIL ACTION TO COLLECT THE DEBT
19 PURSUANT TO SECTION 23-737 OR 23-737.01.

20 2. THE TAXPAYER HAS AGREED IN WRITING TO EXTEND THE TIME PERIOD BEFORE
21 THE TIME PERIOD EXPIRES.

22 3. AN ENFORCED COLLECTION HAS BEEN STAYED BY THE OPERATION OF FEDERAL
23 OR STATE LAW DURING THE PERIOD. THE PERIOD OF LIMITATIONS PRESCRIBED BY THIS
24 SUBSECTION IS EXTENDED BY THE PERIOD OF TIME THAT THE DEPARTMENT WAS STAYED
25 FROM ENGAGING IN ENFORCED COLLECTIONS.

26 C. IF A TAX OBLIGATION IS EXTINGUISHED PURSUANT TO SUBSECTION B OF
27 THIS SECTION, ANY RELATED LIENS FOR THOSE OBLIGATIONS ARE ALSO EXTINGUISHED.

28 ~~C.~~ D. In case of failure without good cause to file a return, fraud
29 or intent to evade any provision of this chapter, additional contributions,
30 payments in lieu of contributions, interest or penalties shall not be
31 determined by the department to be due after six years from the date the
32 contributions, interest or penalties became delinquent.

33 E. ANY AMOUNT OF CONTRIBUTIONS, INTEREST OR PENALTIES FOR WAGES AND
34 PERIODS THAT ARE ASSESSED BY THE INTERNAL REVENUE SERVICE AS SUBJECT TO THE
35 FEDERAL UNEMPLOYMENT TAX ACT AGAINST WHICH CREDIT MAY BE TAKEN FOR
36 CONTRIBUTIONS REQUIRED TO BE PAID INTO A STATE UNEMPLOYMENT FUND BY EMPLOYERS
37 SUBJECT TO THE FEDERAL LAW SHALL BE DETERMINED BY THE DEPARTMENT TO BE DUE
38 REGARDLESS OF THE DATE THE CONTRIBUTIONS, PAYMENTS IN LIEU OF CONTRIBUTIONS,
39 INTEREST OR PENALTIES BECAME DELINQUENT.

40 Sec. 4. Repeal

41 Section 23-746.01, Arizona Revised Statutes, is repealed.

1 Sec. 5. Title 23, chapter 4, article 5, Arizona Revised Statutes, is
2 amended by adding a new section 23-746.01, to read:

3 23-746.01. Release or subordination of lien

4 A. IF A LIEN ESTABLISHED BY SECTION 23-745 HAS BEEN SATISFIED AND A
5 NOTICE OF THE LIEN WAS RECORDED BY THE DEPARTMENT PURSUANT TO SECTION 23-746,
6 THE DEPARTMENT SHALL ISSUE A RELEASE OF THE LIEN TO THE PERSON AGAINST WHOM
7 THE LIEN WAS CLAIMED. THE DEPARTMENT SHALL RECORD THE LIEN RELEASE IN ANY
8 COUNTY WHERE THE ORIGINAL LIEN WAS RECORDED AND IN THE OFFICE OF THE
9 SECRETARY OF STATE, IF APPLICABLE.

10 B. AT ANY TIME, THE DEPARTMENT MAY RELEASE ALL OR ANY PORTION OF THE
11 PROPERTY SUBJECT TO THE LIEN FROM THE LIEN OR SUBORDINATE THE LIEN TO OTHER
12 LIENS IF THE DEPARTMENT DETERMINES THAT EITHER:

13 1. THE TAXES ARE SUFFICIENTLY SECURED BY A LIEN ON OTHER PROPERTY OF
14 THE TAXPAYER.

15 2. THE RELEASE OR SUBORDINATION OF THE LIEN WILL NOT ENDANGER OR
16 JEOPARDIZE THE COLLECTION OF THE TAXES.

17 C. AT THE DEPARTMENT'S DISCRETION AND AT ANY TIME, THE DEPARTMENT MAY
18 WITHDRAW A NOTICE OF LIEN THAT WAS RECORDED PURSUANT TO THIS ARTICLE IF THE
19 DEPARTMENT DETERMINES THAT ANY OF THE FOLLOWING CONDITIONS APPLIES:

20 1. THE DEPARTMENT'S INTERESTS ARE BEST SERVED BY WITHDRAWING THE
21 NOTICE.

22 2. FILING THE LIEN WAS PREMATURE OR OTHERWISE IN VIOLATION OF THE
23 DEPARTMENT'S ADMINISTRATIVE PROCEDURES.

24 3. WITHDRAWING THE NOTICE WILL FACILITATE COLLECTING THE OUTSTANDING
25 AMOUNT OF TAXES, INTEREST AND PENALTIES.

26 4. THE TAXPAYER HAS ENTERED INTO AN INSTALLMENT PAYMENT AGREEMENT
27 UNLESS THE AGREEMENT PROVIDES OTHERWISE.

28 D. IF A CLAIM FOR CONTRIBUTIONS OR PAYMENTS IN LIEU OF CONTRIBUTIONS
29 HAS BEEN COMPROMISED PURSUANT TO SECTION 23-642, THE DEPARTMENT IS NOT
30 REQUIRED TO RECORD A RELEASE OF THE LIEN UNDER THIS SECTION BUT ON THE
31 TAXPAYER'S WRITTEN REQUEST THE DEPARTMENT SHALL PROVIDE A CERTIFICATE OF
32 RELEASE TO THE TAXPAYER.

33 E. IF A TAX OBLIGATION HAS BEEN EXTINGUISHED PURSUANT TO SECTION
34 23-743, THE LIEN FOR THE EXTINGUISHED TAX IS ALSO EXTINGUISHED. THE
35 DEPARTMENT IS NOT REQUIRED TO RECORD A RELEASE OF THE LIEN UNDER THIS SECTION
36 BUT ON THE TAXPAYER'S WRITTEN REQUEST THE DEPARTMENT SHALL PROVIDE A
37 CERTIFICATE OF RELEASE TO THE TAXPAYER.

38 F. A CERTIFICATE BY THE DEPARTMENT TO THE EFFECT THAT ANY PROPERTY HAS
39 BEEN RELEASED FROM THE LIEN OR THAT THE LIEN HAS BEEN SUBORDINATED TO OTHER
40 LIENS IS CONCLUSIVE EVIDENCE THAT THE PROPERTY HAS BEEN RELEASED OR THAT THE
41 LIEN HAS BEEN SUBORDINATED AS PROVIDED IN THE CERTIFICATE.

APPROVED BY THE GOVERNOR APRIL 15, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 15, 2008.