

**Enrolled**  
**House Bill 3261**

Sponsored by COMMITTEE ON REVENUE

CHAPTER .....

AN ACT

Relating to tax warrants; creating new provisions; amending ORS 305.895, 314.430, 320.080, 321.570, 323.390, 323.610 and 324.190; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 314.430 is amended to read:

314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax is not paid within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the termination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department may issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county,*] for the payment of the amount of the tax, with the added penalties, interest[,] **and any** collection charge **incurred.** [*and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.*] A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

*[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing**

**the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

(3) In the discretion of the department a warrant *[of like terms, force and effect may be issued and]* **under this section may be** directed to any agent authorized by the department to collect taxes, and in the execution *[thereof]* **of the warrant** the agent *[shall have]* **has** all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) *[If]* **Until** a warrant **issued under this section** is *[returned not]* satisfied in full, the department *[shall have]* **has** the same remedies to enforce the claim for taxes against the taxpayer as if *[the people of]* the state had recovered judgment against the taxpayer for the amount of the tax, *and shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.*

**SECTION 2.** ORS 320.080 is amended to read:

320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant *[directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the person or persons named in the warrant and liable for the tax found within the county,]* for the payment of the amount *[thereof]* **of the tax**, with the added penalty and the cost of executing the warrant, *and to return the warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified not more than 30 days from the date of the warrant.* A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

*[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to any interest in real property or personal property of the persons against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff shall thereupon proceed upon the same in all respects, with like effect and in the manner prescribed by law in respect to execution issued against property upon judgment of a court of record, and the sheriff is entitled to the same fees for services in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the amount of the tax.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

**(3) In the discretion of the department a warrant under this section may be directed to any agent authorized by the department to collect taxes, and in the execution of the warrant the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.**

**(4) Until a warrant issued under this section is satisfied in full, the department has the same remedies to enforce the claim for taxes against the taxpayer as if the state had recovered judgment against the taxpayer for the amount of the tax.**

**SECTION 3.** ORS 321.570 is amended to read:

321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700 to 321.754, or any portion of the tax, is not paid within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, the Department of Revenue may issue a warrant[, *directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of the taxpayer owning the same, found within that county,*] for the payment of the amount of the tax, with the added penalties, interest and cost of executing the warrant[, *and to return the warrant to the department and to pay to it the money collected from the sale, within 60 days after receipt of the warrant*]. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

*[(2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the county clerk, and the clerk shall immediately enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion of the tax and penalties for which the warrant is issued and the date when the copy is recorded. The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the taxpayer against which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

(3) In the discretion of the department a warrant [*of like terms, force and effect may be issued and*] **under this section may be** directed to any agent authorized **by the department** to collect this tax. In the execution of the warrant[, *such*] **the** agent has the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) [*If*] **Until a warrant issued under this section** is [*returned not*] satisfied in full, the department [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if the state had [*a recorded*] **recovered** judgment against the taxpayer for the amount of the tax.

**SECTION 4.** ORS 323.390 is amended to read:

323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the department shall:

(a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds \$10.

(b) Issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county,*] for the payment

of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant[, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant]. **A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.**

*[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties and interest for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

*(3) In the discretion of the department a warrant [of like terms, force and effect may be issued and] under this section may be directed to any agent authorized by the department to collect income taxes, and in the execution [thereof] of the warrant the agent [shall have] has all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.*

*(4) [If] Until a warrant issued under this section is [returned not] satisfied in full, the department [shall have] has the same remedies to enforce the claim for taxes against the taxpayer as if [the people of] the state had recovered judgment against the taxpayer for the amount of the tax.*

**SECTION 5.** ORS 323.610 is amended to read:

**323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not paid within the time provided by law and no provision is made to secure the payment of the tax by bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department may issue a warrant [directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within the county,] for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant[, and to return the warrant to the department and pay to it the money collected from the sale, within 60 days after the date of receipt of the warrant]. **A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.****

*[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a*

*court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

(3) In the discretion of the department a warrant [*of like terms, force and effect*] **under this section** may be [*issued and*] directed to any agent authorized **by the department** to collect the taxes imposed by ORS 323.500 to 323.645. In the execution of the warrant[,] the agent [*shall have*] **has** all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) [*If*] **Until** a warrant **issued under this section** is [*returned not*] satisfied in full, the department [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if [*the people of*] the state had recovered judgment against the taxpayer for the amount of the tax.

**SECTION 6.** ORS 324.190 is amended to read:

324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant[, *directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of the person owing the tax, found within that county, for the payment in the amount thereof*] **for the payment of the amount of the tax**, with the added penalties, interest and cost of executing the warrant[, *and to return the warrant to the department and to pay to it the money collected by virtue thereof, within 60 days after receipt of the warrant*]. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

*(2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when the copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the person against which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff thereupon shall proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of records, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.]*

**(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125. After recording a warrant, the department may direct the sheriff for the county in which the warrant is recorded to levy upon and sell the real and personal property of the taxpayer found within that county, and to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff's cost of executing the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.**

(3) In the discretion of the department a warrant *[of like terms, force and effect may be issued and]* **under this section may be** directed to any agent *[of the department]* authorized by *[it]* **the department** to collect this tax. In the execution of the warrant<sup>1</sup>, *[such]* **the** agent has the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) *[If]* **Until** a warrant **under this section** is *[returned not]* satisfied in full, the department *[shall have]* **has** the same remedies to enforce the claim for taxes against the *[owner]* **taxpayer** as if the state had a recorded judgment against the *[owner]* **taxpayer** for the amount of the tax.

**SECTION 7.** ORS 305.895 is amended to read:

305.895. (1) Except as provided in ORS 314.440 or other jeopardy assessment procedure, the Department of Revenue shall take no action against a taxpayer's real or personal property before issuing a warrant for the collection of the tax as provided in ORS 314.430, 320.080, 321.570, **323.390, 323.610** and 324.190.

(2) *[Prior to]* **At least 30 days before** issuing a warrant for collection of any tax collected by the department, the department shall send the taxpayer a written notice and demand for payment. The notice shall:

(a) Be sent by mail, addressed to the taxpayer at the taxpayer's last-known address.

(b) Inform the taxpayer that, **even if the taxpayer is compliant with an installment agreement between the taxpayer and the department and is in communication with the department**, if the tax or any portion of the tax is not paid within 30 days after the date of the notice and demand for payment, a warrant may be issued and recorded as provided in ORS 314.430, 320.080, 321.570, **323.390, 323.610** and 324.190.

(c) Describe in clear nontechnical terms the legal authority for the warrant.

(d) Contain the name, office mailing address and office telephone number of the person issuing the warrant and advise the taxpayer that questions or complaints concerning the warrant, other than liability for the underlying tax, may be directed to that person.

(e) Include alternatives available to the taxpayer which would prevent issuance of the warrant.

(f) **Inform the taxpayer of possible consequences to the taxpayer of noncompliance, and of issuance of a warrant, including garnishment of wages or bank accounts and seizure and sale of real or personal property.**

**SECTION 8.** The amendments to ORS 305.895, 314.430, 320.080, 321.570, 323.390, 323.610 and 324.190 by sections 1 to 7 of this 2011 Act apply to warrants issued by the Department of Revenue on or after January 1, 2012.

**SECTION 9.** This 2011 Act takes effect on the 91st day after the date on which the 2011 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

**Passed by House May 5, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 6, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State