

# House Bill 3261

Sponsored by COMMITTEE ON REVENUE

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides for issuance of tax warrants without Department of Revenue direction to county sheriff to seize and sell taxpayer's real and personal property. Provides separate authority for department to order county sheriff to seize and sell taxpayer's real and personal property. Requires that department notice and demand for payment be sent to taxpayer at least 30 days prior to issuance of warrant. Requires department to include in notice accounting of payments by taxpayer and information about consequences of noncompliance.

Applies to warrants issued by department on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax warrants; creating new provisions; amending ORS 305.895, 314.430, 323.390 and  
3 323.610; and prescribing an effective date.

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

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

6 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax  
7 is not paid within 30 days after the date that the written notice and demand for payment required  
8 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-  
9 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and  
10 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-  
11 ulations promulgated by the department, the department may issue a warrant directed to [*the sheriff*  
12 *of*] any county of the state [*commanding the sheriff to levy upon and sell the real and personal prop-*  
13 *erty of the taxpayer found within that county,*] for the payment of the amount of the tax, with the  
14 added penalties, interest[,] **and any** collection charge **incurred**. [*and the sheriff's cost of executing*  
15 *the warrant, and to return such warrant to the department and pay to it the money collected by virtue*  
16 *thereof by a time to be therein specified, not less than 60 days from the date of the warrant.*] A copy  
17 of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's  
18 last-known address.

19 **(2) If so directed by the department, the sheriff of any county of the state may levy upon**  
20 **and sell the real and personal property of the taxpayer found within that county for the**  
21 **payment of the amount of the tax, with added penalties, interest, collection charge and the**  
22 **sheriff's cost of executing the warrant, and return such warrant to the department and pay**  
23 **to it the money collected by virtue thereof by a time to be therein specified, not less than**  
24 **60 days from the date of the warrant.**

25 [(2)] (3) The sheriff shall, within five days after the receipt of the warrant, record with the clerk  
26 of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record  
27 the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof  
28 and penalties for which the warrant is issued and the date when such copy is recorded. Thereupon

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the amount of the warrant so recorded shall become a lien upon the title to and interest in property  
 2 of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The  
 3 sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same  
 4 manner prescribed by law in respect to executions issued against property upon judgment of a court  
 5 of record, and shall be entitled to the same fees for services in executing the warrant, to be added  
 6 to and collected as a part of the warrant liability.

7 [(3)] (4) In the discretion of the department a warrant of like terms, force and effect may be is-  
 8 sued and directed to any agent authorized to collect taxes, and in the execution thereof the agent  
 9 shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation  
 10 in excess of actual expenses paid in the performance of such duty.

11 [(4)] (5) If a warrant is returned not satisfied in full, the department shall have the same reme-  
 12 dies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 13 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record  
 14 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

15 **SECTION 2.** ORS 323.390 is amended to read:

16 323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid  
 17 within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a  
 18 tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond,  
 19 deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the de-  
 20 partment shall:

21 (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds  
 22 \$10.

23 (b) Issue a warrant directed to [*the sheriff of*] any county of the state [*commanding the sheriff*  
 24 *to levy upon and sell the real and personal property of the taxpayer found within that county,*] for the  
 25 payment of the amount of the tax, with the added penalties, interest[,], **and** collection charge. [*and*  
 26 *the sheriff's cost of executing the warrant,*] **If directed by the department, the sheriff shall levy**  
 27 **upon and sell the real and personal property of the taxpayer found within that county** and  
 28 [*to*] return such warrant to the department and pay to it the money collected by virtue thereof,  
 29 **reduced by the sheriff's cost of executing the warrant**, by a time to be therein specified, not less  
 30 than 60 days from the date of the warrant.

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

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

45 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies

1 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 2 judgment against the taxpayer for the amount of the tax.

3 **SECTION 3.** ORS 323.610 is amended to read:

4 323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not  
 5 paid within the time provided by law and no provision is made to secure the payment of the tax by  
 6 bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department  
 7 may issue a warrant directed to [*the sheriff of*] any county of the state [*commanding the sheriff to*  
 8 *levy upon and sell the real and personal property of the taxpayer found within the county,*] for the  
 9 payment of the amount of the tax, with [*the*] added penalties[,] **and** interest [*and the sheriff's cost*  
 10 *of executing the warrant,*]. **If directed by the department, the sheriff shall levy upon and sell**  
 11 **the real and personal property of the taxpayer found within that county** and [*to*] return the  
 12 warrant to the department and pay to it the money collected from the sale, **reduced by the**  
 13 **sheriff's cost of executing the warrant**, within 60 days after the date of receipt of the warrant.

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

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

28 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 29 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 30 judgment against the taxpayer for the amount of the tax.

31 **SECTION 4.** ORS 305.895 is amended to read:

32 305.895. (1) Except as provided in ORS 314.440 or other jeopardy assessment procedure, the  
 33 Department of Revenue shall take no action against a taxpayer's real or personal property before  
 34 issuing a warrant for the collection of the tax as provided in ORS 314.430, 320.080, 321.570, **323.390,**  
 35 **323.610** and 324.190.

36 (2) **No fewer than 30 days** prior to issuing a warrant for collection of any tax collected by the  
 37 department, the department shall send the taxpayer a written notice and demand for payment. The  
 38 notice shall:

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

40 (b) Inform the taxpayer that, **even if the taxpayer is compliant with an installment agree-**  
 41 **ment between the taxpayer and the department and is in communication with the depart-**  
 42 **ment**, if the tax or any portion of the tax is not paid within 30 days after the date of the notice  
 43 and demand for payment, a warrant may be issued and recorded as provided in ORS 314.430, 320.080,  
 44 321.570, **323.390, 323.610** and 324.190.

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

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

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

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

8 **(g) Contain an accounting of all payments from the taxpayer received by the department**  
9 **more than two weeks preceding issuance of the notice.**

10 **SECTION 5. The amendments to ORS 305.895, 314.430, 323.390 and 323.610 by sections 1**  
11 **to 4 of this 2011 Act apply to warrants issued by the Department of Revenue on or after**  
12 **January 1, 2012.**

13 **SECTION 6. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
14 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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