

Enrolled
House Bill 2089

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

CHAPTER

AN ACT

Relating to debt collection; creating new provisions; amending ORS 293.229, 293.231, 305.155 and 305.895; and prescribing an effective date.

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

SECTION 1. ORS 293.229 is amended to read:

293.229. (1) Not later than October 1 of each fiscal year, each state agency shall submit a report to the Legislative Fiscal Office that describes the status of that agency's liquidated and delinquent accounts and efforts made by that agency to collect liquidated and delinquent accounts during the previous fiscal year. The report required under this subsection shall be in a form prescribed by the Legislative Fiscal Office and shall include but not be limited to:

- (a) Beginning balance and total number of all liquidated and delinquent accounts;
- (b) New liquidated and delinquent accounts added during the last preceding fiscal year;
- (c) Total collections of liquidated and delinquent accounts;
- (d) Total amount and total number of liquidated and delinquent accounts that have been written off;
- (e) Total number and ending balance of all liquidated and delinquent accounts;
- (f) Total amount of liquidated and delinquent accounts turned over to private collection agencies and total amount collected by those agencies under ORS 293.231; *[and]*
- (g) Total number and total amount of all liquidated and delinquent accounts exempted under ORS 293.233[.]; **and**

(h) Total number and ending balance of all liquidated and delinquent accounts that have been placed in suspended collection status under section 3 of this 2015 Act.

(2) The Legislative Fiscal Office shall produce an annual report not later than December 31 of each fiscal year on the status of liquidated and delinquent accounts of state agencies. The report shall be based on the reports submitted by state agencies as required in this section.

SECTION 2. ORS 293.231 is amended to read:

293.231. (1) Except as provided in subsections (4) to (9) of this section, a state agency, unless otherwise prohibited by law, shall offer for assignment every liquidated and delinquent account to a private collection agency or to the Department of Revenue as provided in ORS 293.250 not later than:

- (a) Ninety days from the date the account was liquidated if no payment has been received on the account within the 90-day period; or
- (b) Ninety days from the date of receipt of the most recent payment on the account.

(2) Nothing in subsection (1) of this section prohibits a state agency from offering for assignment a liquidated and delinquent account to a private collection agency at any time within the 90-day period.

(3) If, after a reasonable time, the private collection agency is unable to collect the account, the private collection agency shall notify the state agency that assigned the account that it has been unable to collect the account and shall relinquish the account to the state agency. A private collection agency that collects an account under this section shall be held to the same standard of confidentiality, service and courtesy imposed on the state agency that assigned the account.

(4) If a state agency assigns a liquidated and delinquent account to the Department of Revenue as provided in ORS 293.250, the department shall have six months from the date of assignment to collect a payment. If the department does not collect a payment within that six-month period or if six months have elapsed since the date of receipt of the most recent payment on the account, the department shall notify the state agency. The state agency shall then immediately offer for assignment the debt to a private collection agency.

(5) The provisions of subsection (1) of this section do not apply to a liquidated and delinquent account that is prohibited by state or federal law or regulation from assignment or collection.

(6) The Oregon Department of Administrative Services may adopt rules exempting specified kinds of liquidated and delinquent accounts from the time periods established in subsections (1), (2) and (4) of this section.

(7) The Oregon Department of Administrative Services shall adopt rules exempting liquidated and delinquent accounts that originate in the Department of Revenue or the Employment Department from the time periods established in subsections (1), (2) and (4) of this section.

(8) A liquidated and delinquent account that is subject to assignment under this section shall be assigned to a private collection agency if more than one year has elapsed without a payment on the account.

(9) Notwithstanding subsection (1) of this section, a state agency may, at its discretion, choose not to offer for assignment to a private collection agency a liquidated and delinquent account that:

(a) Is secured by a consensual security interest in real or personal property;

(b) Is a court-ordered judgment that includes restitution or a payment to the Department of Justice Crime Victims' Assistance Section;

(c) Is in litigation, including bankruptcy, arbitration and mediation;

(d) Is a student loan owed by a student who is attending school;

(e) Is owed to a state agency by a local or state government or by the federal government;

(f) Is owed by a debtor who is hospitalized in a state hospital as defined in ORS 162.135, who receives public assistance as defined in ORS 411.010 or who receives medical assistance as defined in ORS 414.025;

(g) Is owed by a debtor who is imprisoned;

(h) Is less than \$100, including penalties; [or]

(i) Would result in loss of federal funding if assigned[.]; **or**

(j) Is eligible for suspension of collection as provided in section 3 of this 2015 Act.

(10) Nothing in this section prohibits a state agency from collecting a tax offset after a liquidated and delinquent account is assigned to a private collection agency.

(11) For the purposes of this section, a state agency shall be deemed to have offered for assignment an account if:

(a) The terms of the offer are of a type generally acceptable within the collections industry for the type of account offered for assignment; and

(b) The offer is made to a private collection agency that engages in collecting on accounts of the type sought to be assigned or is made generally available to private collection agencies through a bid or request for proposal process.

(12) A state agency that retains a private collection agency under this section may add a fee to the amount of the liquidated and delinquent account as provided in ORS 697.105. A fee may not be added under this subsection unless the state agency has provided notice to the debtor:

- (a) Of the existence of the debt;
- (b) That the debt may be assigned to a private collection agency for collection; and
- (c) Of the amount of the fee that may be added to the debt under this subsection.

(13) Except as provided by federal law, the state agency may not add a fee under subsection (12) of this section that exceeds the collection fee of the private collection agency.

SECTION 3. ORS 305.155 is amended to read:

305.155. (1) The Department of Revenue shall cancel an unpaid tax imposed by laws of the State of Oregon that is collected by the department, including any penalty or interest applicable to the tax, if the department determines that:

- (a) The tax has been delinquent for seven or more years;
- (b) All reasonable efforts have been made to effect collection;
- (c) The taxpayer cannot be located or is dead; and
- (d) The tax is wholly uncollectible.

(2) The department shall offer to suspend collection of an unpaid tax imposed by laws of the State of Oregon that is collected by the department, including any penalty or interest applicable to the tax, if the department determines that the individual liable for the debt:

(a) Has income that does not exceed 200 percent of the federal poverty guidelines based on the individual's household size and household members;

(b) Has less than \$5,000 in assets; and

(c) Has income solely from a source that is exempt from garnishment under ORS chapter 18.

~~[(2)]~~ **(3)** The department may cancel any tax imposed by laws of the State of Oregon that is collected by the department or any portion of the tax assessed against a person, including any penalty and interest that has not been collected, if the department determines that the administration and collection costs involved would exceed the amount that can reasonably be expected to be recovered.

~~[(3)]~~ **(4)** When taxes are canceled under subsection (1) or ~~[(2)]~~ **(3)** of this section, the department shall make an order canceling the tax, penalties and interest. The order shall be filed in the records of the department. Upon making the order, the department also shall cause to be canceled or released any lien of record **of the tax, penalties and interest** in the counties that may have been filed and entered therein.

(5) When collection of taxes is suspended under subsection (2) of this section:

(a) The department shall continue to charge interest on the taxes for which collection has been suspended.

(b) The taxpayer may make voluntary payments of unpaid tax. Voluntary payment of unpaid tax under this subsection does not affect the taxpayer's eligibility for suspension of collection under this section or allow the department to resume collection of any unpaid tax.

(c) The department may file a lien against the taxpayer's property.

(d) The department may resume collection as described in subsection (7) of this section if the taxpayer incurs additional unpaid tax during the period of suspended collection.

(6) Nothing in this section limits the department's authority to offset state or federal payments, including tax refunds, against unpaid taxes that have been suspended under subsection (2) of this section.

(7)(a) When collection of taxes is suspended under subsection (2) of this section, the department shall review annually the taxpayer's eligibility for suspension of collection activities and ensure that the taxpayer continues to meet all requirements listed in subsection (2) of this section.

(b) If the department determines that a taxpayer no longer meets the requirements listed in subsection (2) of this section, the department may resume collection of any unpaid tax. Not less than 30 days before the department resumes collection under this subsection, the department shall provide written notice to the taxpayer that the taxpayer no longer qualifies

for suspension of collection under this section and that the department will resume collection of the unpaid tax.

(8) The department may write off the debt on its accounts under ORS 293.240 for any tax period for which collection has been suspended under subsection (2) for more than three tax years.

(9) The department shall by rule establish policies and procedures for the administration of this section.

SECTION 4. 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 or transferee's real or personal property before issuing a warrant for the collection of tax or an amount payable by a transferee under ORS 311.695 as provided in ORS 314.430, 320.080, 321.570, 323.390, 323.610 and 324.190.

(2) At least 30 days before issuing a warrant for collection of any tax collected by the department or any amount payable under ORS 311.695, the department shall send the taxpayer or transferee a written notice and demand for payment. The notice shall:

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

(b) Inform the taxpayer or transferee that, even if the taxpayer or transferee is compliant with an installment agreement between the taxpayer or transferee and the department and is in communication with the department, if the tax or any portion of the tax or the amount payable under ORS 311.695 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 or transferee that questions or complaints concerning the warrant, other than liability for the underlying tax or amount payable under ORS 311.695, may be directed to that person.

(e) Include alternatives available to the taxpayer or transferee that would prevent issuance of the warrant.

(f) Inform the taxpayer that certain types of income are exempt from garnishment.

[(f)] (g) Inform the taxpayer or transferee of possible consequences to the taxpayer or transferee 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 5. Section 3 of this 2015 Act applies to tax debt that is outstanding as of January 1, 2016.

SECTION 6. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by House June 16, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 26, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State