

Enrolled
Senate Bill 161

Sponsored by Senator WHITSETT, Representative GOMBERG; Representative WHITSETT (Presession filed.)

CHAPTER

AN ACT

Relating to liens for personal property taxes; creating new provisions; amending ORS 311.806; and prescribing an effective date.

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

SECTION 1. Sections 2 to 7 of this 2015 Act are added to and made a part of ORS 311.605 to 311.635.

SECTION 2. (1) As used in sections 2 to 7 of this 2015 Act:

(a) “Business personal property” means tangible personal property, and machinery and equipment that a tax collector treats as personal property pursuant to ORS 311.549.

(b) “Business personal property” does not include manufactured structures and floating homes.

(2)(a) The tax collector of a county may transmit an electronic notice of a warrant issued for delinquent property taxes on business personal property to the Secretary of State for filing as provided in this section.

(b) Certification by the tax collector of warrants for delinquent property taxes on business personal property entitles the warrants to be filed and no other certification or acknowledgment is necessary.

(3) If an electronic notice of a warrant is transmitted to the Secretary of State for filing under subsection (2) of this section, the Secretary of State shall cause the warrant to be marked, held and indexed in accordance with the provisions of ORS 79.0519 in the same manner as a financing statement under ORS chapter 79.

(4) A county tax collector who transmits an electronic notice of a warrant under this section shall transmit an electronic notice of a release or cancellation of the warrant to the Secretary of State for filing as soon as practicable after the amount due on the warrant is paid in full or canceled.

(5) If an electronic notice of release or cancellation of a warrant is transmitted to the Secretary of State for filing under subsection (4) of this section, the Secretary of State shall, as applicable:

(a) Cause a certificate of release to be marked, held and indexed in the same manner as a termination statement under ORS 79.0512; or

(b) Cause a certificate of cancellation to be held, marked and indexed in the same manner as a release of collateral under ORS 79.0512.

(6) The Secretary of State shall specify the format, required information and manner of transmission for an electronic notice transmitted under this section. The Secretary of State

shall file an electronic notice only if the tax collector has complied with the Secretary of State's specifications.

(7) The Secretary of State may:

(a) Establish a fee for accepting an electronic notice transmitted by a tax collector to the Secretary of State for filing under this section.

(b) Adopt rules to implement the provisions of this section and sections 3 and 4 of this 2015 Act.

(8) The tax collector may add to the amount due on a warrant any fee charged by the Secretary of State for filing an electronic notice of the warrant or the release or cancellation of the warrant pursuant to this section.

(9) Transmitting an electronic notice of a warrant to the Secretary of State for filing under this section does not affect the tax collector's obligation to have the warrant recorded pursuant to ORS 311.625.

SECTION 3. (1) Except as otherwise provided in this section, an electronic notice of a warrant transmitted under section 2 of this 2015 Act expires 10 years after the Secretary of State files the electronic notice.

(2)(a) At any time before an electronic notice of a warrant expires, a county tax collector may transmit an electronic certificate of extension for the warrant, in the same manner as an electronic notice of a warrant is transmitted under section 2 of this 2015 Act, to the Secretary of State for filing.

(b) The Secretary of State shall note when the Secretary of State receives the electronic certificate of extension and shall file the electronic certificate of extension in the same manner as an electronic notice of a warrant is filed under section 2 of this 2015 Act.

(3)(a) An electronic certificate of extension filed under this section expires 10 years after the Secretary of State files the electronic certificate of extension.

(b) Only one electronic certificate of extension may be filed under this section for each electronic notice of a warrant.

(4) An electronic certificate of extension transmitted after the electronic notice of a warrant expires as provided in subsection (1) of this section has no effect.

(5) The Secretary of State shall file an electronic certificate of extension only if the tax collector has complied with the Secretary of State's specifications under section 2 (6) of this 2015 Act.

SECTION 4. The Secretary of State shall provide the public with access to information relating to electronic notices of warrants and release and cancellation of warrants transmitted for filing pursuant to section 2 of this 2015 Act under the same conditions, in the same form and to the same extent that the Secretary of State provides information relating to financing statements the Secretary of State files pursuant to ORS chapter 79.

SECTION 5. A seller of business personal property shall provide a prospective purchaser of the property with a disclosure notice that includes at least the following information:

(1) Whether any property taxes assessed on the property for any property tax year are outstanding;

(2) Whether there are any liens against the property;

(3) If known, the name of any county in which the property has ever been assessed for property tax purposes other than the county in which the property is located at the time of the proposed purchase transaction;

(4) If known, the name and address of any other person that has owned or had possession or control of the property; and

(5) The fact that section 6 of this 2015 Act may apply to the purchase transaction.

SECTION 6. (1) For purposes of this section, a bona fide purchaser is a person that purchases business personal property:

(a) In good faith;

(b) For value;

(c) In an arm's-length transaction; and
(d) Without notice of delinquent property taxes on the property, as described in subsection (2) of this section.

(2) A person purchases property without notice of delinquent property taxes on the property if, as of the date of the purchase transaction, the person:

(a) Does not have actual notice of the taxes, from the disclosure notice required under section 5 of this 2015 Act or otherwise;

(b) Has completed reasonable diligence with respect to:

(A) The information included on the disclosure notice required under section 5 of this 2015 Act, or can attest that the seller failed to provide the disclosure notice; and

(B) Any other relevant facts that the person knew or should have known about the transaction;

(c) Has searched and found no warrant for delinquent property taxes on the property recorded in the County Clerk Lien Record of the county in which the property is located at the time of the purchase transaction or of any other county in which the person, at the time of the purchase transaction, knew or should have known the property was previously located; and

(d) Has searched the Secretary of State's Uniform Commercial Code system within three business days before the date of the purchase transaction and found no unsatisfied warrant for delinquent property taxes on the property, as evidenced by a screen printout of the search results.

(3) For purposes of ORS 311.635, a bona fide purchaser is not liable for property taxes that were delinquent on the date of the purchase transaction in which the bona fide purchaser acquired the business personal property or for interest or fees related to the delinquent property taxes.

(4)(a) Upon receipt of sufficient information to determine that a purchaser of business personal property on which delinquent property taxes are outstanding is a bona fide purchaser, a tax collector shall release the lien for the taxes with respect to the property that was the subject of the purchase transaction.

(b) The release of the lien does not affect:

(A) The personal liability of the owner, or person in possession or control of the property, at the time the property was assessed, arising under ORS 311.455.

(B) The lien on property, other than the property that was the subject of the purchase transaction, arising under ORS 311.405 (3).

SECTION 7. (1)(a) The tax collector of a county may accept from a purchaser of business personal property on which property taxes were delinquent on the date of the purchase transaction a compromise payment that is less than the total outstanding amount of taxes, interest and fees.

(b) The amount of the compromise payment must be equitable in consideration of all the facts and circumstances of the transaction in which the purchaser acquired the property.

(2) Upon receipt of the compromise payment, the tax collector shall release the lien for the taxes on the business personal property that was the subject of the purchase transaction.

(3) Notwithstanding receipt of a compromise payment under this section, the total outstanding amount described in subsection (1)(a) of this section, without reduction for the amount of the compromise payment, remains as:

(a) A personal liability of the owner, or person in possession or control of the property, at the time the property was assessed, arising under ORS 311.455.

(b) A lien on property, other than the property that was the subject of the purchase transaction, arising under ORS 311.405 (3).

(4)(a) If the total outstanding amount described in subsection (1)(a) of this section is paid after receipt of a compromise payment, the amount of the compromise payment shall be refunded to the purchaser.

(b) Upon receipt of the total outstanding amount described in subsection (1)(a) of this section, the tax collector shall notify the governing body of the county that a refund is due under this subsection. The refund shall be made without interest in the manner provided in ORS 311.806.

SECTION 8. ORS 311.806 is amended to read:

311.806. (1) Subject to subsection (2) of this section, the county governing body shall refund, out of the refund reserve account provided in ORS 311.807, or the unsegregated tax collections account provided in ORS 311.385, taxes on property collected by an assessor or tax collector pursuant to a levy of the assessor or of any taxing district or tax levying body or pursuant to ORS 311.255, plus interest as provided in ORS 311.812, in the following cases:

(a) To the person described in ORS 309.100 (1) and in whose name a petition was filed, whenever a change in the value of property is ordered by a county board of property tax appeals and no appeal is taken or can be taken from the board's order, or whenever ordered by the Oregon Tax Court or the Supreme Court and the order constitutes a final determination of the matter;

(b) To the person who has sought and obtained an order from the Department of Revenue under ORS 306.115, whenever a change in the value of property is ordered by the department and no appeal is taken or can be taken from the order of the department;

(c) To the person who meets the criteria described in ORS 305.275 and in whose name an appeal is filed under ORS 305.275, whenever ordered by the Oregon Tax Court or Supreme Court and the order constitutes a final determination of the matter;

(d) Whenever a change in the value of property is made under ORS 309.115 upon resolution of an appeal and no separate appeal of the value of the property was taken for the year of the change:

(A) To the person in whose name the appeal was filed, for each year after the year for which the appeal was filed in which that person was listed as the owner or an owner or the person in whose name the property was assessed; and

(B) To the owner of record on the tax roll at the time of refund, each year thereafter;

(e) To the owner of record on the tax roll at the time of refund, whenever taxes are collected against real or personal property not within the jurisdiction of the tax levying body;

(f) Except as provided in ORS 310.143, to the owner of record on the tax roll at the time of refund, whenever, through excusable neglect or through an error subject to correction under ORS 311.205, taxes on property are paid in excess of the amount legally chargeable, limited to the amount of money collected in excess of the amount actually due; [or]

(g) Except as provided in ORS 311.808, to the payer of the tax whenever any person pays taxes on the property of another by mistake of any kind[.]; or

(h) To the purchaser of business personal property in the circumstances described in section 7 (4) of this 2015 Act, upon notification of the county governing body by the tax collector who accepted the refundable compromise payment.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, a refund of taxes may not be allowed or made after six years from the assessment date for the tax year for which the taxes were collected. A refund under this subsection may be paid only to the extent that a refund under subsection (4) of this section has not been paid.

(b) A refund of taxes may be allowed or made under subsection (1)(f) or (g) of this section after the period described in paragraph (a) of this subsection if, before the expiration of the period, a written claim for refund of the taxes is filed by the taxpayer with the county governing body.

(c) The county governing body shall order a refund of taxes to be paid as specified in subsection (1) of this section without the filing of a written claim and without regard to the period specified under paragraph (a) of this subsection upon receipt of a copy of an order by the Department of Revenue, the Oregon Tax Court or the Supreme Court that constitutes a final determination that is not subject to appeal.

(3)(a) Upon request of the owner or an owner of any taxable property or the person in whose name the property is assessed, or the owner of record on the tax roll at the time of refund, whichever is applicable, and with the approval of the tax collector, the county governing body may authorize refunds payable under subsection (1)(a) to (e) of this section to be made by crediting the total tax liability account of the requester with the amount of the refund. The total tax liability account is the total amount of tax that has been extended or charged against a particular property tax account as limited by section 11b, Article XI of the Oregon Constitution.

(b) In the case of a refund or credit payable to a single requester that results from an order constituting a final determination of a matter as described under subsection (1)(a), (b) or (c) of this section, a county governing body may elect to pay the refund or apply the credit in equal periodic installments over not more than the five-year period that begins on the date that the order is issued if the amount to be refunded or credited exceeds the lesser of \$250,000 or one-quarter of one percent of the total amount of taxes on property imposed within the county within the limits of section 11b, Article XI of the Oregon Constitution, as listed on the certificate last prepared under ORS 311.105.

(c) If a county governing body elects to pay a refund or credit under the provisions of paragraph (b) of this subsection, and the election will result in a hardship to a requester, the requester may appeal the election to the tax court as provided in ORS 305.404 to 305.560.

(4)(a) The tax collector shall refund taxes paid on a property value, a claim for exemption or a claim for cancellation of a property tax exemption if:

(A) A county board of property tax appeals or the Oregon Tax Court issues a decision that could result in a refund if the decision is upheld on appeal;

(B) The final resolution is pending further appeal; and

(C) The county governing body orders a refund of taxes paid under this subsection.

(b) An order by a county governing body or a recommendation of an assessor or tax collector in regard to this subsection may not be considered in determining matters in controversy on appeal, including property value or tax liability.

(c) Interest may not be paid on any refund under this subsection prior to final resolution of the appeal. If, after taking into account the amount refunded under this subsection, the final resolution of the controversy after appeal results in a refund due, interest shall be determined and paid as provided in ORS 311.812.

(d) If, after taking into account the amount refunded under this subsection, the final resolution of the controversy after appeal results in additional taxes due on the property, the additional taxes shall be billed and collected as provided in ORS 311.513.

(5) Immediately upon payment of the refund and any interest thereon, the tax collector shall make the necessary correcting entries in the records of the office of the tax collector. ORS 294.305 to 294.565 do not apply to refunds made out of the refund reserve account or the unsegregated tax collections account.

(6) A refund is not required under this section for any tax year if the amount of the refund would be \$10 or less. Any amount not refunded under this subsection shall be distributed to taxing districts in the same manner that other taxes are distributed.

(7) As used in this section, "owner of record on the tax roll at the time of refund" means the owner or an owner of the property or the person in whose name the property is assessed on the tax roll last certified and delivered to the tax collector under ORS 311.105 and 311.115.

SECTION 9. (1) Sections 2 to 7 of this 2015 Act and the amendments to ORS 311.806 by section 8 of this 2015 Act become operative on January 1, 2016.

(2) The Secretary of State may take any action before the operative date specified in subsection (1) of this section that is necessary for the Secretary of State and county tax collectors to exercise, on and after the operative date specified in subsection (1) of this section, the duties and powers arising under sections 2 to 7 of this 2015 Act and the amendments to ORS 311.806 by section 8 of this 2015 Act.

SECTION 10. 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 Senate March 23, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 4, 2015

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Tina Kotek, Speaker of House

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