

House Bill 2087

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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**.

Expands taxpayer bill of rights. Lowers limits on interest allowed on tax deficiencies. Applies to tax years beginning on or after January 1, 2018.

Provides for cancellation, after 20 years, of uncollected tax debt, penalties and interest.

Establishes Office of Taxpayer Advocate and Office of Independent Administrative Review in Department of Revenue.

Establishes functions, powers and duties of offices.

Appropriates moneys from General Fund to Department of Revenue for purposes of offices.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxpayers; creating new provisions; amending ORS 305.155, 305.265, 305.525, 305.860,
3 305.875, 305.992, 314.400 and 314.840; and prescribing an effective date.

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

5 **SECTION 1.** ORS 305.860 is amended to read:

6 305.860. (1) The Director of the Department of Revenue shall prepare a statement which sets
7 forth in simple nontechnical terms:

8 (a) The rights of a taxpayer and the obligations of the Department of Revenue during an audit;

9 (b) The procedures by which a taxpayer may appeal any adverse decision of the department,
10 including informal conferences and judicial appeals;

11 (c) The procedures for filing and processing refund claims and filing of taxpayer complaints;
12 [*and*]

13 (d) The procedures which the department may use in enforcing the provisions of the laws of this
14 state; **and**

15 **(e) The procedures used by the department for collection of tax debt, and methods the
16 taxpayer may use to appeal decisions by the department related to collections.**

17 (2) The statement prepared in accordance with subsection (1) of this section shall be distributed
18 by the Director of the Department of Revenue to all taxpayers upon request. The director shall in-
19 form taxpayers of their rights in a brief explanatory statement included in all billing or collection
20 notices, all notices of assessment or deficiency and all notices of refund adjustment or denial sent
21 to the taxpayer.

22 **SECTION 2.** ORS 305.875 is amended to read:

23 305.875. In any meeting or communication with the Department of Revenue, including but not
24 limited to audits, conferences, interviews and any other meeting or communication between the
25 taxpayer and the department, the taxpayer shall have the following rights, unless waived by the
26 taxpayer:

27 (1) The right to an explanation, by an officer or employee of the department before or during

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 meeting of:

2 (a) The audit, conference or meeting process and the taxpayer's rights under such process; and

3 (b) The collection process and the taxpayer's rights under such process.

4 (2) The right to make an audio recording of any meeting relating to the determination or col-
5 lection of any tax with the department representative, using the taxpayer's own equipment, and at
6 the taxpayer's own expense.

7 (3) If the department makes an audio recording of the meeting, the taxpayer has the right to
8 advance notice of the recording and a copy of the recording upon request. The taxpayer shall re-
9 imburse the department the reasonable cost of the copy.

10 (4) The right to consult with an attorney, certified public accountant, enrolled agent, or an other
11 person permitted to represent a taxpayer at any meeting before the department, if the taxpayer
12 clearly states to the department representative at any time during any meeting, that the taxpayer
13 wishes to consult with the person. This subsection does not apply to a meeting initiated by an ad-
14 ministrative subpoena.

15 (5) The right to be represented by anyone who is permitted to represent the taxpayer before the
16 department, as provided under ORS 305.230 and 305.245.

17 (6) The right not to be present, if represented, at the meeting unless subpoenaed by the depart-
18 ment pursuant to ORS 305.190, or other laws of this state.

19 **(7) The right not to be contacted by the department if a valid power of attorney has been**
20 **filed with the department. This provision does not apply to mailed notices.**

21 **SECTION 3.** ORS 305.155 is amended to read:

22 305.155. (1) The Department of Revenue shall cancel an unpaid tax imposed by laws of the State
23 of Oregon that is collected by the department, including any penalty or interest applicable to the
24 tax, if the department determines that:

25 (a) The tax has been delinquent for seven or more years;

26 (b) All reasonable efforts have been made to effect collection;

27 (c) The taxpayer cannot be located or is dead; and

28 (d) The tax is wholly uncollectible.

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

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

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

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

36 (3) The department may cancel any tax imposed by laws of the State of Oregon that is collected
37 by the department or any portion of the tax assessed against a person, including any penalty and
38 interest that has not been collected, if the department determines that the administration and col-
39 lection costs involved would exceed the amount that can reasonably be expected to be recovered.

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

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

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

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

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

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

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

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

15 (b) If the department determines that a taxpayer no longer meets the requirements listed in
16 subsection (2) of this section, the department may resume collection of any unpaid tax. Not less than
17 30 days before the department resumes collection under this subsection, the department shall pro-
18 vide written notice to the taxpayer that the taxpayer no longer qualifies for suspension of collection
19 under this section and that the department will resume collection of the unpaid tax.

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

22 **(9) Notwithstanding ORS 305.157 and subsections (1) and (2) of this section, the depart-**
23 **ment shall cancel any tax imposed by laws of the State of Oregon that is collected by the**
24 **department or any portion of the tax assessed against a person, including any penalty and**
25 **interest that has not been collected, if at least 20 years have passed since the date that the**
26 **tax was first due and payable.**

27 [(9)] (10) The department shall by rule establish policies and procedures for the administration
28 of this section.

29 **SECTION 4. Sections 5 to 8 and 10 of this 2017 Act are added to and made a part of ORS**
30 **chapter 305.**

31 **SECTION 5. The Department of Revenue shall by rule adopt and publish the following:**

32 (1) **The standards used by the department in reviewing and analyzing financial state-**
33 **ments presented by taxpayers.**

34 (2) **The standards for determining the amount of a taxpayer's wages that are exempted**
35 **from execution. In these determinations:**

36 (a) **Notwithstanding ORS 18.385, the department shall rely on the collection financial**
37 **standards promulgated by the Internal Revenue Service; and**

38 (b) **The department shall allow a taxpayer an additional amount for special expenses, in-**
39 **cluding the payment of tithes, educational loan debt and higher education expenses at insti-**
40 **tutions located in Oregon of dependents of the taxpayer.**

41 (3) **The standards used by the department in granting or denying:**

42 (a) **Requests for agreements to satisfy tax liability through installment payments under**
43 **ORS 305.890;**

44 (b) **Offers of compromise for settlement of debt; or**

45 (c) **Applications for penalty abatements based on allegations of circumstances beyond a**

1 taxpayer's control.

2 (4) Procedures and enumerated grounds by which a taxpayer may challenge a recorded
3 distraint warrant, including the procedures by which a taxpayer may request release or
4 subordination of a tax lien or cancellation of a tax lien upon bankruptcy discharge.

5 **SECTION 6.** (1) The Office of Independent Administrative Review is established within
6 the Department of Revenue. A taxpayer may appeal actions of the department to the office
7 and may subsequently appeal decisions of the office to the Oregon Tax Court. Actions of the
8 department that are subject to review by the office include the denial of requests by a tax-
9 payer for:

10 (a) An agreement to satisfy tax liability through installment payments under ORS
11 305.890;

12 (b) Offers of compromise for settlement of debt;

13 (c) Requests for abatement of penalties;

14 (d) Requests for debt to be deemed temporarily uncollectible based on hardship; and

15 (e) Requests for cancelation of tax liability.

16 (2) The department shall stay collections of tax during the pendency of a review under
17 this section. This stay shall begin on the date that the taxpayer requests administrative re-
18 view.

19 **SECTION 7.** (1) The Office of the Taxpayer Advocate is established in the Department
20 of Revenue. The office shall be responsible for directly assisting taxpayers and their repre-
21 sentatives to ensure their understanding and utilization of the policies, processes and pro-
22 cedures available to them in the resolution of problems related to taxes collected by the
23 department. The Director of the Department of Revenue shall select the employees of the
24 office, who may include employees of the department and residents of this state with
25 knowledge of taxation.

26 (2) The office shall assist taxpayers in:

27 (a) Obtaining easily understandable tax information and information on audits, cor-
28 rections and appeals procedures of the department;

29 (b) Answering questions regarding preparing and filing returns with the department; and

30 (c) Locating documents or payments filed with or submitted to the department by tax-
31 payers.

32 (3) The office may also:

33 (a) Receive and evaluate complaints of improper, abusive or inefficient service by em-
34 ployees of the department and recommend to the director appropriate action to correct such
35 service;

36 (b) Identify policies and practices of the department that might be barriers to the equi-
37 table treatment of taxpayers and recommend alternatives to the director;

38 (c) Provide expeditious service to taxpayers whose problems are not resolved through
39 ordinary channels;

40 (d) Negotiate with department personnel to resolve the most complex and sensitive tax-
41 payer problems;

42 (e) Take action to stop or prohibit the department from taking an action against a tax-
43 payer, if, in the determination of the office, the manner in which a law administered by the
44 department is being carried out is creating or will create an unjust and inequitable result for
45 the taxpayer;

1 (f) Participate and represent taxpayers' interests and concerns in planning meetings,
 2 reviewing instructions and formulating department policies and procedures;

3 (g) Compile data each year on the number and type of taxpayer complaints and evaluate
 4 the actions taken to resolve complaints;

5 (h) Survey taxpayers each year to obtain their evaluation of the quality of service pro-
 6 vided by the department;

7 (i) Monitor the number and type of seizures of property under ORS 314.419;

8 (j) Notify and recommend appropriate action to the director if the office determines that
 9 a seizure has occurred or will occur that has subjected or will subject the taxpayer to a
 10 seizure of property without affording a reasonable opportunity for discussion of alternative
 11 methods of payment of the obligation;

12 (k) Review department policies and procedures to ensure compliance with the law and to
 13 promote efficient collection of taxes; and

14 (L) Perform other functions that relate to taxpayer assistance as prescribed by the di-
 15 rector.

16 (4) Actions taken by the office may be reviewed only by the director upon request of the
 17 department or a taxpayer. The director may modify action taken by the office.

18 (5) Not later than February 15 of each year, beginning in 2019, the office shall report in
 19 the manner provided in ORS 192.245, and may include recommendations for legislation, to a
 20 committee of the Legislative Assembly related to revenue about any perceived concerns of
 21 taxpayers or operational problems of the tax system in this state.

22 **SECTION 8.** The Office of the Taxpayer Advocate shall establish procedures to maintain
 23 the confidentiality of the records and files of taxpayers. The procedures must meet the fol-
 24 lowing requirements:

25 (1) The office may not disclose the identity of any taxpayer unless the taxpayer or the
 26 legal representative of the taxpayer consents in writing to the disclosure and specifies to
 27 whom the disclosure may be made.

28 (2) The identity of any taxpayer on whose behalf a complaint is made, or any individual
 29 providing information on behalf of the taxpayer, shall be confidential. If the complaint be-
 30 comes the subject of judicial proceedings, the investigative information held by the office
 31 shall be disclosed for the purpose of the proceedings if requested by the court.

32 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-
 33 ated to the Department of Revenue, for the biennium beginning July 1, 2017, out of the
 34 General Fund, the amount of \$_____, which may be expended for the Office of the Taxpayer
 35 Advocate and for the Office of Independent Administrative Review.

36 **SECTION 10.** The Oregon Tax Court shall allow reasonable professional fees to a taxpayer
 37 who successfully challenges a notice of deficiency in the Oregon Tax Court.

38 **SECTION 11.** ORS 305.525 is amended to read:

39 305.525. At the same time that a notice of assessment, letter of refund denial or determination
 40 or an order of the board of property tax appeals is given to any taxpayer, the Department of Re-
 41 venue or board of property tax appeals, as the case may be, shall in writing also notify the taxpayer
 42 of the right of the taxpayer to appeal to the Office of Independent Administrative Review es-
 43 tablished in section 6 of this 2017 Act and to the tax court under ORS 305.404 to 305.560. The
 44 department shall confirm that the taxpayer has received notice under this section.

45 **SECTION 12.** ORS 314.840 is amended to read:

1 314.840. (1) The Department of Revenue may:

2 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230
 3 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-
 4 tative or designee, with a copy of the taxpayer's income tax return filed with the department for
 5 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with
 6 any other information the department considers necessary.

7 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

8 (c) Publish statistics so classified as to prevent the identification of income or any particulars
 9 contained in any report or return.

10 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social
 11 Security number, employer identification number or other taxpayer identification number to the ex-
 12 tent necessary in connection with collection activities or the processing and mailing of correspond-
 13 ence or of forms for any report or return required in the administration of any local tax under ORS
 14 305.620 or any law imposing a tax upon or measured by net income.

15 (2) The department also may disclose and give access to information described in ORS 314.835
 16 to:

17 (a) The Governor of the State of Oregon or the authorized representative of the Governor with
 18 respect to an individual who is designated as being under consideration for appointment or reap-
 19 pointment to an office or for employment in the office of the Governor. The information disclosed
 20 shall be confined to whether the individual:

21 (A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not
 22 more than the three immediately preceding years for which the individual was required to file an
 23 Oregon individual income tax return.

24 (B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or
 25 otherwise respond to a deficiency notice within 30 days of its mailing.

26 (C) Has been assessed any penalty under the Oregon personal income tax laws and the nature
 27 of the penalty.

28 (D) Has been or is under investigation for possible criminal offenses under the Oregon personal
 29 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose
 30 of making the appointment, reappointment or decision to employ or not to employ the individual in
 31 the office of the Governor.

32 (b) An officer or employee of the Oregon Department of Administrative Services duly authorized
 33 or employed to prepare revenue estimates, or a person contracting with the Oregon Department of
 34 Administrative Services to prepare revenue estimates, in the preparation of revenue estimates re-
 35 quired for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the
 36 Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative As-
 37 sembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue
 38 Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of
 39 Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes
 40 of this paragraph only if:

41 (A) The request for information is made in writing, specifies the purposes for which the request
 42 is made and is signed by an authorized representative of the Oregon Department of Administrative
 43 Services. The form for request for information shall be prescribed by the Oregon Department of
 44 Administrative Services and approved by the Director of the Department of Revenue.

45 (B) The officer, employee or person receiving the information does not remove from the premises

1 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-
2 rate taxpayer.

3 (c) The Commissioner of Internal Revenue or authorized representative, for tax administration
4 and compliance purposes only.

5 (d) For tax administration and compliance purposes, the proper officer or authorized represen-
6 tative of any of the following entities that has or is governed by a provision of law that meets the
7 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

8 (A) A state;

9 (B) A city, county or other political subdivision of a state;

10 (C) The District of Columbia; or

11 (D) An association established exclusively to provide services to federal, state or local taxing
12 authorities.

13 (e) The Multistate Tax Commission or its authorized representatives, for tax administration and
14 compliance purposes only. The Multistate Tax Commission may make the information available to
15 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
16 governmental entity described in and meeting the qualifications of paragraph (d) of this subsection.

17 (f) The Attorney General, assistants and employees in the Department of Justice, or other legal
18 representative of the State of Oregon, to the extent the department deems disclosure or access
19 necessary for the performance of the duties of advising or representing the department pursuant to
20 ORS 180.010 to 180.240 and the tax laws of this state.

21 (g) Employees of the State of Oregon, other than of the Department of Revenue or Department
22 of Justice, to the extent the department deems disclosure or access necessary for such employees
23 to perform their duties under contracts or agreements between the department and any other de-
24 partment, agency or subdivision of the State of Oregon, in the department's administration of the
25 tax laws.

26 (h) Other persons, partnerships, corporations and other legal entities, and their employees, to
27 the extent the department deems disclosure or access necessary for the performance of such others'
28 duties under contracts or agreements between the department and such legal entities, in the
29 department's administration of the tax laws.

30 (i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS
31 173.850. Such officer or representative shall not remove from the premises of the department any
32 materials that would reveal the identity of any taxpayer or any other person.

33 (j) The Department of Consumer and Business Services, to the extent the department requires
34 such information to determine whether it is appropriate to adjust those workers' compensation
35 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or
36 earned income received by an individual.

37 (k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
38 or person to whom disclosure or access is given by state law and not otherwise referred to in this
39 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
40 Article VI, section 2, of the Oregon Constitution; the Department of Human Services pursuant to
41 ORS 412.094; the Division of Child Support of the Department of Justice and district attorney re-
42 garding cases for which they are providing support enforcement services under ORS 25.080; the
43 State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy,
44 pursuant to ORS 673.415.

45 (L) The Director of the Department of Consumer and Business Services to determine that a

1 person complies with ORS chapter 656 and the Director of the Employment Department to determine
2 that a person complies with ORS chapter 657, the following employer information:

- 3 (A) Identification numbers.
- 4 (B) Names and addresses.
- 5 (C) Inception date as employer.
- 6 (D) Nature of business.
- 7 (E) Entity changes.
- 8 (F) Date of last payroll.

9 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
10 pay for care that includes services provided by the Oregon State Hospital, or the Oregon Health
11 Authority to collect any unpaid cost of care as provided by ORS chapter 179.

12 (n) Employees of the Employment Department to the extent the Department of Revenue deems
13 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary
14 to performance of their duties in administering the tax imposed by ORS chapter 657.

15 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
16 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and
17 standard industrial classification, if available.

18 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
19 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
20 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
21 refund amount.

22 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement
23 agencies to assist in the investigation or prosecution of the following criminal activities:

24 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
25 to the stolen document, the name, address and taxpayer identification number of the payee, the
26 amount of the check and the date printed on the check.

27 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
28 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
29 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
30 dress and taxpayer identification number of the payee, the amount of the check, the date printed
31 on the check and the altered name and address.

32 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
33 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
34 lowing criminal activities:

35 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
36 to the stolen document, the name, address and taxpayer identification number of the payee, the
37 amount of the check and the date printed on the check.

38 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
39 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
40 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
41 dress and taxpayer identification number of the payee, the amount of the check, the date printed
42 on the check and the altered name and address.

43 (s) The United States Financial Management Service, for purposes of facilitating the offsets de-
44 scribed in ORS 305.612.

45 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in

1 the administration of a tax of the municipal corporation that is imposed on or measured by income,
2 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only
3 pursuant to a written agreement between the Department of Revenue and the municipal corporation
4 that ensures the confidentiality of the information disclosed.

5 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
6 314.843.

7 (v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes
8 of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the
9 purposes of ORS 237.635 (3) and 237.637 (2).

10 **(w) The Office of the Taxpayer Advocate, only at the request of the taxpayer and only**
11 **to the extent necessary to carry out the purposes of sections 7 and 8 of this 2017 Act.**

12 (3)(a) Each officer or employee of the department and each person described or referred to in
13 subsection (2)(a), (b), (f) to (L) or (n) to (q) of this section to whom disclosure or access to the tax
14 information is given under subsection (2) of this section or any other provision of state law, prior
15 to beginning employment or the performance of duties involving such disclosure or access, shall be
16 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-
17 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a
18 certificate for the department, in a form prescribed by the department, stating in substance that the
19 person has read these provisions of law, that the person has had them explained and that the person
20 is aware of the penalties for the violation of ORS 314.835.

21 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a
22 written agreement has been entered into between the Department of Revenue and the person de-
23 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is
24 given, providing that:

25 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-
26 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
27 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of
28 this section;

29 (B) The information shall be protected as confidential under applicable federal and state laws;
30 and

31 (C) The United States Postal Inspection Service or the federal law enforcement agency shall
32 give notice to the Department of Revenue of any request received under the federal Freedom of In-
33 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

34 (4) The Department of Revenue may recover the costs of furnishing the information described
35 in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

36 **SECTION 13. Sections 6 to 8 and 10 of this 2017 Act and the amendments to ORS 305.525**
37 **and 314.840 by sections 11 and 12 of this 2017 Act become operative on January 1, 2018.**

38 **SECTION 14.** ORS 305.265 is amended to read:

39 305.265. (1) Except as provided in ORS 305.305, the provisions of this section apply to all reports
40 or returns of tax or tax liability filed with the Department of Revenue under the revenue and tax
41 laws administered by it, except those filed under ORS 320.005 to 320.150.

42 (2) As soon as practicable after a report or return is filed, the department shall examine or audit
43 it, if required by law or the department deems such examination or audit practicable. If the de-
44 partment discovers from an examination or an audit of a report or return or otherwise that a defi-
45 ciency exists, it shall compute the tax and give notice to the person filing the return of the

1 deficiency and of the department's intention to assess the deficiency, plus interest and any appro-
2 priate penalty. Except as provided in subsection (3) of this section, the notice shall:

3 (a) State the reason for each adjustment;

4 (b) Give a reference to the statute, regulation or department ruling upon which the adjustment
5 is based; and

6 (c) Be certified by the department that the adjustments are made in good faith and not for the
7 purpose of extending the period of assessment.

8 (3) When the notice of deficiency described in subsection (2) of this section results from the
9 correction of a mathematical or clerical error and states what would have been the correct tax but
10 for the mathematical or clerical error, such notice need state only the reason for each adjustment
11 to the report or return.

12 (4) With respect to any tax return filed under ORS chapter 314, 316, 317 or 318, deficiencies
13 shall include but not be limited to the assertion of additional tax arising from:

14 (a) The failure to report properly items or amounts of income subject to or which are the
15 measure of the tax;

16 (b) The deduction of items or amounts not permitted by law;

17 (c) Mathematical errors in the return or the amount of tax shown due in the records of the de-
18 partment; or

19 (d) Improper credits or offsets against the tax claimed in the return.

20 (5)(a) The notice of deficiency shall be accompanied by a statement explaining the person's right
21 to make written objections, the person's right to request a conference and the procedure for re-
22 questing a conference. The statement, and an accompanying form, shall also explain that conference
23 determinations are routinely transmitted via regular mail and that a person desiring to have con-
24 ference determinations transmitted by certified mail may do so by indicating on the form the
25 person's preference for certified mail and by returning the form with the person's written objections
26 as described in paragraph (b) of this subsection.

27 (b) Within 30 days from the date of the notice of deficiency, the person given notice shall pay
28 the deficiency with interest computed to the date of payment and any penalty proposed. Or within
29 that time the person shall advise the department in writing of objections to the deficiency, and may
30 request a conference with the department, which shall be held prior to the expiration of the one-year
31 period set forth in subsection (7) of this section.

32 (6) If a request for a conference is made, the department shall notify the person of a time and
33 place for conference and appoint a conference officer to meet with the person for an informal dis-
34 cussion of the matter. After the conference, the conference officer shall send the determination of
35 the issues to the person. The determination letter shall be sent by regular mail, or by certified mail
36 if the person given notice has indicated a preference for transmission of the determination by cer-
37 tified mail. The department shall assess any deficiency in the manner set forth in subsection (7) of
38 this section. If no conference is requested and written objections are received, the department shall
39 make a determination of the issues considering such objections, and shall assess any deficiency in
40 the manner provided in subsection (7) of this section. The failure to request or have a conference
41 shall not affect the rights of appeal otherwise provided by law.

42 (7) If neither payment nor written objection to the deficiency is received by the department
43 within 30 days after the notice of deficiency has been mailed, the department shall assess the defi-
44 ciency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating
45 the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within

1 one year from the date of the notice of deficiency unless an extension of time is agreed upon as
2 described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

3 (8) If, prior to the expiration of any period of time prescribed in subsection (7) of this section
4 for giving of notice of assessment, the department and the person consent in writing to the defi-
5 ciency being assessed after the expiration of such prescribed period, such deficiency may be assessed
6 at any time prior to the expiration of the period agreed upon. The period so agreed upon may be
7 extended by subsequent agreements in writing made before the expiration of the period agreed upon.

8 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
9 section (5) of this section shall not invalidate any assessment of deficiency made within the one-year
10 period pursuant to subsection (7) of this section or within any extension of time made pursuant to
11 subsection (8) of this section, but shall invalidate any assessment of interest or penalties attributable
12 to the deficiency. After an assessment has been made, the department and the person assessed may
13 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
14 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
15 nation of the issues.

16 (10)(a) In the case of a failure to file a report or return on the date prescribed therefor (deter-
17 mined with regard to any extension for filing), the department shall determine the tax according to
18 the best of its information and belief, assess the tax plus appropriate penalty and interest, and give
19 written notice of the failure to file the report or return and of the determination and assessment to
20 the person required to make the filing. The amount of tax shall be reduced by the amount of any
21 part of the tax which is paid on or before the date prescribed for payment of the tax and by the
22 amount of any credit against the tax which may be lawfully claimed upon the return.

23 (b) Notwithstanding subsection (14) of this section and ORS 305.280, and only to the extent al-
24 lowed by rules adopted by the department, the department may accept the filing of a report or re-
25 turn submitted by a person who has been assessed a tax under paragraph (a) of this subsection.

26 (c) The department may reject a report or return:

27 (A) That is not verified as required by ORS 305.810;

28 (B) That the department determines is not true and correct as to every material matter as re-
29 quired by ORS 305.815; or

30 (C) If the department may impose a penalty under ORS 316.992 (1) with respect to the report
31 or return.

32 (d) If the department rejects a report or return of a person assessed a tax under paragraph (a)
33 of this subsection, the department shall issue a notice of rejection to the person. The person may
34 appeal the rejection to the magistrate division of the Oregon Tax Court only if:

35 (A) The report or return was filed within 90 days of the date the department's assessment under
36 paragraph (a) of this subsection was issued; and

37 (B) The appeal is filed within 90 days of the date shown on the notice of rejection.

38 (e) If the person assessed under paragraph (a) of this subsection submits a report or return to
39 the department and appeals the assessment to the tax court, the department may request a stay of
40 action from the court pending review of the report or return. If the department:

41 (A) Accepts the filing of the report or return, the appeal shall be dismissed as moot.

42 (B) Rejects the report or return, the stay of action on the appeal shall be lifted.

43 (f) If the department accepts the filing of a report or return, the department may reduce the
44 assessment issued under paragraph (a) of this subsection. A report or return filed under this sub-
45 section that is accepted by the department, whether or not the assessment has been reduced, shall

1 be considered a report or return described in subsection (1) of this section and shall be subject to
2 the provisions of this section, including but not limited to examination and adjustment pursuant to
3 subsection (2) of this section.

4 (g) The department may refund payments made with respect to a report or return filed and ac-
5 cepted pursuant to this subsection. If the report or return is filed within three years of the due date
6 for filing the report or return, excluding extensions, the refund shall be made as provided by ORS
7 305.270 and 314.415. If the report or return is not filed within three years of the due date for filing
8 the report or return, excluding extensions, the refund shall be limited to payments received within
9 the two-year period ending on the date the report or return is received by the department and
10 payments received after the date the report or return is received by the department. Interest shall
11 be paid at the rate established under ORS 305.220 for each month or fraction of a month from the
12 date the report or return is received by the department to the time the refund is made.

13 (11) Mailing of notice to the person at the person's last-known address shall constitute the giv-
14 ing of notice as prescribed in this section.

15 (12) If a return is filed with the department accompanied by payment of less than the amount
16 of tax shown on or from the information on the return as due, the difference between the tax and
17 the amount submitted is considered as assessed on the due date of the report or return (determined
18 with regard to any extension of time granted for the filing of the return) or the date the report or
19 return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or
20 from the information on the return as due shall be reduced by the amount of any part of the tax that
21 is paid on or before the due date prescribed for payment of the tax, and by any credits against the
22 tax that are claimed on the return. If the amount required to be shown as tax on a return is less
23 than the amount shown as tax on the return, this subsection shall be applied by substituting the
24 lesser amount.

25 (13) Every deficiency shall bear interest at the rate established under ORS 305.220 for each
26 month or fraction of a month computed from the due date of the return to date of payment. If the
27 return was falsely prepared and filed with intent to evade the tax, a penalty equal to [100] 25 per-
28 cent of the deficiency shall be assessed and collected. All payments received shall be credited first
29 to penalty, then to interest accrued, and then to tax due.

30 (14) If the deficiency is paid in full before a notice of assessment is issued, the department is
31 not required to send a notice of assessment, and the tax shall be considered as assessed as of the
32 date which is 30 days from the date of the notice of deficiency or the date the deficiency is paid,
33 whichever is the later. A partial payment of the deficiency shall constitute only a credit to the ac-
34 count of the person assessed. Assessments and billings of taxes shall be final after the expiration
35 of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under
36 ORS 305.280 (3) following payment of the tax.

37 (15) Appeal may be taken to the tax court from any notice of assessment. The provisions of this
38 chapter with respect to appeals to the tax court apply to any deficiency, penalty or interest as-
39 sessed.

40 **SECTION 15.** ORS 305.992 is amended to read:

41 305.992. (1) If any returns required to be filed under ORS 475B.700 to 475B.760 or ORS chapter
42 118, 314, 316, 317, 318, 321 or 323 or under a local tax administered by the Department of Revenue
43 under ORS 305.620 are not filed for three consecutive years by the due date (including extensions)
44 of the return required for the third consecutive year, there shall be a penalty for each year of
45 [100] 25 percent of the tax liability determined after credits and prepayments for each such year.

1 (2) The penalty imposed under this section is in addition to any other penalty imposed by law.
2 However, the total amount of penalties imposed for any taxable year under this section, ORS 305.265
3 (13), 314.400, 323.403, 323.585 or 475B.755 may not exceed [100] **25** percent of the tax liability.

4 **SECTION 16.** ORS 314.400 is amended to read:

5 314.400. (1) If a taxpayer fails to file a report or return or fails to pay a tax by the date on which
6 the filing or payment is due, the Department of Revenue shall add to the amount required to be
7 shown as tax on the report or return a delinquency penalty of five percent of the amount of the
8 unpaid tax.

9 (2) In the case of a report or return that is required to be filed annually or for a one-year period,
10 if the failure to file the report or return continues for a period in excess of three months after the
11 due date:

12 (a) There shall be added to the amount of tax required to be shown on the report or return a
13 failure to file penalty of 20 percent of the amount of the tax; and

14 (b) Thereafter the department may send a notice and demand to the person to file a report or
15 return within 30 days of the mailing of the notice. If after the notice and demand no report or return
16 is filed within the 30 days, the department may determine the tax according to the best of its in-
17 formation and belief, assess the tax with appropriate penalty and interest plus an additional penalty
18 of 25 percent of the tax deficiency determined by the department and give written notice of the de-
19 termination and assessment to the person required to make the filing.

20 (3) In the case of a report or return that is required to be filed more frequently than annually
21 and the failure to file the report or return continues for a period in excess of one month after the
22 due date:

23 (a) There shall be added to the amount of tax required to be shown on the report or return a
24 failure to file penalty of 20 percent of the amount of the tax; and

25 (b) Thereafter the department may send a notice and demand to the person to file a report or
26 return within 30 days of the mailing of the notice. If after the notice and demand no report or return
27 is filed within the 30 days, the department may determine the tax according to the best of its in-
28 formation and belief, assess the tax with appropriate penalty and interest plus an additional penalty
29 of 25 percent of the tax deficiency determined by the department and give written notice of the de-
30 termination and assessment to the person required to make the filing.

31 (4) Notwithstanding subsections (2) and (3) of this section, if a taxpayer is required to file a
32 federal income tax return for a period of less than 12 months under section 443 of the Internal Re-
33 venue Code, the Oregon personal income or corporate excise or income tax return required to be
34 filed for that period shall be subject to subsection (2) of this section.

35 (5) If a report or return that is subject to a failure to file penalty described in subsection (2)
36 or (3) of this section is filed before a notice of determination and assessment is issued by the de-
37 partment, the failure to file penalty referred to in subsection (2)(a) or (3)(a) of this section shall be
38 added to the amount of tax shown on the report or return.

39 (6) A penalty equal to [100] **25** percent of any deficiency determined by the department shall be
40 assessed and collected if:

41 (a) There is a failure to file a report or return with intent to evade the tax; or

42 (b) A report or return was falsely prepared and filed with intent to evade the tax.

43 (7) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for
44 each month or fraction of a month, computed from the time the tax became due, during which the
45 tax remains unpaid.

1 (8) Each penalty imposed under this section is in addition to any other penalty imposed under
2 this section. However, the total amount of penalty imposed under this section and ORS 305.265 (13)
3 with respect to any deficiency shall not exceed 100 percent of the deficiency.

4 (9) For purposes of subsections (1) to (3) of this section, the amount of tax required to be shown
5 or that is shown on the report or return shall be reduced by the amount that is paid on or before
6 the date prescribed for payment of the tax and by the amount of any credit against the tax that is
7 claimed on the report or return. If the amount required to be shown as tax on the report or return
8 is less than the amount that is actually shown as tax on the report or return, this subsection shall
9 be applied by substituting the lower amount.

10 (10) Notwithstanding subsection (1) of this section, the five percent penalty for failure to file a
11 report or return or pay a tax at the time the tax becomes due may not be imposed if:

12 (a) The taxpayer pays the full amount of the tax plus accrued interest within 30 days of the date
13 shown on the department's notice sent to the taxpayer; and

14 (b)(A) The taxpayer had filed an amended individual tax return or an amended corporate return
15 of income or excise tax accompanied by less than full payment of the tax shown on the return plus
16 accrued interest; or

17 (B) The department issues a notice of tax deficiency to the taxpayer under ORS 305.265.

18 **SECTION 17. The amendments to ORS 305.265, 305.992 and 314.400 by sections 14 to 16**
19 **of this 2017 Act apply to tax years beginning on or after January 1, 2018.**

20 **SECTION 18. This 2017 Act takes effect on the 91st day after the date on which the 2017**
21 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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