

# Enrolled House Bill 2285

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Revenue)

CHAPTER .....

AN ACT

Relating to taxes not paid in full at time of filing; creating new provisions; amending ORS 305.265 and 314.407; and prescribing an effective date.

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

**SECTION 1.** ORS 314.407 is amended to read:

314.407. For the purposes of [ORS 314.407 and] **this section and ORS 314.417 to 314.423:**

(1) In the case of a return submitted to the Department of Revenue with payment of less than the amount of tax computed to be due, the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as [*“assessed”*] **assessed** on the due [*date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.*] **date of the original return (determined without regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.**

(2) The term “time of assessment” means:

(a) In the case of an assessment made under ORS 305.265 and 314.410, 30 days after the date the notice of assessment is mailed to the taxpayer;

(b) In the case of an assessment made under ORS 314.440, five days after the date the notice of assessment is mailed to the taxpayer; or

(c) In the case of a tax assessed as described in subsection (1) of this section, the due date of [*the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.*] **the original return (determined without regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.**

(3) Unless a warrant has been recorded in the County Clerk Lien Record in the county in which property is located, no warrant shall be considered as a lien with respect to that property.

**SECTION 2.** ORS 305.265 is amended to read:

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

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

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

(a) State the reason for each adjustment;

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

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

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

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

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

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

(c) Mathematical errors in the return or the amount of tax shown due in the records of the department; or

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

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

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

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

(7) If neither payment nor written objection to the deficiency is received by the department within 30 days after the notice of deficiency has been mailed, the department shall assess the deficiency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within one year from the date of the notice of deficiency unless an extension of time is agreed upon as described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

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

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

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

(b) Notwithstanding subsection (14) of this section and ORS 305.280, and only to the extent allowed by rules adopted by the department, the department may accept the filing of a report or return submitted by a person who has been assessed a tax under paragraph (a) of this subsection.

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

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

(B) That the department determines is not true and correct as to every material matter as required by ORS 305.815; or

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

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

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

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

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

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

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

(f) If the department accepts the filing of a report or return, the department may reduce the assessment issued under paragraph (a) of this subsection. A report or return filed under this subsection that is accepted by the department, whether or not the assessment has been reduced, shall be considered a report or return described in subsection (1) of this section and shall be subject to the provisions of this section, including but not limited to examination and adjustment pursuant to subsection (2) of this section.

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

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

(12) If a return is filed with the department accompanied by payment of less than the amount of tax shown on or from the information on the return as due, the difference between the tax and the amount submitted is considered as assessed on the due date of the **original** report or return [(determined with regard to any extension of time granted for the filing of the return) or the date the] **(determined without regard to any extension of time granted for the filing of the return) or the date** the report or return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or from the information on the return as due shall be reduced by the amount of any part of the tax that is paid on or before the due date prescribed for payment of the tax, and by any credits against the tax that are claimed on the return. If the amount required to be shown as tax on a return is less than the amount shown as tax on the return, this subsection shall be applied by substituting the lesser amount.

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

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

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

**SECTION 3. The amendments to ORS 305.265 and 314.407 by sections 1 and 2 of this 2017 Act apply to reports or returns originally due on or after January 1, 2018.**

**SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

**Passed by House March 20, 2017**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate April 20, 2017**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2017

**Approved:**

.....M,....., 2017

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Kate Brown, Governor

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

.....M,....., 2017

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Dennis Richardson, Secretary of State