

D R A F T

SUMMARY

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,
3 305.265, 305.525, 305.860, 305.875, 305.992, 314.400 and 314.840; and pre-
4 scribing an effective date.

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

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

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

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

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

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

15 (d) The procedures which the department may use in enforcing the pro-

1 visions of the laws of this state; **and**

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

5 (2) The statement prepared in accordance with subsection (1) of this sec-
6 tion shall be distributed by the Director of the Department of Revenue to
7 all taxpayers upon request. The director shall inform taxpayers of their
8 rights in a brief explanatory statement included in all billing or collection
9 notices, all notices of assessment or deficiency and all notices of refund ad-
10 justment or denial sent to the taxpayer.

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

12 305.875. In any meeting or communication with the Department of Reve-
13 nue, including but not limited to audits, conferences, interviews and any
14 other meeting or communication between the taxpayer and the department,
15 the taxpayer shall have the following rights, unless waived by the taxpayer:

16 (1) The right to an explanation, by an officer or employee of the depart-
17 ment before or during the meeting of:

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

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

21 (2) The right to make an audio recording of any meeting relating to the
22 determination or collection of any tax with the department representative,
23 using the taxpayer's own equipment, and at the taxpayer's own expense.

24 (3) If the department makes an audio recording of the meeting, the tax-
25 payer has the right to advance notice of the recording and a copy of the re-
26 cording upon request. The taxpayer shall reimburse the department the
27 reasonable cost of the copy.

28 (4) The right to consult with an attorney, certified public accountant,
29 enrolled agent, or an other person permitted to represent a taxpayer at any
30 meeting before the department, if the taxpayer clearly states to the depart-
31 ment representative at any time during any meeting, that the taxpayer

1 wishes to consult with the person. This subsection does not apply to a
2 meeting initiated by an administrative subpoena.

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

6 (6) The right not to be present, if represented, at the meeting unless
7 subpoenaed by the department pursuant to ORS 305.190, or other laws of this
8 state.

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

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

13 305.155. (1) The Department of Revenue shall cancel an unpaid tax im-
14 posed by laws of the State of Oregon that is collected by the department,
15 including any penalty or interest applicable to the tax, if the department
16 determines that:

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

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

- 25 (a) Has income that does not exceed 200 percent of the federal poverty
26 guidelines based on the individual's household size and household members;
- 27 (b) Has less than \$5,000 in assets; and
- 28 (c) Has income solely from a source that is exempt from garnishment
29 under ORS chapter 18.

30 (3) The department may cancel any tax imposed by laws of the State of
31 Oregon that is collected by the department or any portion of the tax assessed

1 against a person, including any penalty and interest that has not been col-
2 lected, if the department determines that the administration and collection
3 costs involved would exceed the amount that can reasonably be expected to
4 be recovered.

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

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

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

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

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

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

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

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

30 (b) If the department determines that a taxpayer no longer meets the re-
31 quirements listed in subsection (2) of this section, the department may re-

1 sume collection of any unpaid tax. Not less than 30 days before the
2 department resumes collection under this subsection, the department shall
3 provide written notice to the taxpayer that the taxpayer no longer qualifies
4 for suspension of collection under this section and that the department will
5 resume collection of the unpaid tax.

6 (8) The department may write off the debt on its accounts under ORS
7 293.240 for any tax period for which collection has been suspended under
8 subsection (2) for more than three tax years.

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

15 [(9)] (10) The department shall by rule establish policies and procedures
16 for the administration of this section.

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

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

21 (1) **The standards used by the department in reviewing and analyz-**
22 **ing financial statements presented by taxpayers.**

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

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

28 (b) **The department shall allow a taxpayer an additional amount for**
29 **special expenses, including the payment of tithes, educational loan**
30 **debt and higher education expenses at institutions located in Oregon**
31 **of dependents of the taxpayer.**

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

2 **(a) Requests for agreements to satisfy tax liability through install-**
3 **ment payments under ORS 305.890;**

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

5 **(c) Applications for penalty abatements based on allegations of cir-**
6 **cumstances beyond a taxpayer's control.**

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

11 **SECTION 6.** **(1) The Office of Independent Administrative Review**
12 **is established within the Department of Revenue. A taxpayer may ap-**
13 **peal actions of the department to the office and may subsequently**
14 **appeal decisions of the office to the Oregon Tax Court. Actions of the**
15 **department that are subject to review by the office include the denial**
16 **of requests by a taxpayer for:**

17 **(a) An agreement to satisfy tax liability through installment pay-**
18 **ments under ORS 305.890;**

19 **(b) Offers of compromise for settlement of debt;**

20 **(c) Requests for abatement of penalties;**

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

23 **(e) Requests for cancelation of tax liability.**

24 **(2) The department shall stay collections of tax during the pendency**
25 **of a review under this section. This stay shall begin on the date that**
26 **the taxpayer requests administrative review.**

27 **SECTION 7.** **(1) The Office of the Taxpayer Advocate is established**
28 **in the Department of Revenue. The office shall be responsible for di-**
29 **rectly assisting taxpayers and their representatives to ensure their**
30 **understanding and utilization of the policies, processes and procedures**
31 **available to them in the resolution of problems related to taxes col-**

1 lected by the department. The Director of the Department of Revenue
2 shall select the employees of the office, who may include employees
3 of the department and residents of this state with knowledge of taxa-
4 tion.

5 (2) The office shall assist taxpayers in:

6 (a) Obtaining easily understandable tax information and informa-
7 tion on audits, corrections and appeals procedures of the department;

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

10 (c) Locating documents or payments filed with or submitted to the
11 department by taxpayers.

12 (3) The office may also:

13 (a) Receive and evaluate complaints of improper, abusive or ineffi-
14 cient service by employees of the department and recommend to the
15 director appropriate action to correct such service;

16 (b) Identify policies and practices of the department that might be
17 barriers to the equitable treatment of taxpayers and recommend al-
18 ternatives to the director;

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

21 (d) Negotiate with department personnel to resolve the most com-
22 plex and sensitive taxpayer problems;

23 (e) Take action to stop or prohibit the department from taking an
24 action against a taxpayer, if, in the determination of the office, the
25 manner in which a law administered by the department is being car-
26 ried out is creating or will create an unjust and inequitable result for
27 the taxpayer;

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

31 (g) Compile data each year on the number and type of taxpayer

1 **complaints and evaluate the actions taken to resolve complaints;**

2 **(h) Survey taxpayers each year to obtain their evaluation of the**
3 **quality of service provided by the department;**

4 **(i) Monitor the number and type of seizures of property under ORS**
5 **314.419;**

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

11 **(k) Review department policies and procedures to ensure compli-**
12 **ance with the law and to promote efficient collection of taxes; and**

13 **(L) Perform other functions that relate to taxpayer assistance as**
14 **prescribed by the director.**

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

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

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

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

30 **(2) The identity of any taxpayer on whose behalf a complaint is**
31 **made, or any individual providing information on behalf of the tax-**

1 **payer, shall be confidential. If the complaint becomes the subject of**
2 **judicial proceedings, the investigative information held by the office**
3 **shall be disclosed for the purpose of the proceedings if requested by**
4 **the court.**

5 **SECTION 9. In addition to and not in lieu of any other appropri-**
6 **ation, there is appropriated to the Department of Revenue, for the**
7 **biennium beginning July 1, 2017, out of the General Fund, the amount**
8 **of \$_____, which may be expended for the Office of the Taxpayer Ad-**
9 **vocate and for the Office of Independent Administrative Review.**

10 **SECTION 10. The Oregon Tax Court shall allow reasonable profes-**
11 **sional fees to a taxpayer who successfully challenges a notice of defi-**
12 **ciency in the Oregon Tax Court.**

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

14 305.525. At the same time that a notice of assessment, letter of refund
15 denial or determination or an order of the board of property tax appeals is
16 given to any taxpayer, the Department of Revenue or board of property tax
17 appeals, as the case may be, shall in writing also notify the taxpayer of the
18 right of the taxpayer to appeal **to the Office of Independent Administra-**
19 **tive Review established in section 6 of this 2017 Act and** to the tax court
20 under ORS 305.404 to 305.560. **The department shall confirm that the**
21 **taxpayer has received notice under this section.**

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

23 314.840. (1) The Department of Revenue may:

24 (a) Furnish any taxpayer, representative authorized to represent the tax-
25 payer under ORS 305.230 or person designated by the taxpayer under ORS
26 305.193, upon request of the taxpayer, representative or designee, with a copy
27 of the taxpayer's income tax return filed with the department for any year,
28 or with a copy of any report filed by the taxpayer in connection with the
29 return, or with any other information the department considers necessary.

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

31 (c) Publish statistics so classified as to prevent the identification of in-

1 come or any particulars contained in any report or return.

2 (d) Disclose a taxpayer's name, address, telephone number, refund amount,
3 amount due, Social Security number, employer identification number or other
4 taxpayer identification number to the extent necessary in connection with
5 collection activities or the processing and mailing of correspondence or of
6 forms for any report or return required in the administration of any local
7 tax under ORS 305.620 or any law imposing a tax upon or measured by net
8 income.

9 (2) The department also may disclose and give access to information de-
10 scribed in ORS 314.835 to:

11 (a) The Governor of the State of Oregon or the authorized representative
12 of the Governor with respect to an individual who is designated as being
13 under consideration for appointment or reappointment to an office or for
14 employment in the office of the Governor. The information disclosed shall
15 be confined to whether the individual:

16 (A) Has filed returns with respect to the taxes imposed by ORS chapter
17 316 for those of not more than the three immediately preceding years for
18 which the individual was required to file an Oregon individual income tax
19 return.

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

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

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

30 (b) An officer or employee of the Oregon Department of Administrative
31 Services duly authorized or employed to prepare revenue estimates, or a

1 person contracting with the Oregon Department of Administrative Services
2 to prepare revenue estimates, in the preparation of revenue estimates re-
3 quired for the Governor's budget under ORS 291.201 to 291.226, or required
4 for submission to the Emergency Board or the Joint Interim Committee on
5 Ways and Means, or if the Legislative Assembly is in session, to the Joint
6 Committee on Ways and Means, and to the Legislative Revenue Officer or
7 Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The De-
8 partment of Revenue shall disclose and give access to the information de-
9 scribed in ORS 314.835 for the purposes of this paragraph only if:

10 (A) The request for information is made in writing, specifies the purposes
11 for which the request is made and is signed by an authorized representative
12 of the Oregon Department of Administrative Services. The form for request
13 for information shall be prescribed by the Oregon Department of Adminis-
14 trative Services and approved by the Director of the Department of Revenue.

15 (B) The officer, employee or person receiving the information does not
16 remove from the premises of the Department of Revenue any materials that
17 would reveal the identity of a personal or corporate taxpayer.

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

20 (d) For tax administration and compliance purposes, the proper officer or
21 authorized representative of any of the following entities that has or is
22 governed by a provision of law that meets the requirements of any applicable
23 provision of the Internal Revenue Code as to confidentiality:

24 (A) A state;

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

26 (C) The District of Columbia; or

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

29 (e) The Multistate Tax Commission or its authorized representatives, for
30 tax administration and compliance purposes only. The Multistate Tax Com-
31 mission may make the information available to the Commissioner of Internal

1 Revenue or the proper officer or authorized representative of any govern-
2 mental entity described in and meeting the qualifications of paragraph (d)
3 of this subsection.

4 (f) The Attorney General, assistants and employees in the Department of
5 Justice, or other legal representative of the State of Oregon, to the extent
6 the department deems disclosure or access necessary for the performance of
7 the duties of advising or representing the department pursuant to ORS
8 180.010 to 180.240 and the tax laws of this state.

9 (g) Employees of the State of Oregon, other than of the Department of
10 Revenue or Department of Justice, to the extent the department deems dis-
11 closure or access necessary for such employees to perform their duties under
12 contracts or agreements between the department and any other department,
13 agency or subdivision of the State of Oregon, in the department's adminis-
14 tration of the tax laws.

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

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

24 (j) The Department of Consumer and Business Services, to the extent the
25 department requires such information to determine whether it is appropriate
26 to adjust those workers' compensation benefits the amount of which is based
27 pursuant to ORS chapter 656 on the amount of wages or earned income re-
28 ceived by an individual.

29 (k) Any agency of the State of Oregon, or any person, or any officer or
30 employee of such agency or person to whom disclosure or access is given by
31 state law and not otherwise referred to in this section, including but not

1 limited to the Secretary of State as Auditor of Public Accounts under Article
2 VI, section 2, of the Oregon Constitution; the Department of Human Services
3 pursuant to ORS 412.094; the Division of Child Support of the Department
4 of Justice and district attorney regarding cases for which they are providing
5 support enforcement services under ORS 25.080; the State Board of Tax
6 Practitioners, pursuant to ORS 673.710; and the Oregon Board of
7 Accountancy, pursuant to ORS 673.415.

8 (L) The Director of the Department of Consumer and Business Services
9 to determine that a person complies with ORS chapter 656 and the Director
10 of the Employment Department to determine that a person complies with
11 ORS chapter 657, the following employer information:

12 (A) Identification numbers.

13 (B) Names and addresses.

14 (C) Inception date as employer.

15 (D) Nature of business.

16 (E) Entity changes.

17 (F) Date of last payroll.

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

22 (n) Employees of the Employment Department to the extent the Depart-
23 ment of Revenue deems disclosure or access to information on a combined
24 tax report filed under ORS 316.168 is necessary to performance of their duties
25 in administering the tax imposed by ORS chapter 657.

26 (o) The State Fire Marshal to assist the State Fire Marshal in carrying
27 out duties, functions and powers under ORS 453.307 to 453.414, the employer
28 or agent name, address, telephone number and standard industrial classi-
29 fication, if available.

30 (p) Employees of the Department of State Lands for the purposes of
31 identifying, locating and publishing lists of taxpayers entitled to unclaimed

1 refunds as required by the provisions of chapter 694, Oregon Laws 1993. The
2 information shall be limited to the taxpayer's name, address and the refund
3 amount.

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

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

11 (B) The counterfeiting, forging or altering of a check submitted by a
12 taxpayer to the Department of Revenue or issued by the Department of
13 Revenue to a taxpayer, in which case the information that may be disclosed
14 shall be limited to the counterfeit, forged or altered document, the name,
15 address and taxpayer identification number of the payee, the amount of the
16 check, the date printed on the check and the altered name and address.

17 (r) The United States Postal Inspection Service or a federal law enforce-
18 ment agency, including but not limited to the United States Department of
19 Justice, to assist in the investigation of the following criminal activities:

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

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

30 (s) The United States Financial Management Service, for purposes of fa-
31 cilitating the offsets described in ORS 305.612.

1 (t) A municipal corporation of this state for purposes of assisting the
2 municipal corporation in the administration of a tax of the municipal cor-
3 poration that is imposed on or measured by income, wages or net earnings
4 from self-employment. Any disclosure under this paragraph may be made only
5 pursuant to a written agreement between the Department of Revenue and the
6 municipal corporation that ensures the confidentiality of the information
7 disclosed.

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

10 (v) The Public Employees Retirement Board, to the extent necessary to
11 carry out the purposes of ORS 238.372 to 238.384, and to any public employer,
12 to the extent necessary to carry out the purposes of ORS 237.635 (3) and
13 237.637 (2).

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

17 (3)(a) Each officer or employee of the department and each person de-
18 scribed or referred to in subsection (2)(a), (b), (f) to (L) or (n) to (q) of this
19 section to whom disclosure or access to the tax information is given under
20 subsection (2) of this section or any other provision of state law, prior to
21 beginning employment or the performance of duties involving such disclosure
22 or access, shall be advised in writing of the provisions of ORS 314.835 and
23 314.991, relating to penalties for the violation of ORS 314.835, and shall as
24 a condition of employment or performance of duties execute a certificate for
25 the department, in a form prescribed by the department, stating in substance
26 that the person has read these provisions of law, that the person has had
27 them explained and that the person is aware of the penalties for the violation
28 of ORS 314.835.

29 (b) The disclosure authorized in subsection (2)(r) of this section shall be
30 made only after a written agreement has been entered into between the De-
31 partment of Revenue and the person described in subsection (2)(r) of this

1 section to whom disclosure or access to the tax information is given, pro-
2 viding that:

3 (A) Any information described in ORS 314.835 that is received by the
4 person pursuant to subsection (2)(r) of this section is confidential informa-
5 tion that may not be disclosed, except to the extent necessary to investigate
6 or prosecute the criminal activities described in subsection (2)(r) of this
7 section;

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

10 (C) The United States Postal Inspection Service or the federal law
11 enforcement agency shall give notice to the Department of Revenue of any
12 request received under the federal Freedom of Information Act, 5 U.S.C. 552,
13 or other federal law relating to the disclosure of information.

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

17 **SECTION 13. Sections 6 to 8 and 10 of this 2017 Act and the**
18 **amendments to ORS 305.525 and 314.840 by sections 11 and 12 of this**
19 **2017 Act become operative on January 1, 2018.**

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

21 305.265. (1) Except as provided in ORS 305.305, the provisions of this sec-
22 tion apply to all reports or returns of tax or tax liability filed with the De-
23 partment of Revenue under the revenue and tax laws administered by it,
24 except those filed under ORS 320.005 to 320.150.

25 (2) As soon as practicable after a report or return is filed, the department
26 shall examine or audit it, if required by law or the department deems such
27 examination or audit practicable. If the department discovers from an exam-
28 ination or an audit of a report or return or otherwise that a deficiency ex-
29 ists, it shall compute the tax and give notice to the person filing the return
30 of the deficiency and of the department's intention to assess the deficiency,
31 plus interest and any appropriate penalty. Except as provided in subsection

1 (3) of this section, the notice shall:

2 (a) State the reason for each adjustment;

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

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

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

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

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

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

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

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

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

30 (b) Within 30 days from the date of the notice of deficiency, the person
31 given notice shall pay the deficiency with interest computed to the date of

1 payment and any penalty proposed. Or within that time the person shall ad-
2 vise the department in writing of objections to the deficiency, and may re-
3 quest a conference with the department, which shall be held prior to the
4 expiration of the one-year period set forth in subsection (7) of this section.

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

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

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

1 expiration of the period agreed upon.

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

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

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

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

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

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

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

31 (d) If the department rejects a report or return of a person assessed a tax

1 under paragraph (a) of this subsection, the department shall issue a notice
2 of rejection to the person. The person may appeal the rejection to the
3 magistrate division of the Oregon Tax Court only if:

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

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

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

13 (A) Accepts the filing of the report or return, the appeal shall be dis-
14 missed as moot.

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

17 (f) If the department accepts the filing of a report or return, the depart-
18 ment may reduce the assessment issued under paragraph (a) of this sub-
19 section. A report or return filed under this subsection that is accepted by the
20 department, whether or not the assessment has been reduced, shall be con-
21 sidered a report or return described in subsection (1) of this section and shall
22 be subject to the provisions of this section, including but not limited to ex-
23 amination and adjustment pursuant to subsection (2) of this section.

24 (g) The department may refund payments made with respect to a report
25 or return filed and accepted pursuant to this subsection. If the report or
26 return is filed within three years of the due date for filing the report or re-
27 turn, excluding extensions, the refund shall be made as provided by ORS
28 305.270 and 314.415. If the report or return is not filed within three years of
29 the due date for filing the report or return, excluding extensions, the refund
30 shall be limited to payments received within the two-year period ending on
31 the date the report or return is received by the department and payments

1 received after the date the report or return is received by the department.
2 Interest shall be paid at the rate established under ORS 305.220 for each
3 month or fraction of a month from the date the report or return is received
4 by the department to the time the refund is made.

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

7 (12) If a return is filed with the department accompanied by payment of
8 less than the amount of tax shown on or from the information on the return
9 as due, the difference between the tax and the amount submitted is consid-
10 ered as assessed on the due date of the report or return (determined with
11 regard to any extension of time granted for the filing of the return) or the
12 date the report or return is filed, whichever is later. For purposes of this
13 subsection, the amount of tax shown on or from the information on the re-
14 turn as due shall be reduced by the amount of any part of the tax that is
15 paid on or before the due date prescribed for payment of the tax, and by any
16 credits against the tax that are claimed on the return. If the amount required
17 to be shown as tax on a return is less than the amount shown as tax on the
18 return, this subsection shall be applied by substituting the lesser amount.

19 (13) Every deficiency shall bear interest at the rate established under ORS
20 305.220 for each month or fraction of a month computed from the due date
21 of the return to date of payment. If the return was falsely prepared and filed
22 with intent to evade the tax, a penalty equal to [100] **25** percent of the defi-
23 ciency shall be assessed and collected. All payments received shall be cred-
24 ited first to penalty, then to interest accrued, and then to tax due.

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

1 except to the extent that an appeal is allowed under ORS 305.280 (3) follow-
2 ing payment of the tax.

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

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

7 305.992. (1) If any returns required to be filed under ORS 475B.700 to
8 475B.760 or ORS chapter 118, 314, 316, 317, 318, 321 or 323 or under a local
9 tax administered by the Department of Revenue under ORS 305.620 are not
10 filed for three consecutive years by the due date (including extensions) of the
11 return required for the third consecutive year, there shall be a penalty for
12 each year of [100] **25** percent of the tax liability determined after credits and
13 prepayments for each such year.

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

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

19 314.400. (1) If a taxpayer fails to file a report or return or fails to pay a
20 tax by the date on which the filing or payment is due, the Department of
21 Revenue shall add to the amount required to be shown as tax on the report
22 or return a delinquency penalty of five percent of the amount of the unpaid
23 tax.

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

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

30 (b) Thereafter the department may send a notice and demand to the per-
31 son to file a report or return within 30 days of the mailing of the notice. If

1 after the notice and demand no report or return is filed within the 30 days,
2 the department may determine the tax according to the best of its informa-
3 tion and belief, assess the tax with appropriate penalty and interest plus an
4 additional penalty of 25 percent of the tax deficiency determined by the de-
5 partment and give written notice of the determination and assessment to the
6 person required to make the filing.

7 (3) In the case of a report or return that is required to be filed more
8 frequently than annually and the failure to file the report or return contin-
9 ues for a period in excess of one month after the due date:

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

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

21 (4) Notwithstanding subsections (2) and (3) of this section, if a taxpayer
22 is required to file a federal income tax return for a period of less than 12
23 months under section 443 of the Internal Revenue Code, the Oregon personal
24 income or corporate excise or income tax return required to be filed for that
25 period shall be subject to subsection (2) of this section.

26 (5) If a report or return that is subject to a failure to file penalty de-
27 scribed in subsection (2) or (3) of this section is filed before a notice of de-
28 termination and assessment is issued by the department, the failure to file
29 penalty referred to in subsection (2)(a) or (3)(a) of this section shall be added
30 to the amount of tax shown on the report or return.

31 (6) A penalty equal to [100] **25** percent of any deficiency determined by

1 the department shall be assessed and collected if:

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

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

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

9 (8) Each penalty imposed under this section is in addition to any other
10 penalty imposed under this section. However, the total amount of penalty
11 imposed under this section and ORS 305.265 (13) with respect to any defi-
12 ciency shall not exceed 100 percent of the deficiency.

13 (9) For purposes of subsections (1) to (3) of this section, the amount of tax
14 required to be shown or that is shown on the report or return shall be re-
15 duced by the amount that is paid on or before the date prescribed for pay-
16 ment of the tax and by the amount of any credit against the tax that is
17 claimed on the report or return. If the amount required to be shown as tax
18 on the report or return is less than the amount that is actually shown as tax
19 on the report or return, this subsection shall be applied by substituting the
20 lower amount.

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

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

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

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

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

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

7
