

Enrolled House Bill 2233

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Revenue)

CHAPTER

AN ACT

Relating to liens on tax-deferred property; amending ORS 311.673, 311.675, 311.679 and 311.690.

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

SECTION 1. ORS 311.673 is amended to read:

311.673. (1) The Department of Revenue shall have a lien against *[the]* tax-deferred property for *[the]* payment of *[the]* deferred taxes plus interest **on the deferred taxes** *[thereon]* and any fees paid *[to the county clerk]* by the department in connection with the **filing**, recording, release or satisfaction of the lien. The liens for deferred taxes shall attach to the property on July 1 of the year in which the taxes were assessed. The deferred property tax liens shall have the same priority as other real property tax liens except that the lien of mortgages, trust deeds or security interests *[which are]* **that is filed**, recorded or noted on any certificate of title **or in any record maintained by the Department of Consumer and Business Services pursuant to ORS 446.566 to 446.646** prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

(2) The **deferred property tax** lien may be foreclosed by the department as if it were a purchase money mortgage under ORS chapter 88. The court may award reasonable attorney fees to the department if the department prevails in a foreclosure action under this section. The court may award reasonable attorney fees to a defendant who prevails in a foreclosure action under this section if the court determines that the department had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(3) Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes under ORS 311.701.

(4) This section applies only to **deferred property tax** liens arising prior to October 3, 1989.

SECTION 2. ORS 311.675 is amended to read:

311.675. (1) In each county in which there is tax-deferred property, the Department of Revenue shall cause to be recorded in the mortgage records of the county[,] a list of tax-deferred properties *[of]* that **lie in the** county. The list shall contain a description of the property as listed on the assessment roll together with the name of the owner **as listed** *[thereon]* **on the assessment roll.**

(2)(a) *[Except as provided in ORS 311.679,]* The recording of *[the]* tax-deferred properties under subsection (1) of this section is notice that the Department **of Revenue** claims a lien against those properties in the amount of the deferred taxes plus interest **on the deferred taxes** together with any fees paid *[to the county clerk]* **by the department** in connection with the **filing**, recording, release or satisfaction of the lien. *[, even though the amount of taxes, interest or fees is not listed.]*

(b) If the recording of tax-deferred properties under subsection (1) of this section occurred prior to January 1, 1990, the recording is notice that the department claims a lien against those properties in the amount of the deferred taxes plus interest on the deferred taxes together with any fees paid by the department in connection with the filing, recording, release or satisfaction of the lien, whether or not the amount of taxes, interest or fees is listed.

(3)(a) When an ownership document is issued under ORS 446.566 to 446.646, or issuance of the document is pending, for a tax-deferred manufactured structure assessed as personal property under ORS 308.875, the Department of Revenue shall file with the Department of Consumer and Business Services an application for notation of the deferred property tax lien as a security interest on behalf of the State of Oregon. The Department of Consumer and Business Services shall note the lien as a security interest in the same manner as other security interests in manufactured structures. A lien noted as a security interest in records maintained by the Department of Consumer and Business Services pursuant to ORS 446.566 to 446.646 shall have the same legal effect as other security interests in manufactured structures.

(b) For any other tax-deferred homestead assessed as personal property, the Department of Revenue may file notice of the deferred property tax lien as a security interest on behalf of the State of Oregon with the office of the Secretary of State or with any other designated filing office pursuant to ORS chapter 79.

[3] (4)(a) Notwithstanding the provisions of ORS 182.040 to 182.060 and 205.320 relating to the time and manner of payment of fees to the county clerk, the department shall not be required to pay any filing, indexing or recording fees to the county in connection with the **filing**, recording, release or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made. The manner of payment of the fees shall be as provided in ORS 205.395 for the payment of fees for **filing**, recording and making entry of warrants or orders in the County Clerk Lien Record.

(b) The Department of Revenue shall pay filing fees for any application for notation of the deferred property tax lien as a security interest in tax-deferred properties to the Department of Consumer and Business Services as provided in ORS 446.646 or in rules adopted under ORS 446.646.

(c) If the Department of Revenue files notice of the deferred property tax lien as a security interest on behalf of the State of Oregon with the office of the Secretary of State or with any other designated filing office under subsection (3) of this section, the department shall pay filing fees to the Secretary of State or to the other filing office pursuant to ORS chapter 79.

SECTION 3. ORS 311.679 is amended to read:

311.679. (1) At the time that the taxpayer elects to defer property taxes under ORS 311.666 to 311.701 or if the taxpayer has elected to defer property taxes prior to *[January 1, 1990, or between January 1, 1990 and June 30, 1990]* **July 1, 1990**, the Department of Revenue shall estimate the amount of property taxes that will be deferred for tax years beginning on or after July 1, 1990, interest *[thereon]* **on the deferred taxes** and any fees paid *[to the county clerk]* by the department in connection with lien **filing**, recording, release or satisfaction. Thereafter, the department shall have a lien in the amount of the estimate.

(2) The lien created under subsection (1) of this section shall attach to the property to which the election to defer relates on July 1 of the tax year of initial deferral or on July 1, 1990, whichever is applicable.

(3) The lien created under subsection (1) of this section in the amount of the estimate shall have the same priority as other real property tax liens except that the lien of mortgages, trust deeds or security interests *[which are]* **that is filed**, recorded or noted on a certificate of title **or in any record maintained by the Department of Consumer and Business Services pursuant to ORS**

446.566 to 446.646 prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

(4) If during the period of tax deferment, the amount of taxes, interest and fees exceeds the estimate, the Department of Revenue shall have a lien for the amount of the excess. The liens for the excess shall attach to the property on July 1 of the tax year in which the excess occurs. The lien for the excess shall have the same priority as other real property tax liens, except that the lien of mortgages, trust deeds or security interests **that is filed**, recorded or noted on any certificate of title **or in any record maintained by the Department of Consumer and Business Services pursuant to ORS 446.566 to 446.646** prior in time to the date that the Department of Revenue records an amendment to its estimate to reflect its lien for the excess shall be prior to the lien for the excess.

(5)(a) [Notwithstanding ORS 311.675 (2),] The notice of lien for deferred taxes recorded as provided in ORS 311.675 (1) and (2) arising on or after October 3, 1989, shall list the amount of the estimate of deferred taxes, interest and fees made by the department under subsection (1) of this section. [and] Any amendment to the notice of lien to reflect a lien for excess, as described under subsection (4) of this section, shall list the amount of the excess that the department claims as lien.

(b) If notice of lien with respect to any homestead has been **filed or** recorded as provided under ORS 311.675 (1) [and (2)] **to (3)** prior to January 1, 1990, and the lien has not been released or satisfied, the department shall cause a further notice of lien to be recorded in the mortgage records of the county. The further notice of lien shall list the amount of the estimate of deferred taxes and interest made by the department under subsection (1) of this section and any amendment to the notice to reflect a lien for excess, described under subsection (4) of this section, and shall list the amount of the excess that the department claims as lien.

(6) A lien created under this section may be foreclosed by the department as if it were a purchase money mortgage under ORS chapter 88. The court may award reasonable attorney fees to the prevailing party in a foreclosure action under this section.

(7) Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes under ORS 311.701.

(8) By means of voluntary payment made as provided under ORS 311.690, the taxpayer may limit the amount of the lien for deferred taxes created under this section. If the taxpayer desires that the limit be reflected in the records of the county, the taxpayer must request, subject to any rules adopted by the department, that the department cause a partial satisfaction of the lien to be recorded in the county. Upon receipt of such a request, the department shall cause a partial satisfaction, in the amount of the voluntary payment, to be [so] recorded. Nothing in this subsection shall affect the priority of the liens of the department, as originally created under subsections (1) and (4) of this section.

(9) Nothing in this section shall affect any lien arising under ORS 311.666 to 311.701 for taxes assessed before January 1, 1990. However, except as provided under this section, no lien for taxes shall arise under ORS 311.666 to 311.701 for taxes assessed after December 31, 1989.

(10)(a) Notwithstanding any other provision of this section, a lien arising under this section as the result of a deferral of property taxes on the homestead of a disabled person who is younger than 62 years of age during the tax year may not exceed 90 percent of the real market value of the homestead.

(b) Property may continue to qualify for property tax deferral under ORS 311.666 to 311.701 even though the amount of property taxes being paid by the department may not increase the amount of the lien arising under this section.

(11) This section first applies to liens for deferred taxes arising on or after October 3, 1989.

SECTION 4. ORS 311.690 is amended to read:

311.690. (1) All payments of deferred taxes shall be made to the Department of Revenue.

(2) Subject to subsection (3) of this section, all or part of the deferred taxes and accrued interest may at any time be paid to the department by:

(a) The taxpayer or the spouse of the taxpayer.

(b) The next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer or any person having or claiming a legal or equitable interest in the property.

(3) A person listed in subsection (2)(b) of this section may make [such] payments **of deferred taxes under this section** only if no objection is made by the taxpayer within 30 days after the department deposits in the mail notice to the taxpayer of the fact that [such] payment **of deferred taxes** has been tendered.

(4) Any payment made under this section shall be applied first against accrued interest and any remainder against the deferred taxes. [Such] Payment **of deferred taxes** does not affect the deferred tax status of the property. Unless otherwise provided by law, [such] payment **of deferred taxes** does not give the person paying the taxes any interest in the property or any claim against the estate, in the absence of a valid agreement to the contrary.

(5) When the deferred taxes and accrued interest are paid in full and the property is no longer subject to deferral, the department shall prepare, **file and record documents necessary to effect** [and record in the county in which the property is located a] **a release or** satisfaction of deferred property tax lien.

Passed by House April 2, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 18, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State