

Senate Bill 1025

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT

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**.

Directs Department of Revenue to establish and promote voluntary compliance initiative for taxpayers who utilize listed transactions to underreport personal or corporate income or excise taxes. Waives penalties for taxpayers participating in voluntary compliance initiative. Applies to tax years beginning on or after January 1, 1999.

Extends period for which notice of deficiency may be issued in cases in which returns reflect use of certain transactions to underpay tax liability.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax compliance; creating new provisions; amending ORS 314.410 and 314.415; and pre-
3 scribing an effective date.

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

5 **SECTION 1. Sections 2 to 4 of this 2007 Act are added to and made a part of ORS chapter**
6 **314.**

7 **SECTION 2. As used in ORS 314.410:**

8 (1) **"Listed transaction" means any of the following transactions:**

9 (a) **A listed transaction under section 6707A of the Internal Revenue Code.**

10 (b) **A transaction involving a real estate investment trust that claims a deduction for**
11 **consent dividends, the owners of which do not report income with respect to the consent**
12 **dividends, and:**

13 (A) **That does business in Oregon, is organized in Oregon or has income from Oregon**
14 **sources; or**

15 (B) **That is owned by an Oregon income or corporate excise taxpayer.**

16 (c) **A transaction in which a corporation forms a controlled regulated investment com-**
17 **pany under the Investment Company Act of 1940, and all of the following apply:**

18 (A) **The corporation transfers income-producing assets to the regulated investment**
19 **company;**

20 (B) **The regulated investment company claims a dividend-paid deduction under section 561**
21 **of the Internal Revenue Code;**

22 (C) **The corporation claims a dividend-received deduction with respect to the assets**
23 **transferred under subparagraph (A) of this paragraph; and**

24 (D) **The regulated investment company does business in Oregon, is organized in Oregon**
25 **or has income from Oregon sources or an owner of the regulated investment company is an**
26 **Oregon income or corporate excise taxpayer.**

27 (d) **A transaction that is substantially similar to a transaction described in paragraphs**
28 **(a) to (c) of this subsection.**

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 (2) "Reportable transaction" means a transaction:

2 (a) That is a reportable transaction under section 6707A of the Internal Revenue Code;

3 or

4 (b) That is a listed transaction.

5 **SECTION 3.** (1) The Department of Revenue shall develop and administer a voluntary
6 compliance initiative to be conducted during the period beginning on the later of the effective
7 date of this 2007 Act or November 1, 2007, and ending 90 days thereafter.

8 (2) The voluntary compliance initiative shall apply to tax liabilities attributable to listed
9 transactions for tax years beginning on or after January 1, 1999, and prior to January 1, 2007.

10 (3) The department shall publicize the voluntary compliance initiative so as to maximize
11 public awareness of and participation in the initiative.

12 (4) The department may prescribe forms, issue instructions, conduct public meetings and
13 undertake any other action necessary to maximize public participation in and compliance
14 with the initiative and the collection of tax liabilities to which the initiative applies.

15 (5) Notwithstanding any other provision of law, the department may enter into closing
16 agreements or installment payment agreements to facilitate the collection of tax liabilities
17 to which the initiative applies.

18 (6) As used in this section, "listed transaction" has the meaning given that term in sec-
19 tion 2 of this 2007 Act.

20 **SECTION 4.** (1) The voluntary compliance initiative described in section 3 of this 2007
21 Act applies to any taxpayer that, during the period beginning on the later of the effective
22 date of this 2007 Act or November 1, 2007, and ending 90 days thereafter:

23 (a) Files an amended return for each tax year for which the taxpayer has previously filed
24 a return that reflected the use of a listed transaction to underreport the tax liability of the
25 taxpayer for the tax year;

26 (b) For each return described in paragraph (a) of this subsection, reports all income from
27 all sources, without regard to the listed transaction;

28 (c) Identifies on each return described in paragraph (a) of this subsection, or as other-
29 wise prescribed by the Department of Revenue, that the return is being filed under the vol-
30 untary compliance initiative; and

31 (d) Except as authorized under section 3 (5) of this 2007 Act, pays in full all taxes and
32 interest due.

33 (2) With respect to each return filed in compliance with subsection (1) of this section:

34 (a) All penalties that would otherwise be imposed shall be waived; and

35 (b) A taxpayer may file a subsequent amended return seeking a refund of tax and may
36 otherwise appeal the amount of tax or interest due with respect to any item reported on the
37 amended return.

38 (3)(a) After the conclusion of the period described in subsection (1) of this section, the
39 department may issue a notice of deficiency and impose any penalty, interest or other
40 sanction with respect to the difference between the amount shown on a return filed under
41 subsection (1) of this section and the correct amount of tax.

42 (b) A taxpayer may make written objections to the deficiency or request a conference
43 as prescribed in ORS 305.265.

44 (c) If no written objection or request is received by the department, or as otherwise au-
45 thorized by ORS 305.265, the department shall assess the deficiency as prescribed in ORS

1 **305.265 and the taxpayer may appeal the assessment as prescribed in ORS 305.265.**

2 **(4) Notwithstanding subsection (1) of this section, a taxpayer may not participate in the**
 3 **voluntary compliance initiative if, prior to November 1, 2007, the department has issued a**
 4 **notice of deficiency to the taxpayer or has assessed a tax with respect to any tax year for**
 5 **which the taxpayer could otherwise file an amended return under this section.**

6 **(5) As used in this section, “listed transaction” has the meaning given that term in sec-**
 7 **tion 2 of this 2007 Act.**

8 **SECTION 5. Sections 3, 4 and 7 of this 2007 Act are repealed on January 2, 2014.**

9 **SECTION 6.** ORS 314.410 is amended to read:

10 314.410. (1) At any time within three years after the return was filed, the Department of Re-
 11 venue may give notice of deficiency as prescribed in ORS 305.265.

12 (2) If the department finds that gross income equal to 25 percent or more of the gross income
 13 reported has been omitted from the taxpayer’s return, notice of the deficiency may be given at any
 14 time within five years after the return was filed.

15 **(3) If the department finds that a return reports or reflects the use of a listed trans-**
 16 **action or a reportable transaction, notice of a deficiency may be given at any time within six**
 17 **years after the return was filed.**

18 ~~[(3)(a)]~~ **(4)(a)** The limitations to the giving of notice of a deficiency provided in this section
 19 ~~[shall]~~ **do** not apply to a deficiency resulting from false or fraudulent returns, or in cases where no
 20 return has been filed.

21 (b)(A) If the Commissioner of Internal Revenue or other authorized officer of the federal gov-
 22 ernment or an authorized officer of another state’s taxing authority makes a change or correction
 23 as described in ORS 314.380 (2)(a)(A) and, as a result of the change or correction, an assessment of
 24 tax or issuance of a refund is permitted under any provision of the Internal Revenue Code or ap-
 25 plicable law of the other state, or pursuant to an agreement between the taxpayer and the federal
 26 or other state taxing authority that extends the period in which an assessment of federal or other
 27 state tax may be made, then notice of a deficiency under any Oregon law imposing tax upon or
 28 measured by income for the corresponding tax year may be mailed within two years after the de-
 29 partment is notified by the taxpayer or the commissioner or other tax official of the correction, or
 30 within the applicable ~~[three-year or five-year]~~ period prescribed in subsections (1) ~~[and (2)]~~ **to (3)** of
 31 this section, whichever period expires later.

32 (B) A notice of deficiency mailed pursuant to this paragraph may assert any adjustment neces-
 33 sary to arrive at the correct amount of Oregon taxable income and Oregon tax liability for the tax
 34 year for which the federal or other state change or correction is made.

35 (c) If the taxpayer files an original or amended federal or other state return as described in ORS
 36 314.380 (2)(a)(B), the department may reduce any claim for refund as a result of a change in Oregon
 37 tax liability related to the original or amended federal or other state return, but may not give notice
 38 of a deficiency for an adjustment to Oregon tax liability following the expiration of the applicable
 39 period prescribed in subsections ~~[(1) and (2)]~~ **(1) to (3)** of this section and paragraph (a) of this
 40 subsection.

41 ~~[(4)]~~ **(5)** The tax deficiency must be assessed and notice of tax assessment mailed to the taxpayer
 42 or authorized representative, who is authorized in writing, within one year from the date of the
 43 notice of deficiency unless an extension of time is agreed upon as prescribed in subsection ~~[(6)]~~ **(7)**
 44 of this section.

45 ~~[(5)]~~ **(6)** Notwithstanding other provisions of this section, the period for the assessment of any

1 deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's
 2 principal residence, as provided in section 1034 of the Internal Revenue Code (as in effect prior to
 3 the repeal of section 1034 of the Internal Revenue Code by the Taxpayer Relief Act of 1997 (P.L.
 4 105-34)), does not expire prior to the expiration of three years from the date the department is no-
 5 tified by the taxpayer of:

6 (a) The cost of purchasing the new residence which the taxpayer claims results in
 7 nonrecognition of any part of such gain;

8 (b) The taxpayer's intention not to purchase a new residence; or

9 (c) A failure to purchase a new residence within the period prescribed in section 1034 of the
 10 Internal Revenue Code (as in effect prior to the repeal of section 1034 of the Internal Revenue Code
 11 by the Taxpayer Relief Act of 1997 (P.L. 105-34)).

12 [(6)] (7) If, prior to the expiration of any period of time prescribed in this section for giving of
 13 notice of deficiency or of assessment, the department and the taxpayer consent in writing to the
 14 notice of deficiency being mailed or deficiency being assessed after the expiration of such prescribed
 15 period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the
 16 expiration of the period agreed upon. The period so agreed upon may be extended by subsequent
 17 agreements in writing made before the expiration of the period agreed upon.

18 [(7)] (8) In the case of a deficiency attributable to the application to the taxpayer of a net op-
 19 erating loss carryback, notice of such deficiency may be mailed at any time before the expiration
 20 of the period within which notice of a deficiency for the taxable year of the net operating loss which
 21 results in such carryback may be mailed.

22 [(8)] (9) Notwithstanding the other provisions of this section, if any taxpayer agreed with the
 23 United States Commissioner of Internal Revenue or the taxing authority of another state for an
 24 extension, or renewals thereof, of the period for giving notices of deficiencies and assessing defi-
 25 ciencies in income tax for any year, the period for mailing notices of deficiencies of tax for such
 26 years and the period for filing a claim for refund under ORS 314.380 (2)(b) shall expire on the later
 27 of:

28 (a) The expiration of an applicable period described in subsections (1) to [(7) or (9)] (8) or (10)
 29 of this section; or

30 (b) Six months after the date of the expiration of the agreed period for assessing a deficiency.

31 [(9)(a)] (10)(a) Notwithstanding the other provisions of this section and ORS 314.415, the period
 32 for claiming a refund or giving a notice of deficiency with respect to an item that is shown or re-
 33 quired to be shown on a taxpayer's return and that is attributable to a pass-through entity does not
 34 expire prior to three years from the date of the filing of the pass-through entity return to which the
 35 item on the taxpayer's return relates.

36 (b) As used in this subsection, "pass-through entity" means any entity that is recognized as a
 37 separate entity for federal income tax purposes, for which the owners are required to report income,
 38 gains, losses, deductions or credits from the entity for federal income tax purposes.

39 **SECTION 7. Notwithstanding ORS 314.410 (3), if the Department of Revenue finds that a**
 40 **return reports or reflects the use of a listed transaction or a reportable transaction, both**
 41 **as defined in section 2 of this 2007 Act, notice of a deficiency may be given at any time before**
 42 **the expiration of the later of the following periods:**

43 (1) Six years after the return was filed; or

44 (2) Two years after the conclusion of the period described in section 3 (1) of this 2007 Act.

45 **SECTION 8.** ORS 314.415 is amended to read:

1 314.415. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount
2 of the tax due is less than the amount theretofore paid, the excess shall be refunded by the depart-
3 ment with interest at the rate established under ORS 305.220, for each month or fraction of a month
4 during a period beginning 45 days after the due date of the return or the date the tax was paid,
5 whichever is the later, to the time the refund is made.

6 (2)(a) The department may not allow or make a refund after three years from the time the return
7 was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period
8 expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer
9 in compliance with ORS 305.270. In any case, if the original return is not filed within three years
10 of the due date, excluding extensions, of the return, the department may allow or make a refund only
11 of amounts paid within two years from the date of the filing of the claim for refund. If a refund is
12 disallowed for the tax year during which excess tax was paid for any reason set forth in this sub-
13 section, the department may not allow the excess as a credit against any tax occurring on a return
14 filed for a subsequent year.

15 (b) The department may not make a refund if the tax owed after offsets for all amounts owed
16 the state, or a county pursuant to a judgment obtained under ORS 169.151, is less than \$1.

17 (c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a sus-
18 pension of the running of the periods specified for filing a claim for refund of federal income tax,
19 the period specified in paragraph (a) of this subsection shall also be suspended.

20 (d) The department may not pay an employee interest on a refund of a tax withheld by an em-
21 ployer if the interest would be for any period prior to the time the employee files a personal income
22 tax return for the tax year involved or for any period prior to the day that is 45 days after the date
23 when the employee's annual return for that year was filed or was due, whichever is later.

24 (e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505
25 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer
26 files a tax return for the tax year involved or for any period prior to the day that is 45 days after
27 the date when the tax return for that year was filed or was due, whichever is later.

28 (f) The amount of the refund, exclusive of interest on the refund, may not exceed the portion
29 of the tax paid during the period preceding the filing of the claim or, if no claim is filed, then during
30 the period preceding the allowance of the refund during which a claim might have been filed. Where
31 there has been an overpayment of any tax imposed, the amount of the overpayment and interest on
32 the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer,
33 and only the balance shall be refunded.

34 (g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
35 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the
36 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
37 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
38 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
39 from the date of payment to the department. Nothing in this subsection shall require that interest
40 be paid upon any amount for any period for which interest upon the same amount for the same pe-
41 riod is required to be paid under ORS 305.419.

42 (3)(a) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1)
43 or (2) of this section, if, prior to the expiration of the period prescribed in subsection (2) of this
44 section, the department and the taxpayer consent in writing to the refund of tax after the expiration
45 of the period prescribed:

1 (A) The department shall make the refund prior to the expiration of the period agreed upon; and

2 (B) The department may not make or allow a refund after the expiration of the period agreed
3 upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed
4 upon in compliance with the manner prescribed by the department. The period so agreed upon may
5 be extended by subsequent agreements in writing made before the expiration of the period previ-
6 ously agreed upon.

7 (b) The department may consent to extend the period during which a refund may be made only
8 if the taxpayer has consented to the assessment of additional tax, if additional taxes are determined
9 upon audit, after the expiration of the applicable [*three-year or five-year*] period prescribed in ORS
10 314.410 (1) [*and (2)*] **to (3)**.

11 (4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility
12 by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of
13 the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the
14 three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven
15 years from the date prescribed by law for the filing of the return for the year with respect to which
16 the claim is made.

17 (b) If the claim described in paragraph (a) of this subsection is made after the expiration of the
18 three-year period prescribed in subsection (2) of this section, the department may not allow interest
19 with respect to any credit or refund determined to be due upon the claim for the period beginning
20 at the close of the three-year period prescribed in subsection (2) of this section and ending at the
21 expiration of six months after the date on which the claim is filed.

22 (5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating
23 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-
24 scribed in subsection (2) of this section, the period shall be the period that ends three years after
25 the time prescribed by law for filing the return (including extensions) for the taxable year of the
26 net operating loss or net capital loss that results in such carryback. In the case of such a claim, the
27 amount of the credit or refund may exceed the portion of the tax paid within the period provided
28 in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of
29 the overpayment attributable to the carryback. If the allowance of a credit or refund of an over-
30 payment of tax attributable to a net operating loss carryback or a net capital loss carryback is
31 otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to
32 closing agreements, the credit or refund may be allowed or made if the claim for credit or refund
33 is filed within the period provided in this subsection. To the extent that the carryback was not an
34 issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has
35 become final, the claimed credit or refund applicable to that carryback may be allowed or made
36 under this subsection.

37 (b) For purposes of subsection (1) or (2) of this section, if any overpayment of tax results from
38 a carryback of a net operating loss or net capital loss, the overpayment shall be deemed not to have
39 been made prior to the later of:

40 (A) The due date of the return for the taxable year in which such net operating loss or net
41 capital loss arises;

42 (B) The date the return for the year in which the net operating loss or net capital loss arises
43 is filed; or

44 (C) The date of filing of the return for the year to which the net operating loss or net capital
45 loss is carried back.

1 (6) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section, if
2 the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension,
3 or a renewal of an extension, of the period for proposing and assessing deficiencies in federal income
4 tax for any year, the period within which a claim for credit or refund may be filed or credit or re-
5 fund allowed or made if no claim is filed shall be the period provided within subsections (1) to (5)
6 of this section or six months after the date of the expiration of the agreed period for assessing de-
7 ficiency in federal income tax, whichever period expires later.

8 (7) If a joint return is filed, the department may make separate refunds at the request of either
9 spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross
10 income of each spouse bears to the adjusted gross income of both spouses, or as otherwise deter-
11 mined by the department.

12 (8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department
13 may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490
14 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the
15 State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

16 **SECTION 9. Sections 3 and 4 of this 2007 Act apply to tax years beginning on or after**
17 **January 1, 1999.**

18 **SECTION 10. This 2007 Act takes effect on the 91st day after the date on which the**
19 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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