

Senate Bill 175

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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**.

Modifies period that Department of Revenue must wait before demanding filing of tax report or return and imposing failure to file penalty, in cases in which report or return is required to be filed for period of less than 12 months and taxpayer fails to file report or return. Retains existing period for returns for short income tax years.

Applies to reports and returns required to be filed on or after January 1, 2008.

A BILL FOR AN ACT

1
2 Relating to tax penalties; creating new provisions; and amending ORS 314.400 and 314.750.

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

4 **SECTION 1.** ORS 314.400 is amended to read:

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

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

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

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

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

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

25 **(b) Thereafter the department may send a notice and demand to the person to file a re-**
26 **port or return within 30 days of the mailing of the notice. If after the notice and demand**
27 **no report or return is filed within the 30 days, the department may determine the tax ac-**
28 **ording to the best of its information and belief, assess the tax with appropriate penalty and**

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 **interest plus an additional penalty of 25 percent of the tax deficiency determined by the de-**
 2 **partment and give written notice of the determination and assessment to the person required**
 3 **to make the filing.**

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

8 **[(b)] (5) [But the] If a report or return that is subject to a failure to file penalty described**
 9 **in subsection (2) or (3) of this section** is filed before a notice of determination and assessment is
 10 issued by the department, the failure to file penalty referred to in *[paragraph (a)(A) of this*
 11 *subsection]* **subsection (2)(a) or (3)(a) of this section** shall be added to the amount of tax shown
 12 on the report or return.

13 **[(3)] (6)** A penalty equal to 100 percent of any deficiency determined by the department shall
 14 be assessed and collected if:

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

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

17 (c) A false claim was intentionally filed under ORS 310.635, 310.657 and 310.706.

18 **[(4)] (7)** Interest shall be collected on the unpaid tax at the rate established under ORS 305.220
 19 for each month or fraction of a month, computed from the time the tax became due, during which
 20 the tax remains unpaid.

21 **[(5)] (8)** Each penalty imposed under this section is in addition to any other penalty imposed
 22 under this section. However, the total amount of penalty imposed under this section and ORS
 23 305.265 (13) with respect to any deficiency shall not exceed 100 percent of the deficiency.

24 **[(6)] (9)** For purposes of subsections (1) *[and (2)]* **to (3)** of this section, the amount of tax re-
 25 quired to be shown or that is shown on the report or return shall be reduced by the amount that
 26 is paid on or before the date prescribed for payment of the tax and by the amount of any credit
 27 against the tax that is claimed on the report or return. If the amount required to be shown as tax
 28 on the report or return is less than the amount that is actually shown as tax on the report or return,
 29 this subsection shall be applied by substituting the lower amount.

30 **[(7)] (10)** Notwithstanding subsection (1) of this section, the five percent penalty for failure to
 31 file a report or return or pay a tax at the time the tax becomes due may not be imposed if:

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

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

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

38 **SECTION 2.** ORS 314.750 is amended to read:

39 314.750. (1) Any increase in tax by reason of **a recapture of LIFO benefits under** section
 40 1363(d) of the Internal Revenue Code *[(recapture of LIFO benefits)]* shall be payable in four equal
 41 installments.

42 (2)(a) The first installment shall be paid on or before the due date *[(determined without regard*
 43 *to extensions)]* for the return of the tax for the last taxable year for which the corporation was a
 44 C corporation and the three succeeding installments shall be paid on or before the due date *[(as so*
 45 *determined)]* for the corporation's return for the three succeeding taxable years.

1 **(b) For purposes of this subsection, the due date for returns shall be determined without**
2 **regard to extensions.**

3 (3) Notwithstanding ORS 314.400 [(4)] (7), for purposes of ORS 314.400 [(4)] (7), interest on each
4 installment that is not paid on or before the date prescribed under subsection (2) of this section for
5 payment of that installment shall accrue only from the due date for that installment.

6 (4) This section applies in the case of S corporation elections made after December 17, 1987.
7 No refund or interest shall accrue to any taxpayer on account of the retroactive application under
8 this subsection.

9 **SECTION 3.** (1) **The amendments to ORS 314.400 by section 1 of this 2007 Act apply to**
10 **reports or returns required to be filed on or after January 1, 2008.**

11 (2) **The amendments to ORS 314.750 by section 2 of this 2007 Act apply to tax years be-**
12 **ginning on or after January 1, 2008.**

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