

Enrolled Senate Bill 39

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CHAPTER

AN ACT

Relating to tax compliance; creating new provisions; amending ORS 314.410 and 314.415; and prescribing an effective date.

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

SECTION 1. Sections 2 to 13 of this 2007 Act are added to and made a part of ORS chapter 314.

SECTION 2. As used in sections 2 to 13 of this 2007 Act:

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

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

(b) A transaction without economic substance in which an Oregon taxable corporation:

(A) Transfers income-producing assets to a real estate investment trust owned directly or indirectly by the corporation; and

(B) With respect to dividends paid from the real estate investment trust, claims a dividend-received deduction and the real estate investment trust claims a dividend-paid deduction.

(c) A transaction without economic substance in which an Oregon taxable corporation:

(A) Transfers income-producing assets to a regulated investment company owned directly or indirectly by the corporation; and

(B) With respect to dividends paid from the regulated investment company, claims a dividend-received deduction and the regulated investment company claims a dividend-paid deduction.

(2) "Oregon taxable corporation" means a corporation:

(a) That does business in Oregon, is organized in Oregon or has income from Oregon sources; or

(b) That is owned by an Oregon income or corporate excise taxpayer.

(3) "Reportable transaction" means a transaction:

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

(b) That is a listed transaction.

(4) "Transaction without economic substance" means a transaction for which the taxpayer cannot demonstrate a business purpose other than tax savings.

SECTION 3. (1) If required by rules adopted by the Department of Revenue:

(a) Any person who engages in a reportable transaction as a buyer or transferor shall report the transaction to the department.

(b) Any person who, as the result of a reportable transaction, acquires an interest in property, a present or future right to income, a present or future right to claim a loss, deduction, credit, exemption or other tax benefit or a present or future right to an adjustment to basis shall report the transaction to the department.

(c) Any person who is associated with a reportable transaction in an association that the department has by rule identified as an association that requires reporting shall report the transaction to the department.

(2) A reportable transaction shall be reported to the department in the time, form and manner prescribed by the department by rule. Rules adopted by the department under this section may not apply to a reportable transaction occurring in a tax year beginning before January 1, 2007.

NOTE: Sections 4 through 7 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 8. (1) If a taxpayer has a listed transaction understatement for a tax year, there shall be added to the tax liability of the taxpayer for the tax year a penalty equal to 60 percent of the amount of the understatement.

(2) The penalty imposed under this section applies to listed transaction understatements discovered or reported on or after January 1, 2008, and is in addition to and not in lieu of any other penalty.

(3) As used in this section, "listed transaction understatement" means the sum of:

(a) The amount determined by multiplying the highest rate of tax imposed on the taxpayer under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, by any net increase in taxable income that results from a difference between the proper tax treatment of a listed transaction and the treatment of the transaction on the return of the taxpayer; and

(b) The amount of any decrease in the aggregate amount of credits determined for purposes of ORS chapter 316 or, if the taxpayer is a corporation, for purposes of ORS chapter 317 or 318, that results from the taxpayer's treatment of a listed transaction and the proper tax treatment of that transaction.

(4) The Department of Revenue may by rule further define "listed transaction understatement" consistent with section 2 of this 2007 Act and subsection (3) of this section.

SECTION 9. (1) If a taxpayer fails to report to the Department of Revenue a reportable transaction as required by section 3 of this 2007 Act, there shall be added to the tax liability of the taxpayer for the tax year a penalty as follows:

(a) Individual taxpayers, \$3,300.

(b) Corporation taxpayers, \$16,700.

(2) If the reportable transaction is a listed transaction, in lieu of the penalty provided in subsection (1) of this section, the penalty shall be as follows:

(a) Individual taxpayers, \$33,000.

(b) Corporation taxpayers, \$66,000.

(3) This section applies to tax years beginning on or after January 1, 2007.

NOTE: Sections 10 and 11 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 12. (1) A penalty shall be imposed on a person who promotes a tax shelter if:

(a) The person is or would be subject to a penalty for promoting an abusive tax shelter under section 6700 of the Internal Revenue Code; and

(b) The tax shelter satisfies any of the following conditions:

(A) The tax shelter is organized in this state.

(B) The tax shelter is doing business in this state.

(C) The tax shelter derives income from sources in this state.

(D) At least one investor in the tax shelter is an Oregon personal income taxpayer or an Oregon corporate excise or income taxpayer.

(2) The amount of the penalty shall equal 100 percent of the amount of gross income derived by the person in promoting the tax shelter.

(3) A penalty imposed under this section shall be in addition to and not in lieu of any other penalty.

SECTION 13. Moneys collected under section 12 of this 2007 Act shall be considered net revenue from the tax imposed under ORS chapter 316 for purposes of ORS 316.502.

NOTE: Sections 14 through 17 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 18. ORS 314.410 is amended to read:

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

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

(3) If the department finds that a return reports or reflects the use of a listed transaction, as defined in section 2 of this 2007 Act, and that use of that listed transaction results in a deficiency in tax paid, notice of that deficiency may be given at any time within nine years after the return was filed.

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

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

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

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

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

[(5)] **(6)** Notwithstanding other provisions of this section, the period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence, as provided in section 1034 of the Internal Revenue Code (as in effect prior to the repeal of section 1034 of the Internal Revenue Code by the Taxpayer Relief Act of 1997 (P.L.

105-34)), does not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

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

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

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

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

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

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

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

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

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

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

NOTE: Section 19 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 20. ORS 314.415 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 21. Sections 2, 8, 12 and 13 of this 2007 Act apply to tax years beginning on or after January 1, 1999.

NOTE: Sections 22 through 31 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 32. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by Senate April 17, 2007

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Secretary of Senate

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President of Senate

Passed by House June 8, 2007

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Speaker of House

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