

74th OREGON LEGISLATIVE ASSEMBLY – 2008 Special Session
STAFF MEASURE SUMMARY
SENATE FINANCE & REVENUE COMMITTEE

MEASURE: SB 1101-A
CARRIER: Sen. Burdick

REVENUE: Revenue statement issued

FISCAL: Minimal Fiscal Impact

Action:	Do Pass as Amended
Vote:	6-0-1
Yeas:	Burdick, Morse, Hass, Monroe, Starr, Westlund
Nays:	
Exc.:	Atkinson
Prepared By:	Chris Allanach, Economist
Meeting Dates:	2/6, 2/8

WHAT THE BILL DOES: Clarifies language pertaining to the withholding of income taxes for certain real estate transactions. Clarifies and modifies definitions of terms used in the bill. Examples include adding attorneys to the definition of authorized agent and clarifying that a conveyance pertains to a transfer of Oregon real estate. Changes the amount to be withheld to the least of: (1) four percent of the consideration, (2) the net proceeds from the conveyance (changed from four percent of the net proceeds), or (3) eight (instead of ten) percent of the gain includable in the transferor's Oregon taxable income. Modifies the list of cases where withholding is not required by deleting the general reference to foreclosures and specifically listing, for example, conveyances that are pursuant to a judicial foreclosure proceeding, conveyances that are in lieu of a foreclosure of a mortgage or other security instrument with no additional monetary consideration, cases where the transferor is acting under judicial review, and cases where the sale or exchange qualifies for an exclusion of gain as a principal residence. Allows the Department of Revenue to collect interest on the withholding amount if it is not remitted timely by the authorized agent. Imposes a penalty for the greater of either \$500 or 10 percent of the amount required to be withheld (up to \$2,500) if the authorized agent fails to withhold. Clarifies when the Department of Revenue may not proceed with collections activity: when the amount withheld is remitted timely, when there is no requirement to withhold, or the authorized agent presents to the Department of Revenue the written affirmation indicating no need to withhold. Allows the authorized agent to withhold taxes without written instructions from the transferor. Applies to conveyances occurring on or after January 1, 2008 and declares any transfers or exemptions granted before the effective date of this Act to be in compliance with this Act. Grants the Department of Revenue rule making authority for determining the form, content, and procedures for submitting the written affirmations.

ISSUES DISCUSSED:

- The likelihood of a person other than a licensed escrow agent (e.g. a lawyer) handling these kinds of transfers
- Clarifications and potential loopholes created in the bill
- The need to address issues this session versus the 2009 regular session

EFFECT OF COMMITTEE AMENDMENTS:

- Adds cash amounts to the definition of consideration
- Refines the definition of "net proceeds" to be the amount to be disbursed to the transferor
- Clarifies language, such as the language pertaining to transfers that take place before the effective date of this Act.
- Adds a de minimis amount for withholding requirement
- Adds "attorney" to the definition of authorized agent
- Provides the Department of Revenue rule making authority with respect to the form, content, and procedures for the written affirmations

BACKGROUND: The requirement to withhold personal income taxes or corporation income or excise taxes was first enacted by the 2007 Legislature via HB 2592. The requirement is for the withholding of taxes that are owed under current law and does not constitute a new tax. During the administrative rules process, some technical issues were discovered that required clarification. This bill addresses those issues.

2/13/2008 10:26:18 AM

This summary has not been adopted or officially endorsed by action of the committee.