

House Bill 2609

Sponsored by Representative HANNA; Representatives GILLIAM, MAURER, OLSON, THATCHER, THOMPSON, WINGARD

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**.

Requires Department of Human Services and Department of Revenue to collaborate in establishing outreach program to educate senior citizens and persons with disabilities about property tax deferral.

Increases income limit to qualify for property tax deferral. Adjusts income limit based on Portland-Salem Consumer Price Index. Excludes nontaxable income from consideration in determining eligibility for property tax deferral.

Appropriates moneys from General Fund to Department of Revenue for Senior Property Tax Deferral Revolving Account.

A BILL FOR AN ACT

1 Relating to property tax deferral; creating new provisions; amending ORS 311.666, 311.668, 311.672,
2 311.689, 311.691 and 311.693; and appropriating money.

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

5 **SECTION 1. The Department of Human Services in collaboration with the Department**
6 **of Revenue shall establish and maintain an outreach program to educate senior citizens and**
7 **persons with disabilities about the opportunity to defer property taxes on a homestead under**
8 **ORS 311.666 to 311.701 for the purpose of increasing the number of eligible individuals and**
9 **families electing to defer property taxes pursuant to ORS 311.666 to 311.701.**

10 **SECTION 2.** ORS 311.666 is amended to read:

11 311.666. As used in ORS 311.666 to 311.701:

12 [*(1) "Department" means the Department of Revenue.*]

13 (1) **"Federal adjusted gross income" means federal adjusted gross income of the individual**
14 **electing to defer property taxes, or in the case of two or more individuals electing to defer**
15 **property tax jointly, the combined federal adjusted gross income of all of the individuals to-**
16 **gether, or the federal adjusted gross income of the spouse who has filed a claim under ORS**
17 **311.688, all as determined for the tax year beginning in the calendar year prior to which a**
18 **determination is required under ORS 311.689 (2). "Federal adjusted gross income" shall be**
19 **determined under the Internal Revenue Code, as amended and in effect on December 31, 2008,**
20 **without any of the additions, subtractions or other modifications or adjustments required**
21 **under ORS chapter 314 or 316.**

22 (2) **"Homestead" means the owner occupied principal dwelling, either real or personal property,**
23 **owned by the taxpayer and the tax lot upon which it is located. If the homestead is located in a**
24 **multiunit building, the homestead is the portion of the building actually used as the principal**
25 **dwelling and its percentage of the value of the common elements and of the value of the tax lot upon**
26 **which it is built. The percentage is the value of the unit consisting of the homestead compared to**
27 **the total value of the building exclusive of the common elements, if any.**

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 (3) "Person with a disability" means a person who has been determined to be eligible to receive
2 or who is receiving federal Social Security benefits due to disability or blindness, including a person
3 who is receiving Social Security survivor benefits in lieu of Social Security benefits due to disability
4 or blindness.

5 (4) "Taxpayer" means an individual who has filed a claim for deferral under ORS 311.668 or in-
6 dividuals who have jointly filed a claim for deferral under ORS 311.668.

7 (5) "Tax-deferred property" means the property upon which taxes are deferred under ORS
8 311.666 to 311.701.

9 (6) "Taxes" or "property taxes" means ad valorem taxes, assessments, fees and charges entered
10 on the assessment and tax roll.

11 **SECTION 3.** ORS 311.668 is amended to read:

12 311.668. (1)(a) Subject to ORS 311.670, an individual, or two or more individuals jointly, may
13 elect to defer the property taxes on their homestead by filing a claim for deferral with the county
14 assessor after January 1 and on or before April 15 of the first year in which deferral is claimed if:

15 (A) The individual, or, in the case of two or more individuals filing a claim jointly, each indi-
16 vidual, is 62 years of age or older on April 15 of the year in which the claim is filed; or

17 (B) The individual is a person with a disability on April 15 of the year in which the claim is
18 filed. In the case of individuals filing a claim jointly, only one individual need be a person with a
19 disability in order to make the election.

20 (b) In order to make the election described in paragraph (a) of this subsection, the individual
21 must have, or in the case of two or more individuals filing a claim jointly, all of the individuals to-
22 gether must have [*household income, as defined in ORS 310.630,*] **federal adjusted gross income** for
23 the calendar year immediately preceding the calendar year in which the claim is filed of less than
24 [*\$32,000*] **\$49,000**.

25 (c) The county assessor shall forward each claim filed under this subsection to the Department
26 of Revenue which shall determine if the property is eligible for deferral.

27 (2) When the taxpayer elects to defer property taxes for any year by filing a claim for deferral
28 under subsection (1) of this section, it shall have the effect of:

29 (a) Deferring the payment of the property taxes levied on the homestead for the fiscal year be-
30 ginning on July 1 of such year.

31 (b) Continuing the deferral of the payment by the taxpayer of any property taxes deferred under
32 ORS 311.666 to 311.701 for previous years which have not become delinquent under ORS 311.686.

33 (c) Continuing the deferral of the payment by the taxpayer of any future property taxes for as
34 long as the provisions of ORS 311.670 are met.

35 (3) If a guardian or conservator has been appointed for an individual otherwise qualified to ob-
36 tain deferral of taxes under ORS 311.666 to 311.701, the guardian or conservator may act for such
37 individual in complying with the provisions of ORS 311.666 to 311.701.

38 (4) If a trustee of an inter vivos trust which was created by and is revocable by an individual,
39 who is both the trustor and a beneficiary of the trust and who is otherwise qualified to obtain a
40 deferral of taxes under ORS 311.666 to 311.701, owns the fee simple estate under a recorded instru-
41 ment of sale, the trustee may act for the individual in complying with the provisions of ORS 311.666
42 to 311.701.

43 (5) Nothing in this section shall be construed to require a spouse of an individual to file a claim
44 jointly with the individual even though the spouse may be eligible to claim the deferral jointly with
45 the individual.

1 (6) Any person aggrieved by the denial of a claim for deferral of homestead property taxes or
 2 disqualification from deferral of homestead property taxes may appeal in the manner provided by
 3 ORS 305.404 to 305.560.

4 (7)(a) For each tax year beginning on or after July 1, [2002] **2010**, the Department of Revenue
 5 shall recompute the maximum [household income] **federal adjusted gross income** that may be in-
 6 curred under an allowable claim for deferral under subsection (1)(b) of this section. The computation
 7 shall be as follows:

8 (A) Divide the [average U.S. City Average] **Portland-Salem** Consumer Price Index for the first
 9 six months of the current calendar year by the [average U.S. City Average] **Portland-Salem** Con-
 10 sumer Price Index for the first six months of [2001] **2009**.

11 (B) [Recompute the maximum household income by multiplying] **Multiply \$49,000 by the [\$32,000**
 12 *by the appropriate indexing]* factor determined as provided in subparagraph (A) of this paragraph.

13 (b) As used in this subsection, [“U.S. City Average] **“Portland-Salem** Consumer Price Index”
 14 means the [U.S. City Average] **Portland-Salem** Consumer Price Index for All Urban Consumers (All
 15 Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

16 (c) If any change in the maximum [household income] **federal adjusted gross income** deter-
 17 mined under paragraph (a) of this subsection is not a multiple of \$500, the increase shall be rounded
 18 to the nearest multiple of \$500.

19 **SECTION 4.** ORS 311.672 is amended to read:

20 311.672. (1) A taxpayer’s claim for deferral under ORS 311.668 shall be in writing on a form
 21 supplied by the Department of Revenue and shall:

22 (a) Describe the homestead.

23 (b) Recite facts establishing the eligibility for the deferral under the provisions of ORS 311.666
 24 to 311.701, including facts that establish that the [household income as defined in ORS 310.630]
 25 **federal adjusted gross income** of the individual, or in the case of two or more individuals claiming
 26 the deferral jointly, **the combined federal adjusted gross income** of all of the individuals
 27 together, was, for the calendar year immediately preceding the calendar year in which the claim is
 28 filed, less than or equal to the maximum [household income] **federal adjusted gross income** that
 29 may be incurred under an allowable claim for deferral, as provided in ORS 311.668.

30 (c) Have attached any documentary proof required by the department to show that the require-
 31 ments of ORS 311.666 to 311.701 have been met.

32 (2) There shall be annexed to the claim a statement verified by a written declaration of the
 33 applicant making the claim to the effect that the statements contained in the claim are true.

34 **SECTION 5.** ORS 311.689, as amended by section 10, chapter 45, Oregon Laws 2008, is amended
 35 to read:

36 311.689. (1) Notwithstanding ORS 311.668 or any other provision of ORS 311.666 to 311.701, if
 37 the individual or, in the case of two or more individuals electing to defer property taxes jointly, all
 38 of the individuals together, or the spouse who has filed a claim under ORS 311.688, has federal ad-
 39 justed gross income that exceeds [\$32,000] **\$49,000** for the tax year that began in the previous cal-
 40 endar year, then for the tax year next beginning, the amount of taxes for which deferral is allowed
 41 shall be reduced by \$0.50 for each dollar of federal adjusted gross income in excess of [\$32,000]
 42 **\$49,000**.

43 (2) Prior to June 1 of each year, and notwithstanding ORS 314.835, the Department of Revenue
 44 shall review returns filed under ORS chapter 314 and 316 to determine if subsection (1) of this sec-
 45 tion is applicable for a homestead for the tax year next beginning. If subsection (1) of this section

1 is applicable, the department shall notify by mail the taxpayer or spouse electing deferral, and the
2 taxes otherwise to be deferred for the tax year next beginning shall be reduced as provided in sub-
3 section (1) of this section or, if federal adjusted gross income in excess of [\$32,000] **\$49,000** exceeds
4 the amount of property taxes by a factor of two, the property taxes shall not be deferred.

5 (3) If the taxpayer or spouse does not file a return for purposes of ORS chapters 314 and 316
6 and the department has reason to believe that the federal adjusted gross income of the taxpayer or
7 spouse exceeds [\$32,000] **\$49,000** for the tax year that began in the previous calendar year, the de-
8 partment shall notify by mail the taxpayer or spouse electing deferral. If, within 30 days after the
9 notice is mailed, the taxpayer or spouse does not file a return under ORS chapter 314 or 316 or
10 otherwise satisfy the department that federal adjusted gross income does not exceed [\$32,000]
11 **\$49,000**, the department shall again notify the taxpayer or spouse, and the taxes otherwise to be
12 deferred for the tax year next beginning shall not be deferred.

13 (4) For tax years beginning on or after July 1, [2002] **2010**, the federal adjusted gross income
14 limit set forth in subsections (1) to (3) of this section shall be recomputed by multiplying [\$32,000
15 *by the indexing*] **\$49,000 by the** factor described in ORS 311.668 (7)(a)(A), and rounding the amount
16 so computed to the nearest multiple of \$500.

17 (5) Nothing in this section shall affect the continued deferral of taxes that have been deferred
18 for tax years beginning prior to the tax year next beginning or the right to deferral of taxes for a
19 tax year beginning after the tax year next beginning if subsection (1) **of this section** is not appli-
20 cable for that tax year for the homestead.

21 *[(6) As used in this section, "federal adjusted gross income" means federal adjusted gross income*
22 *of the individual or, in the case of two or more individuals electing to defer property tax jointly, the*
23 *combined federal adjusted gross income of the individuals, or the federal adjusted gross income of the*
24 *spouse who has filed a claim under ORS 311.688, all as determined for the tax year beginning in the*
25 *calendar year prior to which a determination is required under subsection (2) of this section. "Federal*
26 *adjusted gross income" shall be determined under the Internal Revenue Code, as amended and in effect*
27 *on December 31, 2007, without any of the additions, subtractions or other modifications or adjustments*
28 *required under ORS chapter 314 or 316.]*

29 [(7)(a)] **(6)(a)** If, after an initial determination under this section has been made by the depart-
30 ment, upon audit or examination or otherwise, it is discovered that the taxpayer or spouse had
31 federal adjusted gross income in excess of the limitation provided under subsection (1) of this sec-
32 tion, the department shall determine the amount of taxes deferred that should not have been de-
33 ferred and give notice to the taxpayer or spouse of the amount of taxes that should not have been
34 deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the depart-
35 ment under this section in the same manner as those provisions are applicable to an income tax
36 deficiency. The amount of deferred taxes that should not have been deferred shall bear interest from
37 the date paid by the department until paid at the rate established under ORS 305.220 for deficien-
38 cies. A deficiency shall not be assessed under this section if notice required under this section is
39 not given to the taxpayer or spouse within three years after the date that the department has paid
40 the deferred taxes to the county. Upon payment of the amount assessed as deficiency, and interest,
41 the department shall execute a release in the amount of the payment and the release shall be con-
42 clusive evidence of the removal and extinguishment of the lien under ORS 311.666 to 311.701 to the
43 extent of the payment.

44 (b) If, after an initial determination under this section has been made by the department, upon
45 claim for refund, audit or examination or otherwise, it is discovered that the taxpayer or spouse had

1 federal adjusted gross income in the amount of or less than the limitation provided under subsection
 2 (1) of this section, the department shall determine the amount of taxes deferred that should have
 3 been deferred and give notice to the taxpayer or spouse of the amount of taxes that should have
 4 been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the
 5 department under this section in the same manner as those provisions are applicable to an income
 6 tax refund. The amount of the taxes that should have been deferred shall bear interest from the
 7 date paid by the taxpayer to the county at the rate established under ORS 305.220 for refunds until
 8 paid. Claim for refund under this paragraph must be filed within three years after the earliest date
 9 that the taxpayer or spouse is notified by the department that the taxes are not deferred.

10 [(8)] (7) This section applies to all tax-deferred property, notwithstanding that election to defer
 11 taxes is made under ORS 311.666 to 311.701 before or after October 3, 1989.

12 **SECTION 6.** ORS 311.691 is amended to read:

13 311.691. (1) Notwithstanding any provision of ORS chapter 312 to the contrary and ORS 311.696
 14 (1), upon compliance with ORS 311.693, taxes assessed against a tax-deferred homestead for any tax
 15 year that were unpaid as of July 1 of the tax year for which homestead property tax deferral was
 16 initially granted under ORS 311.666 to 311.701, and that remain unpaid, shall remain a lien and shall
 17 become delinquent as otherwise provided by law, but shall not be subject to foreclosure under ORS
 18 chapter 312 until August 15 of the calendar year following the calendar year in which one of the
 19 circumstances listed in ORS 311.684 occurs.

20 (2) This section does not apply if:

21 (a) The tax-deferred homestead property is a manufactured structure or floating home and is
 22 moved out of state;

23 (b) Except in the case of a manufactured structure or floating home, the tax-deferred homestead
 24 property is personal property; or

25 (c) The owner of the tax-deferred homestead property has [*household income*] **federal adjusted**
 26 **gross income**, for the calendar year immediately preceding the calendar year in which application
 27 is filed under ORS 311.693, of more than the maximum [*household income*] **federal adjusted gross**
 28 **income** that may be incurred under an allowable claim for deferral, as provided in ORS 311.668.

29 (3) If the property to which subsection (1) of this section applies has been included on a fore-
 30 closure list, or a judgment of foreclosure entered, the property shall be removed from the foreclosure
 31 list, or judgment vacated, unless the proceeding against the property involves delinquent taxes other
 32 than those described in subsection (1) of this section.

33 (4) Upon removal from the foreclosure list, or upon vacation of the judgment, no penalty shall
 34 be imposed under ORS 312.110 or 312.120. In lieu thereof, the penalty is abated, or if the penalty
 35 has been paid, upon application made to the county assessor on or before July 1 of the year imme-
 36 diately following the year of vacation or removal, the penalty shall be refunded out of the unsegre-
 37 gated tax collections account in the manner provided in ORS 311.806.

38 (5) Within 60 days after approval of an application under ORS 311.693, with respect to any
 39 property to which this section applies, the tax collector shall make the proper entries on the tax
 40 roll and shall remove the property from the foreclosure list and proceeding.

41 (6) If a judgment has been entered foreclosing liens for delinquent taxes against any property
 42 which is the subject of an application filed under ORS 311.693, and the delinquent taxes include only
 43 those taxes described in subsection (1) of this section, or taxes in excess of those described in sub-
 44 section (1) of this section are paid, the judgment shall be null and void and of no effect and the tax
 45 collector shall make the proper entries on the assessment and tax rolls to reflect the vacation of the

1 judgment and to acknowledge the subsisting liens.

2 (7) Nothing in this section shall remove or release property to which this section applies from
 3 the lien of any unpaid tax thereon, but the unpaid taxes shall remain valid and subsisting liens as
 4 though the foreclosure proceeding had not been instituted or as though the foreclosure proceeding
 5 had not been instituted and a judgment entered.

6 (8) Nothing in this section shall affect a foreclosure proceeding instituted, or a judgment en-
 7 tered, to foreclose liens for delinquent taxes against properties subject to foreclosure if the delin-
 8 quent taxes include taxes other than those described under subsection (1) of this section. Such
 9 foreclosure proceedings shall be instituted or continued without regard to this section and such
 10 judgment shall be of full force and effect as if this section did not exist.

11 (9) Interest on taxes to which this section applies shall be determined from the same dates, in
 12 the same manner and until paid as for other property taxes remaining unpaid upon the due dates,
 13 upon preparation of the foreclosure list in accordance with ORS chapter 312 and subsection (1) of
 14 this section and upon entry and following a judgment of foreclosure.

15 **SECTION 7.** ORS 311.693 is amended to read:

16 311.693. (1) The owner of tax-deferred homestead property desiring delay in foreclosure on ac-
 17 count of delinquent taxes as provided in ORS 311.691 shall make application for the delay to the
 18 county assessor prior to the date the period of redemption expires under ORS 312.120. The applica-
 19 tion shall contain or be accompanied by a verified statement of [*total household income, as defined*
 20 *in ORS 310.630,*] **federal adjusted gross income** of the owner for the calendar year immediately
 21 preceding the calendar year in which the application is made.

22 (2) Upon receipt of an application under subsection (1) of this section, the county assessor shall
 23 approve or deny the application. If the application is denied, the owner may appeal to the circuit
 24 court in the county where the tax-deferred homestead property is located within 90 days after notice
 25 in writing of the denial is mailed to the owner by the county assessor. Orders of the circuit court
 26 in an appeal taken under this subsection may be appealed to the Court of Appeals within the time
 27 and in the manner provided under ORS 312.210.

28 **SECTION 8. The amendments to ORS 311.666, 311.668, 311.672, 311.689, 311.691 and 311.693**
 29 **by sections 2 to 7 of this 2009 Act apply to assessment years beginning on or after January**
 30 **1, 2010.**

31 **SECTION 9. There is appropriated to the Department of Revenue, for the biennium be-**
 32 **ginning July 1, 2009, out of the General Fund, the amount of \$4 million to be deposited to the**
 33 **credit of the Senior Property Tax Deferral Revolving Account established under ORS 311.701**
 34 **to carry out the amendments to ORS 311.666, 311.668, 311.672, 311.689, 311.691 and 311.693 by**
 35 **sections 2 to 7 of this 2009 Act.**

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