

Enrolled
Senate Bill 690

Sponsored by COMMITTEE ON FINANCE AND REVENUE

CHAPTER

AN ACT

Relating to personal income tax compliance; creating new provisions; amending ORS 305.225, 305.437, 314.840, 673.415 and 673.710; and prescribing an effective date.

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

SECTION 1. ORS 305.225 is amended to read:

305.225. (1) Notwithstanding ORS 314.835, if the Department of Revenue determines that assistance of a law enforcement agency is necessary to insure compliance with any of the laws of this state administered by it, the department may request such assistance. In connection with assistance requested under this section only, the Department of Revenue may disclose a tax return, report or claim, or information in its files regarding a tax return, report or claim permitted or required to be filed with the department under any law administered by the department to the Oregon State Police, district attorney, grand jury [or], judicial authority **or local law enforcement agency** for the investigation or the prosecution of violations of the criminal laws of this state relating to perjury, theft or forgery if those violations occur in connection with the filing of such a return, report or claim, or of the tax laws of this state. Disclosure under this section shall be solely for the purpose of investigation or prosecution of violations involving the filing of a false or fraudulent return, report or claim, wherein the validity of the return, report or claim, or information contained therein, is at issue. Returns, reports or claims, or information contained therein shall not be disclosed if the purpose for which the information is sought is as evidence of a crime unrelated to the validity of the return, report or claim, or the information contained therein, supplied to the department or if the information is requested by a law enforcement agency in connection with any other investigation or prosecution.

(2) Each person given access to the confidential tax information authorized to be disclosed under this section shall first execute and file with the department the certificate required by ORS 314.840 (3) and shall cause a similar certificate to be executed and filed with the department by any associate or subordinate who is assigned to use the information for the purposes stated in this section.

SECTION 2. ORS 314.840 is amended to read:

314.840. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report, return or claim required in the administration of ORS 310.630 to 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this subparagraph only if:

(i) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

(ii) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

(b) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

(c) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;

(B) A city, county or other political subdivision of a state;

(C) The District of Columbia; or

(D) An association established exclusively to provide services to federal, state or local taxing authorities.

(d) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to

the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

(e) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(g) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(i) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(k) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

- (A) Identification numbers.
- (B) Names and addresses.
- (C) Inception date as employer.
- (D) Nature of business.
- (E) Entity changes.
- (F) Date of last payroll.

(L) The Director of Human Services to determine that a person has the ability to pay for care that includes services provided by the state institutions as described in ORS 179.321 or the Department of Human Services or to collect any unpaid cost of care as provided by ORS chapter 179.

(m) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(n) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(o) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

(p) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(q) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Financial Management Service, for purposes of facilitating the reciprocal offsets described in ORS 305.612.

(s) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(t) A consumer reporting agency, to the extent necessary to carry out the purposes of section 7 of this 2009 Act.

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (e) to (k) or (m) to (p) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(q) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(q) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(q) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(q) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection (2)(k), (L) and (n) to (p) of this section from the respective agencies.

SECTION 3. ORS 673.415 is amended to read:

673.415. (1) The Department of Revenue may furnish to the Oregon Board of Accountancy a copy of the signature block of an income tax return prepared by any person for another. The signature block may be furnished in instances in which the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of any provision of ORS 673.010 to 673.457. The signature block shall include the name, address and signature of the person who prepared the income tax return and the date the return was prepared. The department may include with the signature block the name and address of the taxpayer, the number of the tax form prepared [and], the tax year of the income tax return prepared **and the information described in ORS 314.835**. The board, and its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.010 to 673.457 and shall not otherwise divulge or make known such information. A violation of this prohibition against disclosure is punishable as provided in ORS 314.991 (2).

(2) The Department of Revenue may furnish to the board a copy of the signature block of a tax return or report permitted or required to be filed with the department and prepared by any person for another. The signature block may be furnished in instances where the department or the board has reasonable grounds to believe the person preparing the return or report prepared it in violation of any provision of ORS 673.010 to 673.457, or any rule adopted thereunder. The signature block shall include the name, address and signature of the person who prepared the tax return or report and the date the return or report was prepared. The department may include with the signature block the name and address of the taxpayer, the number of the tax form or report prepared [and], the tax year of the return or report prepared **and the information described in ORS 314.835**. The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.010 to 673.457 and shall not divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

SECTION 4. ORS 673.710 is amended to read:

673.710. (1) If a personal income tax return is prepared by someone other than the taxpayer, the Department of Revenue may furnish to the State Board of Tax Practitioners a copy of that portion of the return that shows:

- (a) The name, business name and address of the preparer;
- (b) The date of preparation; and
- (c) The signature of the preparer.

(2) In instances where the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of ORS 673.605 to 673.740, the department may furnish the following additional information:

- (a) The name and address of the taxpayer;
- (b) The identifying number used on any form, report or schedule filed as part of the return;

[and]

- (c) The tax year reported on the return, or any portion of the return[.]; **and**

(d) The information described in ORS 314.835.

(3) The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.605 to 673.740 and shall not otherwise divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

SECTION 5. ORS 305.437 is amended to read:

305.437. (1) Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, [damages] **a penalty** in an amount not to exceed \$5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment. [Damages] **The**

penalty so awarded shall be paid within 10 days after the judgment becomes final. If the [*damages remain*] **penalty remains** unpaid, the department may collect the amount awarded in the same manner as income taxes are collected under ORS 314.430.

(2) As used in this section[,]:

(a) A taxpayer's position is "frivolous" if there was no objectively reasonable basis for asserting the position.

(b) "Position" means any claim, defense or argument asserted by a taxpayer without regard to any other claim, defense or argument asserted by the taxpayer.

SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS chapter 314.

SECTION 7. (1) As used in this section, "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(2)(a) Notwithstanding ORS 314.835, and subject to rules established by the Department of Revenue, if a taxpayer has neglected or refused to pay any tax and has not filed in good faith an appeal to the tax court within the period required by ORS 305.280 contesting the tax, the department may:

(A) Report periodically to consumer reporting agencies the name of any taxpayer who is delinquent in the payment of taxes and the amount owed by the taxpayer; and

(B) Otherwise make available to a consumer reporting agency upon its request information regarding the amount of delinquent taxes owed by a taxpayer.

(b) The department shall provide advance notice to the taxpayer concerning the proposed reporting of information to the consumer reporting agencies. The notice must inform the taxpayer:

(A) Of the amount of the tax liability that the department will report to the consumer reporting agencies;

(B) That the department will continue to report the amount of tax liability owed without sending additional notice to the parties;

(C) Of the taxpayer's right to request an administrative review within 30 days after the date of the notice; and

(D) Of the issues that may be considered on review.

(3) The department shall report information under subsection (2) of this section only to a person that has furnished evidence satisfactory to the department that the person is a consumer reporting agency.

(4) When the department has made a report to a consumer reporting agency under subsection (2) of this section, the department shall promptly notify the consumer reporting agency when the department's records show that the taxpayer no longer owes delinquent taxes.

SECTION 8. The amendments to ORS 305.437 by section 5 of this 2009 Act apply to appeals pending on, or filed on or after, the effective date of this 2009 Act.

SECTION 9. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by Senate May 18, 2009

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Secretary of Senate

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President of Senate

Passed by House June 17, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State