

Senate Bill 880

Sponsored by COMMITTEE ON FINANCE AND REVENUE

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**.

Directs Department of Revenue to establish general tax amnesty program of limited duration. Waives penalties for personal income taxpayers who pay outstanding taxes. Increases penalties on taxpayers who fail to fully participate. Appropriates moneys to department to fund amnesty program. Sunsets amnesty program January 2, 2014.

Requires mandatory withholding of income tax from distributions from employer-sponsored retirement plans.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax compliance; creating new provisions; amending ORS 316.189; appropriating money;
3 and prescribing an effective date.

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

GENERAL TAX AMNESTY PROGRAM

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8 **SECTION 1. (1) The Department of Revenue shall develop and administer a tax amnesty**
9 **program for personal income taxpayers.**

10 **(2) The tax amnesty program shall be conducted during the period beginning July 1, 2010,**
11 **and ending September 30, 2010.**

12 **(3) The tax amnesty program applies to tax years for which the department could issue**
13 **a notice of deficiency under ORS 314.410, as amended and in effect on the day before the ef-**
14 **fective date of this 2009 Act.**

15 **(4) The department shall publicize the tax amnesty program so as to maximize public**
16 **awareness of and participation in the program.**

17 **(5) The department may prescribe forms, issue instructions, conduct public meetings and**
18 **undertake any other action necessary to maximize public participation in and compliance**
19 **with the tax amnesty program and the collection of tax liabilities to which the program ap-**
20 **plies.**

21 **SECTION 2. (1) A personal income taxpayer who meets all of the following requirements**
22 **during the period beginning July 1, 2010, and ending September 30, 2010, may participate in**
23 **the tax amnesty program:**

24 **(a) The taxpayer was required to file a tax return under ORS chapter 314 or 316 or pay**
25 **a tax imposed under ORS chapter 316 for a tax year that begins before January 1, 2009;**

26 **(b) The taxpayer files a completed amnesty application with the Department of Revenue,**
27 **signed under penalty of perjury, to participate in the tax amnesty program; and**

28 **(c) Within 60 days after the conclusion of the tax amnesty program, the taxpayer does**

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 all of the following:

2 (A) Files a completed tax return for all tax years described in paragraph (a) of this sub-
3 section for which the taxpayer had not previously filed a completed tax return;

4 (B) Files a completed amended tax return for all tax years described in paragraph (a) of
5 this subsection for which the taxpayer underreported or underpaid the tax liability of the
6 taxpayer; and

7 (C) Pays in full the taxes and interest due for all tax years described in paragraph (a) of
8 this subsection or applies for an installment payment agreement under subsection (5) of this
9 section that applies to the taxes and interest due for all tax years described in paragraph (a)
10 of this subsection for which taxes remain unpaid.

11 (2) Notwithstanding subsection (1) of this section, a taxpayer may not participate in the
12 tax amnesty program if, prior to July 1, 2010, the department has issued a notice of defi-
13 ciency to the taxpayer or has assessed a tax for a tax year for which the taxpayer could
14 otherwise apply for amnesty under this section.

15 (3) In addition to the other requirements in subsection (1) of this section, a taxpayer who
16 has filed a petition for bankruptcy protection under Title 11 of the United States Code may
17 participate in the tax amnesty program if the taxpayer submits an order from a United
18 States Bankruptcy Court allowing the taxpayer to participate in the tax amnesty program.

19 (4) A taxpayer who participates in the tax amnesty program described in this section
20 may not request a refund with respect to any tax paid under the tax amnesty program and
21 waives any right to appeal any tax reported on a tax return filed or paid under subsection
22 (1) of this section or pursuant to an installment payment agreement entered into under
23 subsection (5) of this section.

24 (5)(a) A taxpayer may apply for an installment payment agreement for the payment of
25 taxes reported and due under subsection (1) of this section. The application shall be made
26 on a form prescribed by the department and shall be due at the time the taxpayer applies for
27 amnesty under subsection (1) of this section.

28 (b) The department shall enter into an installment payment agreement with a taxpayer
29 who has applied under paragraph (a) of this subsection and shall establish a payment sched-
30 ule if the department concludes that the agreement will facilitate the efficient collection of
31 the outstanding tax liability.

32 (c) Any amount that remains unpaid under an installment payment agreement shall bear
33 interest at the rate established under ORS 305.220 for each month, or fraction of a month,
34 for which the amount remains unpaid.

35 (d) Under any installment payment agreement entered into under this subsection, all
36 outstanding taxes and interest must be paid on or before December 31, 2011.

37 **SECTION 3.** (1) The Department of Revenue shall waive all applicable penalties that
38 would otherwise apply to the taxes being reported and paid under section 2 of this 2009 Act
39 for any taxpayer who fully complies with the tax amnesty program described in section 2 of
40 this 2009 Act, including criminal penalties that would otherwise apply under ORS 314.075 and
41 314.991 (1).

42 (2)(a) If the department has entered into an installment payment agreement with the
43 taxpayer, the failure of the taxpayer to fully comply with the terms of the installment pay-
44 ment agreement shall render the waiver of penalties under subsection (1) of this section and
45 the installment payment agreement void. The total amount of tax, interest and all applicable

1 penalties shall become immediately due and payable.

2 (b) This subsection does not apply if the department determines that the failure to fully
3 comply with the terms of the installment payment agreement is due to reasonable causes.

4 **SECTION 4.** (1) For any tax that was due for a tax year for which amnesty could be
5 sought under section 2 of this 2009 Act and for which the taxpayer failed to file a return and
6 failed to apply for amnesty, an amount equal to 25 percent of the total amount of unpaid tax
7 that is otherwise due shall be added to the amount of outstanding tax liability.

8 (2) If, following the closure of the amnesty period specified in section 2 of this 2009 Act,
9 the Department of Revenue issues a notice of deficiency with respect to an unreported or
10 underreported tax liability, as shown on an original or amended tax return filed in conjunc-
11 tion with an amnesty application filed under section 2 of this 2009 Act, an amount equal to
12 25 percent of the total amount of unpaid tax that is otherwise due shall be added to the
13 amount of outstanding tax liability.

14 (3) The penalties imposed under this section are in addition to and not in lieu of any
15 other penalty.

16 **SECTION 5.** Sections 1 to 4 of this 2009 Act are repealed on January 2, 2014.

17 **SECTION 6.** Sections 1 to 4 of this 2009 Act are added to and made a part of ORS chapter
18 314.

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20 **WITHHOLDING**

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22 **SECTION 7.** ORS 316.189 is amended to read:

23 316.189. (1) As used in this section:

24 (a) “Commercial annuity” means an annuity, endowment or life insurance contract issued by an
25 insurance company authorized to transact insurance in the State of Oregon.

26 (b) “Department” means the Oregon Department of Revenue.

27 (c) “Designated distribution” means any distribution or payment from or under an employer de-
28 ferred compensation plan, an individual retirement plan or a commercial annuity. “Designated dis-
29 tribution” does not include any amount treated as wages as defined in ORS 316.162, the portion of
30 any distribution or payment that is not includable in the gross income of the recipient or any dis-
31 tribution or payment made under section 404(k)(2) of the Internal Revenue Code.

32 (d) “Employer deferred compensation plan” means any pension, annuity, profit-sharing or stock
33 bonus plan or other plan deferring the receipt of compensation.

34 (e) “Individual retirement plan” means an individual retirement account described in section
35 408(a) of the Internal Revenue Code or an individual retirement annuity described in section 408(b)
36 of the Internal Revenue Code.

37 (f) “Nonperiodic distribution” means any designated distribution which is not a periodic pay-
38 ment.

39 (g) “Payer” means any payer of a designated distribution doing business in or making payments
40 or distributions from sources in this state.

41 (h) “Periodic payment” means a designated distribution which is an annuity or similar periodic
42 payment.

43 (i) “Plan administrator” means a plan administrator as described in section 414(g) of the Internal
44 Revenue Code, who is the administrator of a plan created by an Oregon employer.

45 (j) “Qualified total distribution” means any designated distribution made under a retirement,

1 annuity or deferred compensation plan described in section 401(a), 403(a) or 457(b) of the Internal
2 Revenue Code, that consists of the balance to the credit of the employee, exclusive of accumulated
3 deductible employee contributions, made within one tax year of the recipient.

4 (2)(a) The payer of any periodic payment shall withhold from [such] **the** payment the amount
5 [which] **that** would be required to be withheld from [such] **the** payment under ORS 316.167 if the
6 payment were wages paid by an employer to an employee. The time and manner of payment of
7 withheld amounts to the department shall be the same as that required under ORS 316.197 for
8 withholding of income taxes from wages.

9 (b) The payer of any nonperiodic distribution shall withhold from [such] **the** distribution an
10 amount determined under tables prescribed by the department.

11 (c) The maximum amount to be withheld under this section on any designated distribution shall
12 not exceed 10 percent of the amount of money and the fair market value of other property received
13 in the distribution. If the distribution is not subject to withholding for federal income tax purposes
14 under section 3405 of the Internal Revenue Code, it shall not be subject to withholding under this
15 section.

16 (3)(a) Except as provided in paragraph (b) of this subsection, the payer of a designated distrib-
17 ution shall withhold and be liable for payment of amounts required to be withheld under this section.

18 (b) In the case of any plan described in section 401(a), 403(a) or 457(b) of the Internal Revenue
19 Code, or section 301(d) of the Tax Reduction Act of 1975, the plan administrator shall withhold and
20 be liable for payment of amounts required to be withheld under this section, unless the plan ad-
21 ministrator has directed the payer to withhold the tax and has provided the payer with the infor-
22 mation required by rule of the department.

23 (4)(a) An individual may elect to have no withholding by a payer under subsection (2) of this
24 section. If an individual has elected to have no federal withholding from payments or distributions
25 described in this section the individual shall be deemed to have elected no withholding for state
26 purposes, unless the individual notifies the payer otherwise.

27 (b) An election made under this subsection shall be effective as provided under rules
28 promulgated by the department. The rules required under this paragraph shall provide the manner
29 in which an election may be revoked and when such revocation shall be effective.

30 (c) **An election may not be made under this subsection with respect to any distribution**
31 **for which federal income taxes are to be withheld or are required to be withheld under sec-**
32 **tion 3405 of the Internal Revenue Code.**

33 (5) The payer of any periodic payment or nonperiodic distribution **for which an election may**
34 **be made under subsection (4) of this section** shall give notice to the payee of the right to make
35 [an election to have no state withholding from the payment or distribution] **the election.** The depart-
36 ment shall provide by rule for the time and manner of giving the notice required under this sub-
37 section.

38 (6) Any rules permitted or required to be promulgated by the department under this section
39 shall, insofar as is practicable, be consistent with corresponding provisions of section 3405 of the
40 Internal Revenue Code and regulations promulgated thereunder.

41 (7) Any designated distribution shall be treated as if it were wages paid by an employer to an
42 employee within the meaning of ORS 316.162 to 316.221 for all other purposes of ORS 316.162 to
43 316.221. In the case of any designated distribution not subject to withholding by reason of an
44 election under subsection (4) of this section, the amount withheld shall be treated as zero.

45 **SECTION 8. The amendments to ORS 316.189 by section 7 of this 2009 Act apply to dis-**

1 tributions made on or after January 1, 2010.

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3 **APPROPRIATION**

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5 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-
6 ated to the Department of Revenue, for the biennium beginning July 1, 2009, out of the
7 General Fund, the amount of \$625,000, which may be expended for the purposes of sections
8 1 to 4 of this 2009 Act.

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10 **CAPTIONS**

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12 **SECTION 10.** The unit captions used in this 2009 Act are provided only for the conven-
13 ience of the reader and do not become part of the statutory law of this state or express any
14 legislative intent in the enactment of this 2009 Act.

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16 **EFFECTIVE DATE**

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18 **SECTION 11.** This 2009 Act takes effect on the 91st day after the date on which the
19 regular session of the Seventy-fifth Legislative Assembly adjourns sine die.