

**House Revenue Committee
February 21, 2011
Discussion related to HB 2560**

Officer Liability Provisions

316.207 Liability for tax; warrant for collection; conference; appeal. (1) Every employer who deducts and retains any amount under ORS 316.162 to 316.221 shall hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided in ORS 316.162 to 316.221.

(2) At any time the employer fails to remit any amount withheld, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued, recorded and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

(3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member described in ORS 316.162 (3)(b) of such employer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of liability is received by the department within 30 days after the notice of liability has been mailed, the notice of liability becomes final. In such event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(4)(a) In the case of a failure to file a withholding tax report on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member described in ORS 316.162 (3)(b) any time within three years after the assessment of an employer described in ORS 316.162 (3)(a). The time of assessment against such officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment, and if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a

conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In such event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of withheld taxes.

(b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer or employee of a corporation may be held jointly and severally liable for payment of withheld taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.

(c) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of withheld taxes to the department. If any person notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's determination shall be binding on all persons notified and required to appear under this subsection.

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any person determined to be liable for unpaid withholding taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any officer, employee or member who may be held jointly and severally liable for the payment of withheld taxes. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court such information as was presented before the department, as well as such other information as may be presented to the court.

(B) The court may determine that one or more persons impleaded under this paragraph are liable for unpaid withholding taxes without regard to any earlier determination by the department that an impleaded person was not liable for unpaid withholding taxes.

(C) If any person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. All such evidence shall constitute a public record and shall be available to the parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of the tax court shall be binding on all persons made parties to the action under this subsection.

(e) Nothing in this section shall be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unpaid withholding taxes. [1969 c.493 §33; 1985 c.406 §4; 1989 c.423 §3; 1993 c.593 §6; 1995 c.650 §38; 1997 c.839 §17; 2001 c.660 §42; 2005 c.688 §4]

Payroll Tax Provisions

267.385 Employer payroll tax; collection; enforcement. (1) To carry out the powers granted by ORS 267.010 to 267.390, a district may by ordinance impose an excise tax on every employer equal to not more than eight-tenths of one percent of the wages paid with respect to the employment of individuals. For the same purposes, a district may by ordinance impose a tax on each individual equal to not more than eight-tenths of one percent of the individual's net earnings from self-employment.

(2) No employer shall make a deduction from the wages of an employee to pay all or any portion of a tax imposed under this section.

(3) The provisions of ORS 305.620 are applicable to collection, enforcement, administration and distribution of a tax imposed under this section.

(4) At any time an employer or individual fails to remit the amount of taxes when due under an ordinance of the district board imposing a tax under this section, the Department of Revenue may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued and may be enforced in the same manner and have the same force and effect as prescribed with respect to warrants for the collection of delinquent state income taxes.

(5) Any ordinance adopted under subsection (1) of this section shall require an individual having net earnings from self-employment from activity both within and without the district taxable by the State of Oregon to allocate and apportion such net earnings to the district in the manner required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675. Such ordinance shall give the individual the option of apportioning income based on a single factor designated by the ordinance.

(6) Any ordinance adopted under subsection (1) of this section with respect to net earnings from self-employment may impose a tax for a taxable year measured by each individual's net earnings from self-employment for the prior taxable year, whether such prior taxable year begins before or after November 1, 1981, or such ordinance.

(7) Any ordinance imposing a tax authorized by subsection (1) of this section shall not apply to any business, trade, occupation or profession upon which a tax is imposed under ORS 267.360.

(8) The district board may not adopt an ordinance increasing a tax authorized by subsection (1) of this section unless the board makes a finding that the economy in the district has recovered to an extent sufficient to warrant the increase in tax. In making the finding, the board shall consider regional employment and income growth. [1969 c.643 §35; 1981 c.907 §3; 2003 c.576 §197; 2003 c.739 §7; 2009 c.253 §1]

