

# House Bill 2557

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on 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**.

Authorizes collection agencies engaged by Department of Revenue to collect delinquent taxes and to issue tax warrants, liens and writs of attachment and garnishment. Applies to inheritance tax, income and excise tax, timber tax, cigarette and tobacco tax, oil and gas tax and miscellaneous taxes.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax compliance; amending ORS 18.854, 118.230, 305.850, 314.430, 320.080, 321.570, 323.390,  
3 323.610 and 324.190; and prescribing an effective date.

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

5 **SECTION 1.** ORS 305.850 is amended to read:

6 305.850. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Direc-  
7 tor of the Department of Revenue may engage the services of a collection agency to collect any  
8 taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by  
9 ORS chapter 118, 310, 314, 316, 317, 318, 321 or 323 or ORS 320.005 to 320.150 and any other tax  
10 laws administered by the Department of Revenue. The director may engage the services of a col-  
11 lection agency by entering into an agreement to pay reasonable charges on a contingent fee or other  
12 basis.

13 (2) The director shall cause to be collected, in the same manner as provided in subsection (1)  
14 of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected  
15 pursuant to this subsection shall be credited as provided in ORS 293.250.

16 (3) The director may assign to the collection agency, for collection purposes only, any of the  
17 taxes, penalties, interest and moneys due the state.

18 (4) The collection agency may bring such action or take such proceedings, **as may be neces-**  
19 **sary**, including but not limited to:

20 (a) Attachment and garnishment proceedings[, *as may be necessary*.]; **and**

21 (b) **Issuing a warrant or lien as provided in ORS 314.430, 320.080, 321.570, 323.390, 323.610**  
22 **or 324.190.**

23 **SECTION 2.** ORS 118.230 is amended to read:

24 118.230. (1) Every tax imposed by ORS 118.005 to 118.840 is a lien upon the property embraced  
25 in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property  
26 is transferred, and the personal representatives and trustees of every estate embracing such prop-  
27 erty are personally liable for such tax until its payment, to the extent of the value of such property.

28 (2) Taxes imposed under ORS 118.005 to 118.840 may be assessed and collected by the Depart-  
29 ment of Revenue in the same manner as income taxes are assessed and collected under ORS chapter

**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.

1 314. The department **or a collection agency engaged by the department under ORS 305.850** may  
 2 issue a warrant as provided in ORS 314.430 and record the warrant in the County Clerk Lien Record  
 3 maintained under ORS 205.130. A warrant issued under this section has the same force and effect  
 4 as a warrant issued under ORS 314.430.

5 **SECTION 3.** ORS 314.430 is amended to read:

6 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax  
 7 is not paid within 30 days after the date that the written notice and demand for payment required  
 8 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-  
 9 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and  
 10 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-  
 11 ulations promulgated by the department, the department **or a collection agency engaged by the**  
 12 **department under ORS 305.850** may issue a warrant directed to the sheriff of any county of the  
 13 state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer  
 14 found within that county, for the payment of the amount of the tax, with the added penalties, in-  
 15 terest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant  
 16 to the department **or collection agency** and pay to it the money collected by virtue thereof by a  
 17 time to be therein specified, not less than 60 days from the date of the warrant. A copy of the  
 18 warrant shall be mailed or delivered to the taxpayer by the department **or collection agency** at the  
 19 taxpayer's last-known address.

20 (2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of  
 21 the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the  
 22 name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and  
 23 penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the  
 24 amount of the warrant so recorded shall become a lien upon the title to and interest in property  
 25 of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The  
 26 sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same  
 27 manner prescribed by law in respect to executions issued against property upon judgment of a court  
 28 of record, and shall be entitled to the same fees for services in executing the warrant, to be added  
 29 to and collected as a part of the warrant liability.

30 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
 31 and directed to any agent authorized to collect taxes, and in the execution thereof the agent shall  
 32 have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in ex-  
 33 cess of actual expenses paid in the performance of such duty.

34 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 35 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 36 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record  
 37 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

38 **SECTION 4.** ORS 320.080 is amended to read:

39 320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by  
 40 ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment  
 41 required under ORS 305.895 is mailed, the Department of Revenue **or a collection agency engaged**  
 42 **by the department under ORS 305.850** shall issue a warrant directed to the sheriff of any county  
 43 of the state commanding the sheriff to levy upon and sell the real and personal property of the  
 44 person or persons named in the warrant and liable for the tax found within the county, for the  
 45 payment of the amount thereof with the added penalty and the cost of executing the warrant, and

1 to return the warrant to the department **or collection agency** and pay to it the money collected  
2 by virtue thereof by a time to be therein specified not more than 30 days from the date of the  
3 warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department **or**  
4 **collection agency** at the taxpayer's last-known address.

5 (2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of  
6 the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the  
7 names of the persons mentioned in the warrant, and the amount of the tax and penalty for which  
8 the warrant is issued and the date when such copy is recorded. Thereupon the amount of the war-  
9 rant so recorded shall become a lien upon the title to any interest in real property or personal  
10 property of the persons against whom it is issued in the same manner as a judgment that creates  
11 a judgment lien under ORS chapter 18. The sheriff shall thereupon proceed upon the same in all  
12 respects, with like effect and in the manner prescribed by law in respect to execution issued against  
13 property upon judgment of a court of record, and the sheriff is entitled to the same fees for services  
14 in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied  
15 in full, the department shall have the same remedies to enforce the claim for taxes as if the people  
16 of the state had recovered judgment for the amount of the tax.

17 **SECTION 5.** ORS 321.570 is amended to read:

18 321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700 to  
19 321.754, or any portion of the tax, is not paid within 30 days after the date that the written notice  
20 and demand for payment required under ORS 305.895 is mailed, the Department of Revenue **or a**  
21 **collection agency engaged by the department under ORS 305.850** may issue a warrant, directed  
22 to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and  
23 personal property of the taxpayer owning the same, found within that county, for the payment of the  
24 amount of the tax, with the added penalties, interest and cost of executing the warrant, and to re-  
25 turn the warrant to the department **or collection agency** and to pay to it the money collected from  
26 the sale, within 60 days after receipt of the warrant. A copy of the warrant shall be mailed or de-  
27 livered to the taxpayer by the department **or collection agency** at the taxpayer's last-known ad-  
28 dress.

29 (2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the  
30 county clerk, and the clerk shall immediately enter in the County Clerk Lien Record the name of  
31 the taxpayer mentioned in the warrant, and the amount of the tax or portion of the tax and penalties  
32 for which the warrant is issued and the date when the copy is recorded. The amount of the warrant  
33 so recorded shall become a lien upon the title to and interest in real property of the taxpayer  
34 against which it is issued, in the same manner as a judgment that creates a judgment lien under  
35 ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with like  
36 effect, and in the same manner prescribed by law in respect to executions issued against property  
37 upon judgments of a court of record, and shall be entitled to the same fees for services in executing  
38 the warrant, to be added to and collected as a part of the warrant liability.

39 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
40 and directed to any agent authorized to collect this tax. In the execution of the warrant, such agent  
41 has the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess  
42 of actual expenses paid in the performance of such duty.

43 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
44 to enforce the claim for taxes against the taxpayer as if the state had a recorded judgment against  
45 the taxpayer for the amount of the tax.

**SECTION 6.** ORS 323.390 is amended to read:

323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the department **or a collection agency engaged by the department under ORS 305.850** shall:

(a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds \$10.

(b) Issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department **or collection agency** and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties and interest for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

**SECTION 7.** ORS 323.610 is amended to read:

323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not paid within the time provided by law and no provision is made to secure the payment of the tax by bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department **or a collection agency engaged by the department under ORS 305.850** may issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within the county, for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the department **or collection agency** and pay to it the money collected from the sale, within 60 days after the date of receipt of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and penalties for which the warrant is issued and the date the copy is recorded. The amount

1 of the warrant so recorded shall become a lien upon the title to and interest in real property of the  
 2 taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien  
 3 under ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with  
 4 like effect and in the same manner prescribed by law in respect to executions issued against prop-  
 5 erty upon judgment of a court of record, and shall be entitled to the same fees for services in exe-  
 6 cuting the warrant, to be added to and collected as a part of the warrant liability.

7 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
 8 and directed to any agent authorized to collect the taxes imposed by ORS 323.500 to 323.645. In the  
 9 execution of the warrant, the agent shall have all the powers conferred by law upon sheriffs, but is  
 10 entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

11 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 12 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 13 judgment against the taxpayer for the amount of the tax.

14 **SECTION 8.** ORS 324.190 is amended to read:

15 324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30  
 16 days after the date that the written notice and demand for payment required under ORS 305.895 is  
 17 mailed, the Department of Revenue **or a collection agency engaged by the department under**  
 18 **ORS 305.850** shall issue a warrant, directed to the sheriff of any county of the state, commanding  
 19 the sheriff to levy upon and sell the real and personal property of the person owing the tax, found  
 20 within that county, for the payment in the amount thereof, with the added penalties, interest and  
 21 cost of executing the warrant, and to return the warrant to the department **or collection agency**  
 22 and to pay to it the money collected by virtue thereof, within 60 days after receipt of the warrant.  
 23 A copy of the warrant shall be mailed or delivered to the taxpayer by the department **or collection**  
 24 **agency** at the taxpayer's last-known address.

25 (2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the  
 26 county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the  
 27 person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for  
 28 which the warrant is issued and the date when the copy is recorded. Thereupon the amount of the  
 29 warrant so recorded shall become a lien upon the title to and interest in real property of the person  
 30 against which it is issued, in the same manner as a judgment that creates a judgment lien under  
 31 ORS chapter 18. The sheriff thereupon shall proceed upon the warrant in all respects, with like ef-  
 32 fect, and in the same manner prescribed by law in respect to executions issued against property  
 33 upon judgments of a court of records, and shall be entitled to the same fees for services in executing  
 34 the warrant, to be added to and collected as a part of the warrant liability.

35 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
 36 and directed to any agent of the department authorized by it to collect this tax. In the execution  
 37 of the warrant, such agent has the powers conferred by law upon sheriffs, but is entitled to no fee  
 38 or compensation in excess of actual expenses paid in the performance of such duty.

39 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 40 to enforce the claim for taxes against the owner as if the state had a recorded judgment against the  
 41 owner for the amount of the tax.

42 **SECTION 9.** ORS 18.854 is amended to read:

43 18.854. (1) Any state agency **or collection agency** authorized to issue warrants to collect taxes  
 44 and debts owed to the State of Oregon, including but not limited to warrants issued pursuant to ORS  
 45 179.655, 184.644, 267.385, 293.250, 314.430, 316.207, 320.080, 321.570, 323.390, 411.703, 657.396, 657.642,

1 657.646, 705.175 and 825.504, or any county tax collector authorized to issue warrants to collect  
2 taxes and debts owed to the county pursuant to ORS 311.625, may garnish property of a debtor in  
3 the possession, control or custody of a person other than the debtor by delivering to the person all  
4 of the following:

5 (a) A notice of garnishment;

6 (b) A warrant, or a true copy of a warrant;

7 (c) The items specified in ORS 18.650 (1)(b) to (d); and

8 (d) Any garnishee's search fee payable as provided in ORS 18.790.

9 (2) A notice of garnishment may be issued by any person designated by the state agency, **by the**  
10 **collection agency** or by the county tax collector. A warrant need not be recorded in the County  
11 Clerk Lien Record as a condition of issuing a notice of garnishment under the provisions of this  
12 section. The provisions of ORS 18.800 do not apply to a notice of garnishment.

13 (3) If any of the items described in subsection (1) of this section are not delivered to the  
14 garnishee, a notice of garnishment shall not be effective to garnish any property of the debtor, and  
15 the garnishee shall not be required to respond to the garnishment and may proceed to deal with any  
16 property of the debtor as though the notice of garnishment had not been issued.

17 (4) Notwithstanding ORS 18.652, a notice of garnishment and the other items required by sub-  
18 section (1) of this section may be delivered in person by any employee of the state agency, **of the**  
19 **collection agency** or of the county tax collector authorized by the agency or the county to deliver  
20 the notice of garnishment, or by certified mail, return receipt requested. The employee need not be  
21 covered by the errors and omissions insurance required in ORS 18.652.

22 (5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need not be  
23 prepared or delivered for any notice of garnishment.

24 (6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the debtor  
25 that may be contained in a safe deposit box that is in the garnishee's possession, control or custody  
26 at the time of delivery of the notice of garnishment to the garnishee is conditioned upon the state  
27 agency, **the collection agency** or the county tax collector first paying to the garnishee, in addition  
28 to the search fee provided for in ORS 18.790, all reasonable costs incurred by the garnishee in  
29 gaining entry to the safe deposit box. The costs shall be paid to the garnishee by the state agency,  
30 **the collection agency** or the county tax collector at least five days before the date the state  
31 agency, **the collection agency** or the county tax collector takes possession of the property in the  
32 safe deposit box. If the state agency, **the collection agency** or the county tax collector fails to pay  
33 such costs to the garnishee within 20 days after the delivery of the garnishee response, the  
34 garnishment shall not be effective to garnish any property of the debtor that may be contained in  
35 the safe deposit box and the garnishee may proceed to deal with the safe deposit box and its con-  
36 tents as though the notice of garnishment had not been issued. Nothing in this subsection limits the  
37 rights of a state agency, **collection agency** or county tax collector to reach the contents of any safe  
38 deposit box in any manner otherwise provided by law.

39 (7) Except as provided in this section and ORS 18.855 and 18.857, all provisions of ORS 18.600  
40 to 18.850 apply to notices of garnishment. The state agency, **collection agency** or county tax col-  
41 lector shall modify the forms provided in ORS 18.600 to 18.850 as necessary to allow use of those  
42 forms for notices of garnishment. The form of the notice of garnishment must clearly indicate that  
43 the document is a notice of garnishment and must reflect the date of all warrants on which the  
44 notice of garnishment is based.

45 (8) The Attorney General may adopt model forms for notices of garnishment and other docu-

1 ments issued by state agencies and county tax collectors under this section and ORS 18.855 and  
2 18.857. There is a presumption, as described in ORS 40.120, that any state agency, **collection**  
3 **agency** or county tax collector that uses a model form adopted by the Attorney General under this  
4 subsection has complied with the requirements of ORS 18.600 to 18.850, and with the provisions of  
5 this section and ORS 18.855 and 18.857, with respect to the form of notices of garnishment.

6 **SECTION 10. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
7 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

8

---