

House Bill 2636

Sponsored by Representative ROBLAN (Pre-session filed.)

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**.

Establishes office of Taxpayer Ombudsman in Department of Revenue. Establishes functions, powers and duties of office. Requires Taxpayer Ombudsman to make quarterly reports to Director of Department of Revenue.

Appropriates moneys from General Fund to Department of Revenue for purposes of office.

Becomes operative January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a Taxpayer Ombudsman; creating new provisions; amending ORS 314.840; appropriating
3 money; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS chapter**
6 **305.**

7 **SECTION 2. (1) The office of the Taxpayer Ombudsman is established in the Department**
8 **of Revenue. The Governor shall appoint the Taxpayer Ombudsman for a four-year term.**

9 **(2) The Taxpayer Ombudsman may be removed for just cause by the Governor.**

10 **(3) The Taxpayer Ombudsman shall be a person of recognized judgment, objectivity and**
11 **integrity and shall have a background and experience in the area of taxation.**

12 **(4) The Taxpayer Ombudsman shall be paid a salary fixed by the Governor.**

13 **SECTION 3. (1) The office of the Taxpayer Ombudsman shall have the following func-**
14 **tions, powers and duties:**

15 **(a) To investigate and resolve complaints made by or on behalf of taxpayers that may**
16 **adversely affect taxpayers' rights or their relationship with the Department of Revenue.**

17 **(b) To identify areas in which taxpayers have problems in dealings with the department.**

18 **(c) To propose solutions, including administrative changes to practices and procedures**
19 **of the department.**

20 **(d) To collaborate with the department in the resolution of systemic problems experi-**
21 **enced by taxpayers.**

22 **(e) To recommend legislative action as may be appropriate to resolve problems encount-**
23 **ered by taxpayers.**

24 **(f) To preserve and promote the rights of the taxpayer.**

25 **(g) To promote open and direct communications between taxpayers and the department.**

26 **(h) To appoint such officers and employees as the office may require for the performance**
27 **of its duties.**

28 **(i) To undertake, participate in or cooperate with persons and agencies in conferences,**
29 **inquiries, meetings or studies that may enhance support for taxpayers in dealings with the**

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 **department.**

2 (j) **To provide information to public agencies about the problems experienced by taxpay-**
 3 **ers.**

4 (k) **To widely publicize the Taxpayer Ombudsman's services, purpose and mode of opera-**
 5 **tion.**

6 (2) **The Taxpayer Ombudsman shall report quarterly to the Director of the Department**
 7 **of Revenue. The report shall include, but need not be limited to:**

8 (a) **A summary of the complaints filed with the office;**

9 (b) **A summary of the services provided by the office;**

10 (c) **Information on the resolution of the complaints; and**

11 (d) **Recommendations for systemic changes that will resolve problems experienced by**
 12 **taxpayers.**

13 **SECTION 4.** **The Taxpayer Ombudsman shall establish procedures to maintain the**
 14 **confidentiality of the records and files of taxpayers. The procedures must meet the following**
 15 **requirements:**

16 (1) **The Taxpayer Ombudsman may not disclose the identity of any taxpayer unless the**
 17 **taxpayer or the legal representative of the taxpayer consents in writing to the disclosure and**
 18 **specifies to whom the disclosure may be made.**

19 (2) **The identity of any taxpayer on whose behalf a complaint is made, or any individual**
 20 **providing information on behalf of the taxpayer, shall be confidential. If the complaint be-**
 21 **comes the subject of judicial proceedings, the investigative information held by the Taxpayer**
 22 **Ombudsman shall be disclosed for the purpose of the proceedings if requested by the court.**

23 **SECTION 5.** **In addition to and not in lieu of any other appropriation, there is appropri-**
 24 **ated to the Department of Revenue, for the biennium beginning July 1, 2011, out of the**
 25 **General Fund, the amount of \$_____, which may be expended for the office of the Taxpayer**
 26 **Ombudsman.**

27 **SECTION 6.** **ORS 314.840 is amended to read:**

28 314.840. (1) **The Department of Revenue may:**

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

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

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

37 (d) **Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social**
 38 **Security number, employer identification number or other taxpayer identification number to the ex-**
 39 **tent necessary in connection with collection activities or the processing and mailing of correspond-**
 40 **ence or of forms for any report, return or claim required in the administration of ORS 310.630 to**
 41 **310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net in-**
 42 **come.**

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

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

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

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

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

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

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

15 (B) For use by an officer or employee of the Oregon Department of Administrative Services duly
 16 authorized or employed to prepare revenue estimates, or a person contracting with the Oregon De-
 17 partment of Administrative Services to prepare revenue estimates, in the preparation of revenue
 18 estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for sub-
 19 mission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee
 20 on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445.
 21 The Department of Revenue shall disclose and give access to the information described in ORS
 22 314.835 for the purposes of this subparagraph only if:

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

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

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

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

35 (A) A state;

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

37 (C) The District of Columbia; or

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

40 (d) The Multistate Tax Commission or its authorized representatives, for tax administration and
 41 compliance purposes only. The Multistate Tax Commission may make the information available to
 42 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
 43 governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

44 (e) The Attorney General, assistants and employees in the Department of Justice, or other legal
 45 representative of the State of Oregon, to the extent the department deems disclosure or access

1 necessary for the performance of the duties of advising or representing the department pursuant to
2 ORS 180.010 to 180.240 and the tax laws of this state.

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

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

12 (h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS
13 173.850. Such officer or representative shall not remove from the premises of the department any
14 materials that would reveal the identity of any taxpayer or any other person.

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

19 (j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
20 or person to whom disclosure or access is given by state law and not otherwise referred to in this
21 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
22 section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to
23 ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district
24 attorney regarding cases for which they are providing support enforcement services under ORS
25 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of
26 Accountancy, pursuant to ORS 673.415.

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

30 (A) Identification numbers.

31 (B) Names and addresses.

32 (C) Inception date as employer.

33 (D) Nature of business.

34 (E) Entity changes.

35 (F) Date of last payroll.

36 (L) The Director of Human Services to determine that a person has the ability to pay for care
37 that includes services provided by the Eastern Oregon Training Center or the Department of Human
38 Services to collect any unpaid cost of care as provided by ORS chapter 179.

39 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
40 pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon
41 State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by
42 ORS chapter 179.

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

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

4 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
 5 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
 6 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
 7 refund amount.

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

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

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

18 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
 19 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
 20 lowing criminal activities:

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

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

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

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

36 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
 37 314.843.

38 **(v) The Taxpayer Ombudsman, only at the request of the taxpayer and only to the extent**
 39 **necessary to carry out the purposes of sections 2 to 4 of this 2011 Act.**

40 (3)(a) Each officer or employee of the department and each person described or referred to in
 41 subsection (2)(a), (e) to (k) or (n) to (q) of this section to whom disclosure or access to the tax in-
 42 formation is given under subsection (2) of this section or any other provision of state law, prior to
 43 beginning employment or the performance of duties involving such disclosure or access, shall be
 44 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-
 45 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a

1 certificate for the department, in a form prescribed by the department, stating in substance that the
 2 person has read these provisions of law, that the person has had them explained and that the person
 3 is aware of the penalties for the violation of ORS 314.835.

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

8 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-
 9 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
 10 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of
 11 this section;

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

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

17 (4) The Department of Revenue may recover the costs of furnishing the information described
 18 in subsection (2)(k) to (m) and (o) to (q) of this section from the respective agencies.

19 **SECTION 7. Sections 2 to 4 of this 2011 Act and the amendments to ORS 314.840 by sec-**
 20 **tion 6 of this 2011 Act become operative January 1, 2012.**

21 **SECTION 8. This 2011 Act takes effect on the 91st day after the date on which the 2011**
 22 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

23