

House Bill 3216

Sponsored by Representative BARKER (at the request of Department of Justice)

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**.

Allows Attorney General to issue order disqualifying charitable organization from receiving contributions that are deductible for purpose of Oregon income tax and corporate excise tax if Attorney General finds that charitable organization has failed to expend at least 30 percent of total annual functional expenses on program services when those expenses are averaged over most recent three fiscal years. Provides that Attorney General may decline to issue disqualification order if certain mitigating circumstances exist. Specifies exempt organizations.

Imposes mandatory disclosure requirements for charitable organizations subject to disqualification order. Requires Attorney General to publish on Internet and otherwise make available list of charitable organizations that are subject to disqualification orders.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to regulation of charitable organizations; and prescribing an effective date.

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

SECTION 1. Sections 2 to 5 of this 2011 Act are added to and made a part of ORS 128.610 to 128.750.

SECTION 2. (1) The Attorney General may issue an order disqualifying a charitable organization from receiving contributions that are deductible as charitable donations for the purpose of Oregon income tax and corporate excise tax if the Attorney General finds that the organization has failed to expend at least 30 percent of the organization's total annual functional expenses on program services when those expenses are averaged over the most recent three fiscal years for which the Attorney General has reports containing expense information. The calculation of program services expenses and total functional expenses shall be based on the amounts of program services expenses and total functional expenses identified by the organization in the organization's Internal Revenue Service Form 990 return or other Internal Revenue Service return required to be filed as part of the organization's report to the Attorney General.

(2) A charitable organization may request a contested case hearing within 60 days after notification from the Attorney General that the Attorney General proposes to issue a disqualification order under this section. Notwithstanding a finding that the charitable organization's program services expenses fall below the minimum percentage specified in subsection (1) of this section, the Attorney General may decline to issue a disqualification order if the organization establishes:

(a) That the organization made payments to affiliates that should be considered in calculating the organization's program services expenses;

(b) That the organization is accumulating revenue for a specific program purpose consistent with representations in solicitations; or

(c) Such other mitigating circumstances as may be identified by the Attorney General

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 by rule.

2 (3) A disqualification order under this section remains in effect until such time as the
 3 charitable organization submits sufficient information to the Attorney General to demon-
 4 strate that the organization's program services expenses meet the minimum percentage
 5 specified in subsection (1) of this section. A charitable organization may submit information
 6 under this subsection no earlier than one year after the disqualification order becomes final,
 7 and may not submit information under this subsection more than once each year after the
 8 initial submission is made. The information submitted under this subsection must include
 9 all Internal Revenue Service Form 990 returns, or equivalent Internal Revenue Service re-
 10 turns, filed by the organization after the disqualification order became final.

11 (4) A disqualification order under this section may not be issued to:

12 (a) A private foundation as defined in section 509 of the Internal Revenue Code, as in
 13 effect on the effective date of this 2011 Act;

14 (b) A community trust or foundation operating as described in 26 C.F.R. 1.170A-9(f)(10)
 15 and (11), as in effect on the effective date of this 2011 Act;

16 (c) A qualified charitable remainder trust described in section 664 of the Internal Re-
 17 venue Code, as in effect on the effective date of this 2011 Act;

18 (d) An organization that does not qualify to receive tax deductible contributions;

19 (e) An organization that is not required to file annual reports with the Attorney General;

20 (f) An organization that is not required to file an Internal Revenue Service Form 990
 21 return or an equivalent Internal Revenue Service return;

22 (g) An organization that receives less than 50 percent of the organization's total annual
 23 revenues from contributions or grants identified in accordance with Internal Revenue Ser-
 24 vice Form 990 or an equivalent form; and

25 (h) An organization that has been in existence for less than four years.

26 **SECTION 3.** (1) When a disqualification order issued under sections 2 to 5 of this 2011
 27 Act becomes effective, the charitable organization named in the order shall provide a dis-
 28 closure as described in this section in all solicitations made by the organization to persons
 29 in Oregon. The disclosure must clearly and conspicuously state that contributions to the
 30 organization are not deductible as charitable donations for Oregon income tax purposes. The
 31 disclosure also must appear in any written document provided to a donor acknowledging the
 32 donation or referring to the amount of the donation. The Attorney General may specify ad-
 33 ditional disclosure requirements by rule.

34 (2) Failure to provide the disclosures required by this section is a false or misleading
 35 representation for the purposes of ORS 128.886.

36 **SECTION 4.** (1) When a disqualification order issued under sections 2 to 5 of this 2011
 37 Act becomes effective, the Attorney General shall publish on the Internet and otherwise
 38 make publicly available information identifying the charitable organization named in the or-
 39 der, the date that the order became effective and the date that the information was published
 40 on the Internet.

41 (2) At least once every year the Attorney General shall file a written report with the
 42 Department of Revenue that:

43 (a) Identifies all charitable organizations that are subject to disqualification orders dur-
 44 ing the period covered by the report;

45 (b) The date the disqualification orders became effective;

1 (c) The date that information required by subsection (1) of this section was published on
2 the Internet for each order; and

3 (d) The methods by which the public can obtain a listing of charitable organizations that
4 are subject to disqualification orders.

5 SECTION 5. The Attorney General may adopt all rules necessary for the implementation
6 of sections 2 to 5 of this 2011 Act.

7 SECTION 6. Section 7 of this 2011 Act is added to and made a part of ORS chapter 316.

8 SECTION 7. (1) Except as provided in subsection (2) of this section, in addition to any
9 other modification to federal taxable income under this chapter there shall be added to fed-
10 eral taxable income the amount of any charitable contribution that:

11 (a) Is allowed as a deduction for federal tax purposes for the tax year under section 170
12 of the Internal Revenue Code;

13 (b) Is attributable to a contribution to a charitable organization that is the subject of a
14 disqualification order issued under sections 2 to 5 of this 2011 Act; and

15 (c) Was made to the charitable organization more than 30 days after the date of Internet
16 publication of information relating to the disqualification order under section 4 of this 2011
17 Act.

18 (2) Charitable contributions described in subsection (1) of this section shall not be added
19 to federal taxable income if the taxpayer provides to the Department of Revenue a written
20 document that the taxpayer received from the organization to which the contribution was
21 made that:

22 (a) Acknowledges receipt of the contribution by the organization; and

23 (b) Does not include the disclosure required by section 3 of this 2011 Act.

24 SECTION 8. Section 9 of this 2011 Act is added to and made a part of ORS chapter 317.

25 SECTION 9. (1) Except as provided in subsection (2) of this section, in addition to any
26 other modification to federal taxable income under this chapter there shall be added to fed-
27 eral taxable income the amount of any charitable contribution that:

28 (a) Is allowed as a deduction for federal tax purposes for the tax year under section 170
29 of the Internal Revenue Code;

30 (b) Is attributable to a contribution to a charitable organization that is the subject of a
31 disqualification order issued under sections 2 to 5 of this 2011 Act; and

32 (c) Was made to the charitable organization more than 30 days after the date of Internet
33 publication of information relating to the disqualification order under section 4 of this 2011
34 Act.

35 (2) Charitable contributions described in subsection (1) of this section shall not be added
36 to federal taxable income if the taxpayer provides to the Department of Revenue a written
37 document that the taxpayer received from the organization to which the contribution was
38 made that:

39 (a) Acknowledges receipt of the contribution by the organization; and

40 (b) Does not include the disclosure required by section 3 of this 2011 Act.

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