

A-Engrossed
House Bill 4041

Ordered by the House February 13
Including House Amendments dated February 13

Introduced and printed pursuant to House Rule 12.00. 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.

Exempts from taxation property owned exclusively by eligible Indian tribe or by entity wholly owned by eligible Indian tribe if property is used exclusively for certain government services.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of Indian tribe property; creating new provisions; amending ORS 307.112,
3 307.162 and 307.181; and prescribing an effective date.

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

5 **SECTION 1.** ORS 307.181 is amended to read:

6 307.181. (1) Land acquired by an Indian tribe by purchase, gift or without consideration is ex-
7 empt from taxation if:

8 (a) The land is located within the ancient tribal boundaries of the tribe; and

9 (b) Acquisition of the land by the United States in trust status has been requested or is in pro-
10 cess.

11 (2) The exemption under **subsection (1) of** this section ceases if the federal government enters
12 a final administrative determination denying the request for acquisition of the land in trust status
13 and:

14 (a) The deadlines for all available federal administrative appeals and federal judicial review ex-
15 pire with no appeal or review initiated; or

16 (b) All federal administrative and judicial proceedings arising from or related to the request for
17 or process of acquisition of the land in trust status that have been initiated are completed without
18 overturning the administrative denial of the request.

19 **(3)(a) Notwithstanding subsections (1) and (2) of this section, property that is owned ex-**
20 **clusively by an eligible Indian tribe or by an entity wholly owned by an eligible Indian tribe,**
21 **or a portion of the property, is exempt from taxation if the property, or the portion of the**
22 **property, respectively, is used exclusively for government services.**

23 **(b) Property described in paragraph (a) of this subsection that may be exempt from tax-**
24 **ation as property used exclusively for low income rental housing includes, without limitation,**
25 **property that:**

26 **(A) Is held under lease or a lease purchase agreement by an eligible Indian tribe;**

27 **(B)(i) Is the property of a partnership, nonprofit corporation or limited liability company**

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 of which an eligible Indian tribe is a general partner, limited partner, director, member,
2 manager or general manager; and

3 (ii) Is leased or rented to low income persons for housing purposes; or

4 (C) Is used exclusively for an activity that qualifies as an affordable housing activity
5 under 25 U.S.C. 4132.

6 (c) Property described in paragraph (a) of this subsection may not be exempt from taxa-
7 tion as property that is used exclusively for low income rental housing unless:

8 (A) The requirements of ORS 307.543 have been satisfied;

9 (B) The property is offered for rent or is held for the purpose of developing low income
10 rental housing;

11 (C) If occupied, the property is occupied solely by low income persons; and

12 (D) The property is located in a county in which more than 10 percent of the enrolled
13 members of the eligible Indian tribe reside.

14 (4) As used in this section:

15 (a) "Eligible Indian tribe" means the Burns Paiute Tribe, the Confederated Tribes of
16 Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde
17 Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated
18 Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs Reser-
19 vation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians
20 or the Klamath Tribes.

21 (b) "Government services" means services provided by an eligible Indian tribe that:

22 (A) Are equivalent to services that a state or local government or the federal govern-
23 ment customarily provides to its citizens;

24 (B) Are related to:

25 (i) Tribal administration;

26 (ii) Tribal facilities or tribal health facilities;

27 (iii) Elementary or secondary education or higher education, including community col-
28 leges;

29 (iv) Transportation;

30 (v) Fire or police;

31 (vi) Low income rental housing;

32 (vii) Utility services provided to an Indian reservation or to land held in trust by the
33 United States for the benefit of an eligible Indian tribe; or

34 (viii) Cemeteries; and

35 (C) Other than services related to the uses of property described in subsection (3)(c) of
36 this section, do not generate income.

37 (c) "Low income":

38 (A) Means income at or below 60 percent of the area median income as determined by
39 the State Housing Council based on information from the United States Department of
40 Housing and Urban Development.

41 (B) For purposes of projects undertaken pursuant to the Native American Housing As-
42 sistance and Self-Determination Act of 1996 (P.L. 104-330), includes income that qualifies
43 under 24 C.F.R. 5.609.

44 (d) "Utility services" means services related to sanitation, sewer, storm drainage and
45 water.

1 **SECTION 2.** ORS 307.112 is amended to read:

2 307.112. (1) Real or personal property of a taxable owner held under lease, sublease or lease-
3 purchase agreement by an institution, organization or public body, other than the State of Oregon,
4 granted exemption or the right to claim exemption for any of its property under ORS 307.090,
5 307.130, 307.136, 307.140, 307.145 [or], 307.147 **or 307.181 (3)**, is exempt from taxation if:

6 (a) The property is used by the lessee or, if the lessee is not in possession of the property, by
7 the entity in possession of the property, in the manner, if any, required by law for the exemption
8 of property owned, leased, subleased or being purchased by it; and

9 (b) It is expressly agreed within the lease, sublease or lease-purchase agreement that the rent
10 payable by the institution, organization or public body has been established to reflect the savings
11 below market rent resulting from the exemption from taxation.

12 (2) To obtain the exemption under this section, the lessee or, if the lessee is not in possession
13 of the property, the entity in possession of the property, must file a claim for exemption with the
14 county assessor, verified by the oath or affirmation of the president or other proper officer of the
15 institution or organization, or head official of the public body or legally authorized delegate, show-
16 ing:

17 (a) A complete description of the property for which exemption is claimed.

18 (b) If applicable, all facts relating to the use of the property by the lessee or, if the lessee is
19 not in possession of the property, by the entity in possession of the property.

20 (c) A true copy of the lease, sublease or lease-purchase agreement covering the property for
21 which exemption is claimed.

22 (d) Any other information required by the claim form.

23 (3) If the assessor is not satisfied that the rent stated in the lease, sublease or lease-purchase
24 agreement has been established to reflect the savings below market rent resulting from the tax ex-
25 emption, before the exemption may be granted the lessor must provide documentary proof, as spec-
26 ified by rule of the Department of Revenue, that the rent has been established to reflect the savings
27 below market rent resulting from the tax exemption.

28 (4)(a) The claim must be filed on or before April 1 preceding the tax year for which the ex-
29 emption is claimed, except:

30 (A) If the lease, sublease or lease-purchase agreement is entered into after March 1 but not later
31 than June 30, the claim must be filed within 30 days after the date the lease, sublease or lease-
32 purchase agreement is entered into if exemption is claimed for that year; or

33 (B) If a late filing fee is paid in the manner provided in ORS 307.162 (2), the claim may be filed
34 within the time specified in ORS 307.162 (2).

35 (b) The exemption first applies for the tax year beginning July 1 of the year for which the claim
36 is filed.

37 (5)(a) An exemption granted under this section continues as long as the use of the property re-
38 mains unchanged and during the period of the lease, sublease or lease-purchase agreement.

39 (b) If the use changes, a new claim must be filed as provided in this section.

40 (c) If the use changes due to sublease of the property or any portion of the property from the
41 tax exempt entity described in subsection (1) of this section to another tax exempt entity, the entity
42 in possession of the property must file a new claim for exemption as provided in this section.

43 (d) If the lease, sublease or lease-purchase agreement expires before July 1 of any year, the ex-
44 emption terminates as of January 1 of the same calendar year.

45 **SECTION 3.** ORS 307.162 is amended to read:

1 307.162. (1)(a) Before any real or personal property may be exempted from taxation under ORS
2 307.115, 307.118, 307.130 to 307.140, 307.145, 307.147, 307.150, 307.160, **307.181 (3)** or 307.580 for any
3 tax year, the institution or organization entitled to claim the exemption must file a claim with the
4 county assessor, on or before April 1 preceding the tax year for which the exemption is claimed.
5 The claim must contain statements, verified by the oath or affirmation of the president or other
6 proper officer of the institution or organization, that:

7 (A) List all real property claimed to be exempt and show the purpose for which the real property
8 is used; and

9 (B) Cite the statutes under which exemption for personal property is claimed.

10 (b) If the ownership of all property included in the claim filed with the county assessor for a
11 prior year remains unchanged, a new claim is not required.

12 (c) When the property designated in the claim for exemption is acquired after March 1 and be-
13 fore July 1, the claim for that year must be filed within 30 days from the date of acquisition of the
14 property.

15 (2)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section for
16 the current tax year:

17 (A) On or before December 31 of the tax year, if the claim is accompanied by a late filing fee
18 of the greater of \$200, or one-tenth of one percent of the real market value as of the most recent
19 assessment date of the property to which the claim pertains.

20 (B) On or before April 1 of the tax year, if the claim is accompanied by a late filing fee of \$200
21 and the claimant demonstrates good and sufficient cause for failing to file a timely claim, is a
22 first-time filer or is a public entity described in ORS 307.090.

23 (b)(A) Notwithstanding subsection (1) of this section, a claimant that demonstrates good and
24 sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described
25 in ORS 307.090 may file a claim under this section for the five tax years prior to the current tax
26 year:

27 (i) Within 60 days after the date on which the county assessor mails notice of additional taxes
28 owing under ORS 311.206 for the property to which the claim filed under this subparagraph pertains;
29 or

30 (ii) At any time if no notice is mailed.

31 (B) A claim filed under this paragraph must be accompanied by a late filing fee of the greater
32 of \$200, or one-tenth of one percent of the real market value as of the most recent assessment date
33 of the property to which the claim pertains, multiplied by the number of prior tax years for which
34 exemption is claimed.

35 (c) If a claim filed under this subsection is not accompanied by the late filing fee or if the late
36 filing fee is not otherwise paid, an exemption may not be allowed for the tax years sought by the
37 claim. A claim may be filed under this subsection notwithstanding that there are no grounds for
38 hardship as required for late filing under ORS 307.475.

39 (d) The value of the property used to determine the late filing fee under this subsection and the
40 determination of the county assessor relative to a claim of good and sufficient cause are appealable
41 in the same manner as other acts of the county assessor.

42 (e) A late filing fee collected under this subsection must be deposited in the county general fund.

43 (3) As used in this section:

44 (a) "First-time filer" means a claimant that:

45 (A) Has never filed a claim for the property that is the subject of the current claim; and

1 (B) Did not receive notice from the county assessor on or before December 1 of the tax year for
2 which exemption is claimed regarding the potential property tax liability of the property.

3 (b)(A) "Good and sufficient cause" means an extraordinary circumstance beyond the control of
4 the taxpayer or the taxpayer's agent or representative that causes the failure to file a timely claim.

5 (B) "Good and sufficient cause" does not include hardship, reliance on misleading information
6 unless the information is provided by an authorized tax official in the course of the official's duties,
7 lack of knowledge, oversight or inadvertence.

8 (c) "Ownership" means legal and equitable title.

9 (4)(a) Notwithstanding subsection (1) of this section, if an institution or organization owns
10 property that is exempt from taxation under a provision of law listed in subsection (1) of this section
11 and fails to file a timely claim for exemption under subsection (1) of this section for additions or
12 improvements to the exempt property, the additions or improvements may nevertheless qualify for
13 exemption.

14 (b) The organization must file a claim for exemption with the county assessor to have the addi-
15 tions or improvements to the exempt property be exempt from taxation. The claim must:

16 (A) Describe the additions or improvements to the exempt property;

17 (B) Describe the current use of the property that is the subject of the application;

18 (C) Identify the tax year and any preceding tax years for which the exemption is sought;

19 (D) Contain any other information required by the Department of Revenue; and

20 (E) Be accompanied by a late filing fee equal to the product of the number of tax years for
21 which exemption is sought multiplied by the greater of \$200 or one-tenth of one percent of the real
22 market value as of the most recent assessment date of the property that is the subject of the claim.

23 (c) Upon the county assessor's receipt of a completed claim and late filing fee, the assessor shall
24 determine for each tax year for which exemption is sought whether the additions or improvements
25 that are the subject of the claim would have qualified for exemption had a timely claim been filed
26 under subsection (1) of this section. Any property that would have qualified for exemption had a
27 timely claim been filed under subsection (1) of this section is exempt from taxation for each tax year
28 for which the property would have qualified.

29 (d) A claim for exemption under this subsection may be filed only for tax years for which the
30 time for filing a claim under subsections (1) and (2)(a) of this section has expired. A claim filed under
31 this subsection, however, may serve as the claim required under subsection (1) of this section for
32 the current tax year.

33 (e) A late filing fee collected under this subsection must be deposited in the county general fund.

34 (5) For each tax year for which an exemption granted pursuant to subsection (2) or (4) of this
35 section applies:

36 (a) Any tax, or interest attributable thereto, that was paid with respect to the property that is
37 declared exempt from taxation must be refunded. Refunds must be made without interest from the
38 unsegregated tax collections account established under ORS 311.385.

39 (b) Any tax, or interest attributable thereto, that remains unpaid as of the date the exemption
40 is granted must be abated.

41 (6) If an institution or organization owns property that is exempt from taxation under a pro-
42 vision of law listed in subsection (1) of this section and changes the use of the property to a use that
43 would not entitle the property to exemption from taxation, the institution or organization must no-
44 tify the county assessor of the change to a taxable use within 30 days.

45 **SECTION 4. The amendments to ORS 307.162 by section 3 of this 2012 Act apply to tax**

1 years beginning on or after July 1, 2012.

2 **SECTION 5. This 2012 Act takes effect on the 91st day after the date on which the 2012**
3 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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