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## **HB 3317A: Extension of E911 tax**

### What the amendments do:

The –A17 amendments create a Point-of-Sale (POS) method of collecting the E911 tax beginning January 1, 2014. Under this amendment, the tax is collected by retailers during a retail transaction and remitted to the Department of Revenue quarterly. The amendment provides for a “net revenue” guarantee in that if revenues from the program actually fall below \$1.5 million, then the department must increase the tax on prepaid wireless for tax year 2016. The department would call for such a change by rule.

### Concerns:

#### *Funding limitation and stream*

Currently the limitation is set at 2% of the revenues from prepaid wireless. Based on the Revenue Impact Statement prepared for the A-Engrossed version of the bill and the net revenue guarantee contained in the –A17 amendment, we estimate the funding for the POS model to be substantially under the actual costs to administer even a bare-bones program of just return processing without enforcement or collection.

If this amendment were implemented the department would incur nearly \$200,000 of start up costs before any returns were filed in April 2014. In those quarters where actual costs exceed the limitation, this would become a General Fund liability and impact DOR’s appropriated budget.

#### *Litigation Risk*

As the department’s counsel has advised us, there are risks of litigation because of several issues in this amendment (see testimony of Melisse S. Cunningham). Because we have not analyzed the level of risk, the costs of potential litigation were not included in our fiscal estimate. If we found ourselves defending this tax, we would likely request funding from the Legislature at that time through means available to us such as the Emergency Board.

### Administration Options:

#### *Processing Returns Only*

*Estimated 13-15 cost: \$417,000*

This option includes costs for two positions to create forms and instructions, reconcile accounts, manage payment activities, and process original and amended returns (without audit). These positions would perform annual forms and publications updates, and customer service for filers. Additionally, there are one-time costs of building a computer system to process the returns and ongoing mailroom/processing center costs.

## *Enforcement*

*Estimated 13-15 cost: \$395,000*

This option would add three tax auditors to audit the retailers. We estimate about a 5-6% coverage rate in audits of retailers and audit just over 100 retailers a year. Each audit would be comprised of multiple quarters and might be performed at retailer headquarters out of state depending on the retailer. These positions would also perform filing enforcement for retailers that do not file as the law requires them to. These positions would also be responsible for representing the department in the appeals processes (Conference, Written Objection, and Magistrate Division of the Oregon Tax Court) for audit and filing enforcement.

## *Collection*

*Estimated 13-15 cost: \$65,500*

This option would add one collector to actively collect on retailers who do not remit payment with the returns they file. The collector would establish payment plans, issue garnishments, and take other actions to ensure the tax is properly collected.

## Contacts:

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