

Testimony for HB 2489 -3 Property tax deferral

Summary: The dash 3 amendment replaces the entire substance of the bill. My comments address Sections 2 through 5.

Section 2

- This section contains the terms, “year”, “years”, “calendar year” and “tax year”. The amendment clarifies where the term “year” is used to make it clear that the applicant has to be at least 62 years of age at the time they apply for the program. The current law could be interpreted to suggest that they need only be 61. We believe that is an incorrect interpretation and think specificity is preferable.

Section 3

- Same clarification to the term “year” making it abundantly clear that word “year” refers to the January 1 to April 15 immediately prior to the property tax year for which the applicant is seeking tax deferral.

Section 4

- This section contains a collection process for those who have been determined ineligible due to being over the income limit. Even though additional eligibility requirements were added in 2011 that would also render someone ineligible, those additional requirements were not added to this collection section.
- However, since we now have a regular review process we are suggesting that rather than force ineligible seniors into collection processes we would recommend you delete the language at the bottom of page 5 and the top of page 6. Those sections allow for collection under the income tax laws: ORS Chapter 314. Ineligibility can occur for a number of reasons and this section, as amended, would also affirm that a determination of ineligibility does not preclude a senior from reapplying in a future year with an opportunity to regain eligibility.

Section 5

- The funds that drive this program are fundamentally the repayments made after the senior is no longer in the program. This usually occurs due to a passing of the participant or other occurrence that results in a transfer of the property. Collecting on the lien from an heir who just received an asset, (the homestead) can be problematic. The only recourse we have had was the foreclosure process until the 2011 legislation. That legislation allows us to collect from the transferee.
- This section amends ORS 311.695. This statute provides personal or collective liability for those who are transferees of the homestead of a senior who has a deferral lien.

In discussions with the private bar, they raised concerns that additional measures needed to be in place to limit the amount recoverable from transferees so as not to render them liable for more than the department would have been able to collect from the deferral program participant. Subsection 1 retains our ability to collect from the transferee but limits that collection to an amount equivalent to the amount the department would be able to collect if it foreclosed.

Example: If the property has a mortgage lien for \$100k and a deferral lien in second position for \$100k and a RMV of \$150k, the current language could be read to allow the Department to realize \$100K from the transferee.

- ORS Chapter 311 does not specifically layout the appeal process for a person we determine to be a “transferee”. To preserve the rights of that person(s) and to provide consistency, we recommend you add due process language as detailed in this section. The process allows for an initial conference with DOR (within 30 days of determination notice to transferee), and then gives 90 days for an appeal to Tax Court.