

Enrolled
House Bill 2060

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on General Government and Consumer Protection for Attorney General Ellen Rosenblum)

CHAPTER

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 2013 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 by rule.

(3) A disqualification order under this section remains in effect until such time as the charitable organization submits sufficient information to the Attorney General to demonstrate that the organization's program services expenses meet the minimum percentage specified in subsection (1) of this section. A charitable organization may submit information under this subsection no earlier than one year after the disqualification order becomes final,

and may not submit information under this subsection more than once each year after the initial submission is made. The information submitted under this subsection must include all Internal Revenue Service Form 990 returns, or equivalent Internal Revenue Service returns, filed by the organization after the disqualification order became final.

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

(a) A private foundation as defined in section 509 of the Internal Revenue Code, as in effect on the effective date of this 2013 Act;

(b) A community trust or foundation operating as described in 26 C.F.R. 1.170A-9(f)(10) and (11), as in effect on the effective date of this 2013 Act;

(c) A qualified charitable remainder trust described in section 664 of the Internal Revenue Code, as in effect on the effective date of this 2013 Act;

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

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

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

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

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

(5) When a disqualification order is issued under this section, the charitable organization that is the subject of the order does not qualify for and may not claim exemption from taxation under ORS 307.130 for the tax year following the tax year in which the order went into effect and subsequent tax years in which the order remains in effect.

SECTION 3. (1) When a disqualification order issued under sections 2 to 5 of this 2013 Act becomes effective, the charitable organization named in the order shall provide a disclosure as described in this section in all solicitations made by the organization to persons in Oregon. The disclosure must clearly and conspicuously state that contributions to the organization are not deductible as charitable donations for Oregon income tax purposes. The disclosure also must appear in any written document provided to a donor acknowledging the donation or referring to the amount of the donation. The Attorney General may specify additional disclosure requirements by rule.

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

SECTION 4. (1) When a disqualification order issued under sections 2 to 5 of this 2013 Act becomes effective, the Attorney General shall publish on the Internet and otherwise make publicly available information identifying the charitable organization named in the order, the date that the order became effective and the date that the information was published on the Internet.

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

(a) Identifies all charitable organizations that are subject to disqualification orders during the period covered by the report;

(b) The date the disqualification orders became effective;

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

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

SECTION 5. The Attorney General may adopt all rules necessary for the implementation of sections 2 to 5 of this 2013 Act.

SECTION 6. Section 7 of this 2013 Act is added to and made a part of ORS chapter 316.

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

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

(b) Is attributable to a contribution to a charitable organization that is the subject of a disqualification order issued under sections 2 to 5 of this 2013 Act; and

(c) Was made to the charitable organization more than 30 days after the date of Internet publication of information relating to the disqualification order under section 4 of this 2013 Act.

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

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

(b) Does not include the disclosure required by section 3 of this 2013 Act.

SECTION 8. Section 9 of this 2013 Act is added to and made a part of ORS chapter 317.

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

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

(b) Is attributable to a contribution to a charitable organization that is the subject of a disqualification order issued under sections 2 to 5 of this 2013 Act; and

(c) Was made to the charitable organization more than 30 days after the date of Internet publication of information relating to the disqualification order under section 4 of this 2013 Act.

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

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

(b) Does not include the disclosure required by section 3 of this 2013 Act.

SECTION 10. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by House March 7, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 22, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State