

# Enrolled House Bill 2489

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

CHAPTER .....

AN ACT

Relating to tax deferral programs; creating new provisions; amending ORS 311.668, 311.672, 311.689 and 311.695; and prescribing an effective date.

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

**SECTION 1. Notwithstanding section 24 (1), chapter 723, Oregon Laws 2011, and section 7, chapter 13, Oregon Laws 2012, the amendments to ORS 311.700 by section 16, chapter 723, Oregon Laws 2011, relating to reverse mortgages do not apply to homesteads described in section 7 (1), chapter 13, Oregon Laws 2012.**

**SECTION 2.** ORS 311.668 is amended to read:

311.668. (1)(a) A claim to defer the property taxes on a homestead that is eligible for deferral under ORS 311.670 may be filed with the county assessor in the manner prescribed under ORS 311.672 by:

(A) An individual who is, or two or more individuals filing a claim jointly each of whom is, 62 years of age or older on or before April 15 of the [*year for which deferral is claimed*] **calendar year in which the claim is filed**; or

(B) An individual who is a person with a disability as of April 15 of the [*year for which deferral is claimed*] **calendar year in which the claim is filed**, regardless of the age or disability of other individuals occupying the homestead.

(b) If a guardian or conservator has been appointed for an individual otherwise eligible to claim deferral of taxes under this section, the guardian or conservator may act for the individual in complying with the provisions of ORS 311.666 to 311.701.

(c) If a trustee of an inter vivos trust that was created by and is revocable by an individual, who is both the trustor and a beneficiary of the trust and who is otherwise eligible to claim deferral of taxes under this section, owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of ORS 311.666 to 311.701.

(d) This section may not be construed to require the spouse of an individual to file a claim jointly with the individual even though the spouse may be eligible to claim the deferral jointly with the individual.

(2)(a) Notwithstanding subsection (1) of this section, deferral may not be granted under ORS 311.666 to 311.701 with respect to a claim filed by individuals who together have, for the calendar year immediately preceding the calendar year in which the claim for deferral is filed:

(A) Household income of \$32,000 or more; or

(B) Net worth of \$500,000 or more.

(b) For each tax year beginning on or after July 1, 2002, the Department of Revenue shall recompute the maximum household income under this subsection as follows:

(A) Divide the average U.S. City Average Consumer Price Index for the first six months of the current calendar year by the average U.S. City Average Consumer Price Index for the first six months of 2001.

(B) Recompute the maximum household income by multiplying \$32,000 by the appropriate indexing factor determined under subparagraph (A) of this paragraph.

(c) Any change in the maximum household income determined under paragraph (b) of this subsection shall be rounded to the nearest multiple of \$500.

(3) Notwithstanding subsection (1) of this section, deferral may not be granted under ORS 311.666 to 311.701 with respect to a claim if, at the time the claim is filed, property taxes imposed on the homestead of any individual filing the claim have been deferred and are delinquent or have been canceled.

**SECTION 3.** ORS 311.672 is amended to read:

311.672. (1)(a) A taxpayer's claim for deferral under ORS 311.666 to 311.701 must:

(A) Be in writing on a form supplied by the Department of Revenue;

(B) Describe the homestead;

(C) Recite all facts establishing the eligibility of the homestead for, and of the taxpayers to claim, the deferral; and

(D) Have attached:

(i) Any documentary proof required by the department; and

(ii) A statement verified by a written declaration of all taxpayers claiming deferral to the effect that the statements contained in the claim are true.

(b) The claim for deferral must be filed with the assessor of the county in which the homestead is located, after January 1 and on or before April 15 *[of the]* **immediately preceding the property tax** year for which deferral is claimed.

(2) The county assessor shall forward each claim filed under this section to the department, and the department shall determine whether the property is eligible for the deferral.

(3) If the taxpayers and the homestead are determined to be eligible under ORS 311.668 and 311.670, respectively, a timely claim for deferral has the effect of:

(a) Deferring the payment of the property taxes levied on the homestead for the property tax year beginning on July 1 of the year in which the claim is filed.

(b) Continuing the deferral of the payment by the taxpayers of any property taxes deferred under ORS 311.666 to 311.701 for previous years that have not become delinquent under ORS 311.686.

(c) Continuing the deferral of the payment by the taxpayers of any future property taxes for as long as the homestead remains eligible for, and the taxpayers remain eligible to claim, the deferral.

(4)(a) Notwithstanding subsection (3) of this section:

(A) For the property tax year beginning on July 1, 2012, the maximum number of claims for deferral under ORS 311.666 to 311.701 that may be granted to taxpayers who have not previously been granted deferral is the number of such claims granted for the property tax year beginning on July 1, 2011, multiplied by 105 percent.

(B) For each property tax year beginning after July 1, 2012, the maximum number of claims for deferral that may be granted to taxpayers who have not previously been granted deferral is the maximum number determined under this subsection for the property tax year immediately preceding multiplied by 105 percent.

(b) For purposes of paragraph (a) of this subsection, spouses who continue deferral under ORS 311.688 are not considered taxpayers who have not previously been granted deferral.

(c) If the number of eligible claims described in paragraph (a) of this subsection exceeds the maximum number determined under paragraph (a) of this subsection, claims shall be granted in ascending order based on the ratio that is equal to the real market value of the homestead entered on the last certified assessment and tax roll divided by the applicable percentage of county median

RMV of the homestead determined under ORS 311.670 (2), until the maximum number determined under paragraph (a) of this subsection is reached.

(5) Any taxpayer aggrieved by the denial of a claim for, or discontinuation of, deferral under ORS 311.666 to 311.701 may appeal in the manner provided by ORS 305.404 to 305.560.

**SECTION 4.** ORS 311.689, as amended by section 4, chapter 13, Oregon Laws 2012, is amended to read:

311.689. (1)[(a)] The Department of Revenue shall certify the eligibility of each homestead granted, and the respective taxpayers claiming, deferral under ORS 311.666 to 311.701, not less than once every three years.

[(b)] (2) The department shall notify the taxpayers in writing of the obligation to certify eligibility under this [subsection] **section** and the taxpayers shall respond, by the means prescribed by the department, within 65 days after the department sends the notification.

[(c)] (3) Failure to respond as required under [paragraph (b) of this] subsection (2) of this **section** renders the homestead ineligible for deferral for the next following property tax year. **This subsection does not preclude the grant of deferral to an eligible homestead in any subsequent property tax year for which an eligible claimant files a timely application under ORS 311.672.**

[(2)(a)] *For any year in which the household income of the taxpayers exceeds the amounts allowable under ORS 311.668, the property taxes deferred under ORS 311.666 to 311.701 for that year, including accrued interest, become payable by the applicable due date prescribed in ORS 311.686 (1)(b) or (2).]*

[(b)] *The provisions of ORS chapters 305 and 314 apply to this subsection in the same manner as those provisions are applicable to an income tax deficiency.]*

[(c)] *The amount of deferred taxes payable under this subsection shall bear interest from the date paid by the department until paid at the rate established under ORS 305.220 for deficiencies.]*

[(d)] *A deficiency may not be assessed under this subsection if notice is not given to the taxpayer or spouse within three years after the date that the department has paid the deferred taxes to the county.]*

[(e)] *Upon payment of the amount assessed as a deficiency under this subsection and any interest, the department shall execute a release in the amount of the payment. The release shall be conclusive evidence of the removal and extinguishment of the lien under ORS 311.666 to 311.701 to the extent of the payment.]*

[(3)] *Subsection (2) of this section does not affect the continued deferral of taxes that have been deferred for tax years beginning before a tax year to which subsection (2) of this section applies or the deferral of taxes for tax years beginning after a tax year to which subsection (2) of this section applies, provided subsection (2) of this section does not apply to those tax years.]*

[(4)] *This section applies to all tax-deferred property, whether the deferral under ORS 311.666 to 311.701 is claimed before or after October 3, 1989.]*

**SECTION 5.** ORS 311.695 is amended to read:

311.695. (1) A transferee of a homestead who is ineligible to claim, or does not claim, deferral under ORS 311.666 to 311.701, or that is not an individual, is jointly and severally liable for amounts payable under ORS 311.686 to the extent of **the positive amount, if any, remaining after subtracting the amount of all liens prior to the Department of Revenue's liens for deferred taxes arising under ORS 311.673 or 311.679** from the real market value of the homestead entered on the last certified assessment and tax roll prior to the date of the transfer.

(2) **The department shall issue by mail a notice of liability to a transferee after deferred amounts for which the transferee is liable under this section become payable under ORS 311.686.**

(3)(a) **Within 30 days after the department mails the notice of liability required under subsection (2) of this section, the transferee:**

(A) **Shall pay the deferred amounts, plus interest and fees; or**

(B)(i) **Shall notify the department in writing of objections to the notice of liability; and**

(ii) May request a conference. The provisions of ORS 305.265 governing a conference requested relating to a notice of deficiency apply to a conference requested under this subparagraph.

(b) If the department does not receive payment or written objection to the notice of liability within 30 days after the notice has been mailed, the notice of liability becomes final.

(c) A transferee may appeal the notice of liability to the tax court in the manner provided for an appeal from a notice of assessment within 90 days after the notice becomes final under this subsection.

(4)(a) After a conference, or, if no conference is requested, a determination of the issues raised by the written objections, the department shall mail to the transferee a conference letter affirming, canceling or adjusting the notice of liability.

(b) Within 90 days after the date on which the conference letter is mailed to the transferee, the transferee shall pay the deferred amounts, plus interest and fees, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(5)(a) If more than one transferee may be held jointly and severally liable for payment of deferred amounts under this section, the department may require any or all of the transferees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each transferee of the time and place set for the determination of liability.

(b) Each transferee notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of deferred amounts to the department. If any person notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's determination shall be binding on all persons notified and required to appear under this subsection.

(c)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any transferee determined to be liable for deferred amounts under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any transferee who may be held jointly and severally liable for the payment of deferred amounts. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court such information as was presented before the department, as well as such other information as may be presented to the court.

(B) The court may determine that one or more persons impleaded under this paragraph are liable for deferred amounts without regard to any earlier determination by the department that an impleaded person was not liable for deferred amounts.

(C) If any person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. All such evidence shall constitute a public record and shall be available to the parties and the court. The determination of the tax court shall be binding on all persons made parties to the action under this subsection.

(d) Nothing in this section shall be construed to preclude a determination by the department or the Oregon Tax Court that more than one transferee is jointly and severally liable for deferred amounts.

**SECTION 6.** 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 13, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate March 28, 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