

A-Engrossed
Senate Bill 33

Ordered by the House May 1
Including House Amendments dated May 1

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Department of 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.

In computation by Department of Revenue of interest due on tax deficiency owed to department or refunds of tax owed by department, replaces rate based on month or partial month with annual percentage rate computed daily. **Standardizes department procedures by delaying running of interest on overpayments of certain taxes.**

Applies to tax deficiencies or refunds owing as of January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax interest rate computations; creating new provisions; amending ORS 118.100, 118.260,
3 305.220, 305.222, 305.265, 305.295, 314.395, 314.400, 314.415, 314.525, 316.587, 320.320, 321.045,
4 321.560, 323.195, 323.320, 323.330, 323.365, 323.510, 324.170, 403.220, 453.404, 465.114 and 475B.710;
5 and prescribing an effective date.

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

7 **SECTION 1.** ORS 118.100 is amended to read:

8 118.100. (1) The tax provided for in ORS 118.010 shall take effect at and accrue upon the death
9 of the decedent. A return shall be filed and the tax shall be paid to the Department of Revenue on
10 the date the federal estate tax is payable or, if no federal estate tax return is required, no later than
11 nine months following the date of death of the decedent. If the department determines, pursuant to
12 an amended return or refund claim, that the amount of tax imposed by ORS 118.010 is less than the
13 amount theretofore paid, the excess tax shall be refunded by the department with interest at the
14 rate established by ORS 305.220 for [*each month or fraction thereof during*] a period beginning 45
15 days after the due date of the return or on the date the amended return or refund claim is filed,
16 whichever is later, and ending at the time the refund is made.

17 (2) If the amount of federal estate tax reported on a federal estate tax return is changed or
18 corrected by the Internal Revenue Service or other competent authority, resulting in a change in
19 the Oregon taxable estate, the executor shall report the change or correction in federal estate tax
20 to the department. If the federal change or correction results in a reduction of the Oregon taxable
21 estate, the report of the change or correction shall be treated by the department as a claim for re-
22 fund pursuant to ORS 305.270 and, notwithstanding the limitations of ORS 305.270, shall be deemed
23 timely if filed with the department within two years after the federal correction was made. If the
24 change or correction results in an increase in the Oregon taxable estate, the department may issue
25 a notice of deficiency within two years after the federal change or correction was made or within

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 two years after receiving a report of the federal change or correction, whichever is the later. Any
2 executor filing an amended federal estate tax return shall also file an amended return with the de-
3 partment within 90 days thereafter.

4 (3)(a) In the case of an estate that contains property that is valued under section 2032A of the
5 Internal Revenue Code for federal estate tax purposes (relating to the valuation of certain farm or
6 other property) and that ceases to qualify for valuation under section 2032A, an additional tax under
7 ORS 118.005 to 118.540 shall be imposed in the amount attributable to the change in the value of
8 the estate resulting from the imposition of additional federal estate tax under section 2032A.

9 (b) The department shall be notified of the disqualification of the property from valuation under
10 section 2032A in the same time and manner as the federal Internal Revenue Service is notified of
11 the disqualification.

12 (c) The period for assessment of the tax imposed under this subsection, including any penalty
13 or interest, shall be two years from the date on which the department receives the notice described
14 in paragraph (b) of this subsection.

15 (d) The other provisions of ORS 118.005 to 118.540 and ORS chapter 305 shall apply to the ad-
16 ditional tax imposed under this subsection in the same manner in which those provisions apply to
17 the tax imposed under ORS 118.010.

18 (4) For purposes of this section, a change or correction of a federal estate tax return is deemed
19 to be made on the date of the federal audit report.

20 (5) The executor shall, upon request of the department, supply a copy of the federal estate tax
21 return which the executor has filed or may file with the federal government, or a copy of any federal
22 agent's report upon any audit or adjustment of the federal estate tax return.

23 (6) The executor shall explain, on the return, how the reported values were determined and at-
24 tach copies of any appraisals.

25 **SECTION 2.** ORS 118.260 is amended to read:

26 118.260. (1) If no return has been filed as required by this chapter, there shall be added to the
27 amount of tax required to be shown on the return a delinquency penalty of five percent of the
28 amount of such tax.

29 (2) If the failure to file a return continues for a period in excess of three months after the due
30 date, there shall be added to the amount of tax required to be shown as tax on the return a failure
31 to file penalty of 20 percent of the amount of such tax. This penalty is in addition to the delin-
32 quency penalty imposed by subsection (1) of this section.

33 (3) If any part of any deficiency is due to fraud with intent to evade tax, then 100 percent of the
34 total amount of the deficiency shall be assessed and collected.

35 (4) Except for a deferral of payment pursuant to an extension granted under ORS 118.225 or a
36 timely election made under ORS 118.300, if the taxes imposed by ORS 118.005 to 118.540 are not paid
37 on or before the date on which payment of the tax is required to be made under ORS 118.100, there
38 shall be added to the amount of tax required to be shown on the return a delinquency penalty of five
39 percent of the amount of such tax.

40 (5)(a) Except as provided in subsection (6) of this section and paragraph (b) of this subsection,
41 if the tax imposed by ORS 118.005 to 118.540 is not paid on or before the date on which payment
42 of the tax is required to be made under ORS 118.100, interest shall be charged and collected thereon
43 at the rate established under ORS 305.220 [*for each month or fraction thereof*] from the time when
44 the tax became due and payable.

45 (b) If payment of the tax or deficiency is extended under ORS 118.225, interest shall be charged

1 and collected on any amount for which extension is granted from the date the tax or deficiency is
 2 otherwise due and payable to the date of payment at the rate established under ORS 305.220, with-
 3 out regard to ORS 305.222[, *for each month or fraction thereof*].

4 (6) In all cases in which a bond is given, under the provisions of ORS 118.300, interest shall be
 5 charged at the rate established under ORS 305.220, without regard to ORS 305.222, [*for each month*
 6 *or fraction thereof*] from the time when the tax became due and payable, until the date of payment.

7 (7) If the tax has not been determined, a deposit may be made to avoid interest. Should the
 8 amount of such payment exceed the sum subsequently determined to be due, the Department of Re-
 9 venue shall refund the excess with interest at the rate established under ORS 305.220[, *for each*
 10 *month or fraction of a month during*] **for** a period beginning 45 days after the due date of the return
 11 or **on** the date that the return is filed, whichever is later, and ending at the time the refund is made.

12 (8) Payments made on the tax shall be applied first to penalty and interest and then to the
 13 principal.

14 (9) For purposes of this section, the amount of tax required to be shown on the return shall be
 15 reduced by the amount of any part of the tax which is paid on or before the date prescribed for
 16 payment of the tax and by the amount of any credit against the tax which may be lawfully claimed
 17 upon the return.

18 **SECTION 3.** ORS 305.220 is amended to read:

19 305.220. (1) Unless specifically provided otherwise by statute or by rule of the Director of the
 20 Department of Revenue adopted pursuant to subsection (3) of this section, every deficiency or de-
 21 linquency arising under any law administered by the Department of Revenue shall bear simple in-
 22 terest at the rate of [*five-sixths of one percent per month or fraction thereof*] **10 percent per annum,**
 23 **to be computed on a daily basis.**

24 (2) Unless specifically provided otherwise by statute or by rule of the director adopted pursuant
 25 to subsection (3) of this section, every refund arising under any law administered by the department
 26 shall, subject to subsections (3) and (5) of this section and ORS 305.222, bear simple interest at the
 27 rate of [*five-sixths of one percent per month, or fraction thereof*] **10 percent per annum, to be**
 28 **computed on a daily basis.**

29 (3)(a) If the director determines that the rates of interest for deficiencies, delinquencies and re-
 30 funds established in subsections (1) and (2) of this section are at least one percentage point more
 31 or less than the prevailing rates of interest established by the Internal Revenue Service for under-
 32 payments arising under the federal tax laws to which one percentage point has been added, the di-
 33 rector may adopt, by rule, adjusted interest rates. The director shall not adopt adjusted interest
 34 rates more than once in a calendar year. Notice of intent to adopt adjusted interest rates shall be
 35 given in the manner provided in ORS 183.335, not less than three months before the proposed ef-
 36 fective date of the adjusted rates.

37 (b) In establishing the adjusted interest rates to be adopted under this subsection:

38 (A) The director shall take into consideration the current interest rates established by the
 39 Internal Revenue Service for underpayments arising under the federal tax laws.

40 (B) To any interest amount determined by taking into consideration the current interest rates
 41 established by the Internal Revenue Service for underpayments under subparagraph (A) of this par-
 42 agraph, which interest amount shall be expressed at a rate per [*month or fraction thereof*] **annum,**
 43 there shall be added [*one-twelfth of*] one percent.

44 (4) If the director adopts an adjusted interest rate for deficiencies and delinquencies, the direc-
 45 tor shall adopt an adjusted interest rate for refunds that is equal to the adjusted interest rate for

1 deficiencies and delinquencies.

2 (5) Any change in the rate of interest applicable to deficiencies, delinquencies or refunds re-
3 sulting from the adoption of adjusted interest rates by the director under this section shall apply to
4 deficiencies, delinquencies and refunds outstanding on the effective date of the rule, or arising on
5 or after that date, but only with respect to interest periods beginning on or after that date.

6 *[(6) If the rate of interest on a deficiency, a delinquency or a refund is governed by this section,
7 and if a fraction of a month is involved in making the computation of interest on the deficiency, delin-
8 quency or refund, then for the fractional month, the simple interest otherwise provided shall be com-
9 puted on a daily basis.]*

10 **SECTION 4.** ORS 305.222 is amended to read:

11 305.222. For purposes of determining the interest rate established under ORS 305.220:

12 (1) In the case of a refund of tax ordered by the Oregon Tax Court or the Oregon Supreme Court
13 and arising under any law administered by the Department of Revenue, if the refund is not paid by
14 the department within 60 days after the date of the order, the interest rate provided under ORS
15 305.220 shall be *[one-third of one]* **four** percent greater than *[that so]* **the annual interest rate**
16 provided under ORS 305.220, but only with respect to interest periods that begin 61 days after the
17 date the order is entered.

18 (2)(a) In the case of a notice of assessment pursuant to any law administered by the department,
19 if the deficiency is not paid within 60 days after the date of the notice of assessment, the interest
20 rate provided under ORS 305.220 shall be *[one-third of one]* **four** percent greater than *[that so]* **the**
21 **annual interest rate** provided under ORS 305.220, but only for interest periods that begin 61 days
22 after the date of notice of assessment.

23 (b) In the case of an assessment under ORS 305.265 (12), if the delinquency is not paid within
24 60 days after the date of the assessment, the interest rate provided under ORS 305.220 shall be
25 *[one-third of one]* **four** percent greater than *[that so]* **the annual interest rate** provided under ORS
26 305.220. The increased rate shall apply only for interest periods that begin 61 days after the date
27 of notice of the delinquency.

28 (3) If the deficiency assessment is appealed to the Oregon Tax Court without prior payment of
29 tax, then notwithstanding subsection (2) of this section, the increased rate of interest shall com-
30 mence only for interest periods that begin 61 days after the date that the order of the Oregon Tax
31 Court or the Oregon Supreme Court affirming the deficiency is entered.

32 **SECTION 5.** ORS 305.265 is amended to read:

33 305.265. (1) Except as provided in ORS 305.305, the provisions of this section apply to all reports
34 or returns of tax or tax liability filed with the Department of Revenue under the revenue and tax
35 laws administered by it, except those filed under ORS 320.005 to 320.150.

36 (2) As soon as practicable after a report or return is filed, the department shall examine or audit
37 it, if required by law or the department deems such examination or audit practicable. If the de-
38 partment discovers from an examination or an audit of a report or return or otherwise that a defi-
39 ciency exists, it shall compute the tax and give notice to the person filing the return of the
40 deficiency and of the department's intention to assess the deficiency, plus interest and any appro-
41 priate penalty. Except as provided in subsection (3) of this section, the notice shall:

42 (a) State the reason for each adjustment;

43 (b) Give a reference to the statute, regulation or department ruling upon which the adjustment
44 is based; and

45 (c) Be certified by the department that the adjustments are made in good faith and not for the

1 purpose of extending the period of assessment.

2 (3) When the notice of deficiency described in subsection (2) of this section results from the
3 correction of a mathematical or clerical error and states what would have been the correct tax but
4 for the mathematical or clerical error, such notice need state only the reason for each adjustment
5 to the report or return.

6 (4) With respect to any tax return filed under ORS chapter 314, 316, 317 or 318, deficiencies
7 shall include but not be limited to the assertion of additional tax arising from:

8 (a) The failure to report properly items or amounts of income subject to or which are the
9 measure of the tax;

10 (b) The deduction of items or amounts not permitted by law;

11 (c) Mathematical errors in the return or the amount of tax shown due in the records of the de-
12 partment; or

13 (d) Improper credits or offsets against the tax claimed in the return.

14 (5)(a) The notice of deficiency shall be accompanied by a statement explaining the person's right
15 to make written objections, the person's right to request a conference and the procedure for re-
16 questing a conference. The statement, and an accompanying form, shall also explain that conference
17 determinations are routinely transmitted via regular mail and that a person desiring to have con-
18 ference determinations transmitted by certified mail may do so by indicating on the form the
19 person's preference for certified mail and by returning the form with the person's written objections
20 as described in paragraph (b) of this subsection.

21 (b) Within 30 days from the date of the notice of deficiency, the person given notice shall pay
22 the deficiency with interest computed to the date of payment and any penalty proposed. Or within
23 that time the person shall advise the department in writing of objections to the deficiency, and may
24 request a conference with the department, which shall be held prior to the expiration of the one-year
25 period set forth in subsection (7) of this section.

26 (6) If a request for a conference is made, the department shall notify the person of a time and
27 place for conference and appoint a conference officer to meet with the person for an informal dis-
28 cussion of the matter. After the conference, the conference officer shall send the determination of
29 the issues to the person. The determination letter shall be sent by regular mail, or by certified mail
30 if the person given notice has indicated a preference for transmission of the determination by cer-
31 tified mail. The department shall assess any deficiency in the manner set forth in subsection (7) of
32 this section. If no conference is requested and written objections are received, the department shall
33 make a determination of the issues considering such objections, and shall assess any deficiency in
34 the manner provided in subsection (7) of this section. The failure to request or have a conference
35 shall not affect the rights of appeal otherwise provided by law.

36 (7) If neither payment nor written objection to the deficiency is received by the department
37 within 30 days after the notice of deficiency has been mailed, the department shall assess the defi-
38 ciency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating
39 the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within
40 one year from the date of the notice of deficiency unless an extension of time is agreed upon as
41 described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

42 (8) If, prior to the expiration of any period of time prescribed in subsection (7) of this section
43 for giving of notice of assessment, the department and the person consent in writing to the defi-
44 ciency being assessed after the expiration of such prescribed period, such deficiency may be assessed
45 at any time prior to the expiration of the period agreed upon. The period so agreed upon may be

1 extended by subsequent agreements in writing made before the expiration of the period agreed upon.

2 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
3 section (5) of this section shall not invalidate any assessment of deficiency made within the one-year
4 period pursuant to subsection (7) of this section or within any extension of time made pursuant to
5 subsection (8) of this section, but shall invalidate any assessment of interest or penalties attributable
6 to the deficiency. After an assessment has been made, the department and the person assessed may
7 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
8 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
9 nation of the issues.

10 (10)(a) In the case of a failure to file a report or return on the date prescribed therefor (deter-
11 mined with regard to any extension for filing), the department shall determine the tax according to
12 the best of its information and belief, assess the tax plus appropriate penalty and interest, and give
13 written notice of the failure to file the report or return and of the determination and assessment to
14 the person required to make the filing. The amount of tax shall be reduced by the amount of any
15 part of the tax which is paid on or before the date prescribed for payment of the tax and by the
16 amount of any credit against the tax which may be lawfully claimed upon the return.

17 (b) Notwithstanding subsection (14) of this section and ORS 305.280, and only to the extent al-
18 lowed by rules adopted by the department, the department may accept the filing of a report or re-
19 turn submitted by a person who has been assessed a tax under paragraph (a) of this subsection.

20 (c) The department may reject a report or return:

21 (A) That is not verified as required by ORS 305.810;

22 (B) That the department determines is not true and correct as to every material matter as re-
23 quired by ORS 305.815; or

24 (C) If the department may impose a penalty under ORS 316.992 (1) with respect to the report
25 or return.

26 (d) If the department rejects a report or return of a person assessed a tax under paragraph (a)
27 of this subsection, the department shall issue a notice of rejection to the person. The person may
28 appeal the rejection to the magistrate division of the Oregon Tax Court only if:

29 (A) The report or return was filed within 90 days of the date the department's assessment under
30 paragraph (a) of this subsection was issued; and

31 (B) The appeal is filed within 90 days of the date shown on the notice of rejection.

32 (e) If the person assessed under paragraph (a) of this subsection submits a report or return to
33 the department and appeals the assessment to the tax court, the department may request a stay of
34 action from the court pending review of the report or return. If the department:

35 (A) Accepts the filing of the report or return, the appeal shall be dismissed as moot.

36 (B) Rejects the report or return, the stay of action on the appeal shall be lifted.

37 (f) If the department accepts the filing of a report or return, the department may reduce the
38 assessment issued under paragraph (a) of this subsection. A report or return filed under this sub-
39 section that is accepted by the department, whether or not the assessment has been reduced, shall
40 be considered a report or return described in subsection (1) of this section and shall be subject to
41 the provisions of this section, including but not limited to examination and adjustment pursuant to
42 subsection (2) of this section.

43 (g) The department may refund payments made with respect to a report or return filed and ac-
44 cepted pursuant to this subsection. If the report or return is filed within three years of the due date
45 for filing the report or return, excluding extensions, the refund shall be made as provided by ORS

1 305.270 and 314.415. If the report or return is not filed within three years of the due date for filing
 2 the report or return, excluding extensions, the refund shall be limited to payments received within
 3 the two-year period ending on the date the report or return is received by the department and
 4 payments received after the date the report or return is received by the department. Interest shall
 5 be paid at the rate established under ORS 305.220 [*for each month or fraction of a month*] from the
 6 date the report or return is received by the department to the time the refund is made.

7 (11) Mailing of notice to the person at the person's last-known address shall constitute the giving
 8 of notice as prescribed in this section.

9 (12) If a return is filed with the department accompanied by payment of less than the amount
 10 of tax shown on or from the information on the return as due, the difference between the tax and
 11 the amount submitted is considered as assessed on the due date of the report or return (determined
 12 with regard to any extension of time granted for the filing of the return) or the date the report or
 13 return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or
 14 from the information on the return as due shall be reduced by the amount of any part of the tax that
 15 is paid on or before the due date prescribed for payment of the tax, and by any credits against the
 16 tax that are claimed on the return. If the amount required to be shown as tax on a return is less
 17 than the amount shown as tax on the return, this subsection shall be applied by substituting the
 18 lesser amount.

19 (13) Every deficiency shall bear interest at the rate established under ORS 305.220 [*for each*
 20 *month or fraction of a month computed*] from the due date of the return to **the** date of payment. If
 21 the return was falsely prepared and filed with intent to evade the tax, a penalty equal to 100 percent
 22 of the deficiency shall be assessed and collected. All payments received shall be credited first to
 23 penalty, then to interest accrued, and then to tax due.

24 (14) If the deficiency is paid in full before a notice of assessment is issued, the department is
 25 not required to send a notice of assessment, and the tax shall be considered as assessed as of the
 26 date which is 30 days from the date of the notice of deficiency or the date the deficiency is paid,
 27 whichever is the later. A partial payment of the deficiency shall constitute only a credit to the ac-
 28 count of the person assessed. Assessments and billings of taxes shall be final after the expiration
 29 of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under
 30 ORS 305.280 (3) following payment of the tax.

31 (15) Appeal may be taken to the tax court from any notice of assessment. The provisions of this
 32 chapter with respect to appeals to the tax court apply to any deficiency, penalty or interest as-
 33 sessed.

34 **SECTION 6.** ORS 305.295 is amended to read:

35 305.295. (1) Notwithstanding ORS 305.265 (14), the Department of Revenue may in its discretion,
 36 cancel any tax, penalty or interest or any portion thereof, for which an assessment has become final,
 37 if any of the following conditions exist:

38 (a) The assessment is based upon an asserted tax deficiency calculated upon income that the
 39 state is expressly prohibited from taxing under the Oregon Constitution or the laws of the United
 40 States.

41 (b) The assessment is based upon an asserted tax deficiency arising from an error made by the
 42 department when reviewing the return during processing, and the information necessary to correct
 43 the error was properly reported in the return as filed as determined by the department.

44 (c) The assessment is against an employer for withholding tax, with respect to any full calendar
 45 quarter during which the employer had no payroll and had permanently ceased doing business. An

1 employer shall not be considered to have ceased doing business if the employer has changed its
2 name and the business activity continues under the same beneficial ownership.

3 (d) Pursuant to rules adopted by the department, the department determines that:

4 (A) Reasonable doubt exists as to the taxpayer's liability for the assessment;

5 (B) The taxpayer has presented documentation that the department considers sufficient to sup-
6 port canceling the tax, penalty or interest, or any portion thereof; and

7 (C) The taxpayer has complied with all applicable reporting and filing requirements for all tax
8 years for which the department maintains records.

9 (2) When taxes are canceled, in whole or in part, under subsection (1) of this section, the de-
10 partment shall make an order canceling the tax, penalties and interest. The order shall be filed in
11 the records of the department. Upon making the order, the department also shall cause to be can-
12 celed or released any lien of record in the counties which may have been filed and entered therein.

13 (3) Before the department may cancel an assessment under subsection (1) of this section, the
14 taxpayer to whom the assessment is issued shall provide any information the department deems
15 necessary to verify the existence of one of the conditions under which the assessment may be can-
16 celed.

17 (4) Notwithstanding ORS 314.415, the department may refund any payments made with respect
18 to an assessment described in subsection (1) of this section. Interest shall be paid at the rate es-
19 tablished under ORS 305.220[*for each month or fraction of a month during*] **for** a period beginning
20 on the date the taxpayer requests the refund.

21 [*(5) This section applies to any unpaid assessment described in subsection (1) of this section*
22 *whether issued before or after September 27, 1987, and to any assessment for which payment is made*
23 *on or after September 27, 1987.*]

24 [(6)] (5) A taxpayer may appeal denial of a request for cancellation of assessment or refund to
25 the Director of the Department of Revenue. The decision of the director is final and may not be
26 appealed.

27 **SECTION 7.** ORS 314.395 is amended to read:

28 314.395. (1) The tax shall be paid to the Department of Revenue at the time fixed by ORS 314.385
29 for filing the return without regard to extensions.

30 (2) When the time for filing a return of income is extended at the request of the taxpayer, in-
31 terest at the rate established under ORS 305.220, [*for each month or fraction of a month*] from the
32 time the return was originally required to be filed to the time of payment, shall be added and paid.

33 **SECTION 8.** ORS 314.400 is amended to read:

34 314.400. (1) If a taxpayer fails to file a report or return or fails to pay a tax by the date on which
35 the filing or payment is due, the Department of Revenue shall add to the amount required to be
36 shown as tax on the report or return a delinquency penalty of five percent of the amount of the
37 unpaid tax.

38 (2) In the case of a report or return that is required to be filed annually or for a one-year period,
39 if the failure to file the report or return continues for a period in excess of three months after the
40 due date:

41 (a) There shall be added to the amount of tax required to be shown on the report or return a
42 failure to file penalty of 20 percent of the amount of the tax; and

43 (b) Thereafter the department may send a notice and demand to the person to file a report or
44 return within 30 days of the mailing of the notice. If after the notice and demand no report or return
45 is filed within the 30 days, the department may determine the tax according to the best of its in-

1 formation and belief, assess the tax with appropriate penalty and interest plus an additional penalty
 2 of 25 percent of the tax deficiency determined by the department and give written notice of the de-
 3 termination and assessment to the person required to make the filing.

4 (3) In the case of a report or return that is required to be filed more frequently than annually
 5 and the failure to file the report or return continues for a period in excess of one month after the
 6 due date:

7 (a) There shall be added to the amount of tax required to be shown on the report or return a
 8 failure to file penalty of 20 percent of the amount of the tax; and

9 (b) Thereafter the department may send a notice and demand to the person to file a report or
 10 return within 30 days of the mailing of the notice. If after the notice and demand no report or return
 11 is filed within the 30 days, the department may determine the tax according to the best of its in-
 12 formation and belief, assess the tax with appropriate penalty and interest plus an additional penalty
 13 of 25 percent of the tax deficiency determined by the department and give written notice of the de-
 14 termination and assessment to the person required to make the filing.

15 (4) Notwithstanding subsections (2) and (3) of this section, if a taxpayer is required to file a
 16 federal income tax return for a period of less than 12 months under section 443 of the Internal Re-
 17 venue Code, the Oregon personal income or corporate excise or income tax return required to be
 18 filed for that period shall be subject to subsection (2) of this section.

19 (5) If a report or return that is subject to a failure to file penalty described in subsection (2)
 20 or (3) of this section is filed before a notice of determination and assessment is issued by the de-
 21 partment, the failure to file penalty referred to in subsection (2)(a) or (3)(a) of this section shall be
 22 added to the amount of tax shown on the report or return.

23 (6) A penalty equal to 100 percent of any deficiency determined by the department shall be as-
 24 sessed and collected if:

25 (a) There is a failure to file a report or return with intent to evade the tax; or

26 (b) A report or return was falsely prepared and filed with intent to evade the tax.

27 (7) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for
 28 *[each month or fraction of a month, computed from the time the tax became due, during which]* **the**
 29 **period** the tax remains unpaid.

30 (8) Each penalty imposed under this section is in addition to any other penalty imposed under
 31 this section. However, the total amount of penalty imposed under this section and ORS 305.265 (13)
 32 with respect to any deficiency shall not exceed 100 percent of the deficiency.

33 (9) For purposes of subsections (1) to (3) of this section, the amount of tax required to be shown
 34 or that is shown on the report or return shall be reduced by the amount that is paid on or before
 35 the date prescribed for payment of the tax and by the amount of any credit against the tax that is
 36 claimed on the report or return. If the amount required to be shown as tax on the report or return
 37 is less than the amount that is actually shown as tax on the report or return, this subsection shall
 38 be applied by substituting the lower amount.

39 (10) Notwithstanding subsection (1) of this section, the five percent penalty for failure to file a
 40 report or return or pay a tax at the time the tax becomes due may not be imposed if:

41 (a) The taxpayer pays the full amount of the tax plus accrued interest within 30 days of the date
 42 shown on the department's notice sent to the taxpayer; and

43 (b)(A) The taxpayer had filed an amended individual tax return or an amended corporate return
 44 of income or excise tax accompanied by less than full payment of the tax shown on the return plus
 45 accrued interest; or

1 (B) The department issues a notice of tax deficiency to the taxpayer under ORS 305.265.

2 **SECTION 9.** ORS 314.415 is amended to read:

3 314.415. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount
4 of the tax due is less than the amount theretofore paid, the excess shall be refunded by the depart-
5 ment with interest at the rate established under ORS 305.220[*for each month or fraction of a month*
6 *during*] **for** a period beginning 45 days after the due date of the return or **on** the date the tax was
7 paid, or, in the case of a return filed under ORS 118.100, the date that the return is filed, whichever
8 is [*the*] later, [*to*] **and ending at** the time the refund is made.

9 (2)(a) The department may not allow or make a refund after three years from the time the return
10 was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period
11 expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer
12 in compliance with ORS 305.270. In any case, if the original return is not filed within three years
13 of the due date, excluding extensions, of the return, the department may allow or make a refund only
14 of amounts paid within two years from the date of the filing of the claim for refund. If a refund is
15 disallowed for the tax year during which excess tax was paid for any reason set forth in this sub-
16 section, the department may not allow the excess as a credit against any tax occurring on a return
17 filed for a subsequent year.

18 (b) The department may not make a refund if the tax owed after offsets for all amounts owed
19 the state, or a county pursuant to a judgment obtained under ORS 169.151, is less than \$1.

20 (c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a sus-
21 pension of the running of the periods specified for filing a claim for refund of federal income tax,
22 the period specified in paragraph (a) of this subsection shall also be suspended.

23 (d) The department may not pay an employee interest on a refund of a tax withheld by an em-
24 ployer if the interest would be for any period prior to the time the employee files a personal income
25 tax return for the tax year involved or for any period prior to the day that is 45 days after the date
26 when the employee's annual return for that year was filed or was due, whichever is later.

27 (e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505
28 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer
29 files a tax return for the tax year involved or for any period prior to the day that is 45 days after
30 the date when the tax return for that year was filed or was due, whichever is later.

31 (f) The amount of the refund, exclusive of interest on the refund, may not exceed the portion
32 of the tax paid during the period preceding the filing of the claim or, if no claim is filed, then during
33 the period preceding the allowance of the refund during which a claim might have been filed. Where
34 there has been an overpayment of any tax imposed, the amount of the overpayment and interest on
35 the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer,
36 and only the balance shall be refunded.

37 (g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
38 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the
39 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
40 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
41 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
42 from the date of payment to the department. Nothing in this subsection shall require that interest
43 be paid upon any amount for any period for which interest upon the same amount for the same pe-
44 riod is required to be paid under ORS 305.419.

45 (3)(a) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1)

1 or (2) of this section, if, prior to the expiration of the period prescribed in subsection (2) of this
2 section, the department and the taxpayer consent in writing to the refund of tax after the expiration
3 of the period prescribed:

4 (A) The department shall make the refund prior to the expiration of the period agreed upon; and

5 (B) The department may not make or allow a refund after the expiration of the period agreed
6 upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed
7 upon in compliance with the manner prescribed by the department. The period so agreed upon may
8 be extended by subsequent agreements in writing made before the expiration of the period previ-
9 ously agreed upon.

10 (b) The department may consent to extend the period during which a refund may be made only
11 if the taxpayer has consented to the assessment of additional tax, if additional taxes are determined
12 upon audit, after the expiration of the applicable period prescribed in ORS 314.410 (1) to (3).

13 (4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility
14 by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of
15 the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the
16 three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven
17 years from the date prescribed by law for the filing of the return for the year with respect to which
18 the claim is made.

19 (b) If the claim described in paragraph (a) of this subsection is made after the expiration of the
20 three-year period prescribed in subsection (2) of this section, the department may not allow interest
21 with respect to any credit or refund determined to be due upon the claim for the period beginning
22 at the close of the three-year period prescribed in subsection (2) of this section and ending at the
23 expiration of six months after the date on which the claim is filed.

24 (5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating
25 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-
26 scribed in subsection (2) of this section, the period shall be the period that ends three years after
27 the time prescribed by law for filing the return (including extensions) for the taxable year of the
28 net operating loss or net capital loss that results in such carryback. In the case of such a claim, the
29 amount of the credit or refund may exceed the portion of the tax paid within the period provided
30 in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of
31 the overpayment attributable to the carryback. If the allowance of a credit or refund of an over-
32 payment of tax attributable to a net operating loss carryback or a net capital loss carryback is
33 otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to
34 closing agreements, the credit or refund may be allowed or made if the claim for credit or refund
35 is filed within the period provided in this subsection. To the extent that the carryback was not an
36 issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has
37 become final, the claimed credit or refund applicable to that carryback may be allowed or made
38 under this subsection.

39 (b) For purposes of subsection (1) or (2) of this section, if any overpayment of tax results from
40 a carryback of a net operating loss or net capital loss, the overpayment shall be deemed not to have
41 been made prior to the later of:

42 (A) The due date of the return for the taxable year in which such net operating loss or net
43 capital loss arises;

44 (B) The date the return for the year in which the net operating loss or net capital loss arises
45 is filed; or

1 (C) The date of filing of the return for the year to which the net operating loss or net capital
2 loss is carried back.

3 (6) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section, if
4 the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension,
5 or a renewal of an extension, of the period for proposing and assessing deficiencies in federal income
6 tax for any year, the period within which a claim for credit or refund may be filed or credit or re-
7 fund allowed or made if no claim is filed shall be the period provided within subsections (1) to (5)
8 of this section or six months after the date of the expiration of the agreed period for assessing de-
9 ficiency in federal income tax, whichever period expires later.

10 (7) If a joint return is filed, the department may make separate refunds at the request of either
11 spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross
12 income of each spouse bears to the adjusted gross income of both spouses, or as otherwise deter-
13 mined by the department.

14 (8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department
15 may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490
16 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the
17 State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

18 **SECTION 10.** ORS 314.525 is amended to read:

19 314.525. (1) An underpayment of estimated tax under ORS 314.505 to 314.525 will be considered
20 to have occurred if the estimated tax is not paid as required.

21 (2) Notwithstanding subsection (1) of this section, there shall be no underpayment of estimated
22 tax if the estimated tax paid equals or exceeds the amount described in any one of the following
23 paragraphs:

24 (a) The amount which would be required to be paid if the estimated tax liability were equal to
25 100 percent of the tax shown on the return for the taxable year or, if no return was filed, 100 per-
26 cent of the tax for such taxable year.

27 (b) The amount which would be required to be paid if the estimated tax liability were equal to
28 100 percent of the tax shown on the return for the preceding taxable year, and the preceding taxable
29 year was a taxable year of 12 months.

30 (c)(A) An amount equal to 100 percent of the tax for the taxable year computed by placing on
31 an annualized basis the taxable income:

32 (i) For the first three months of the taxable year, in the case of the installment required to be
33 paid in the fourth month;

34 (ii) For the first three months or for the first five months of the taxable year, in the case of the
35 installment required to be paid in the sixth month;

36 (iii) For the first six months or for the first eight months of the taxable year in the case of the
37 installment required to be paid in the ninth month; and

38 (iv) For the first nine months or for the first 11 months of the taxable year, in the case of the
39 installment required to be paid in the 12th month of the taxable year.

40 (B) For purposes of this paragraph the taxable income shall be placed on an annualized basis
41 by:

42 (i) Multiplying by 12 the taxable income referred to in subparagraph (A) of this paragraph; and

43 (ii) Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or
44 11, as the case may be) referred to in subparagraph (A) of this paragraph.

45 (d) An amount equal to 100 percent of the amount obtained by applying section 6655(e) (3)(C)

1 of the Internal Revenue Code to Oregon taxable income.

2 (e) An election made under section 6655(e) (2)(C) of the Internal Revenue Code (relating to
3 annualization periods) for federal tax purposes shall also apply for purposes of estimated tax under
4 ORS 314.505 to 314.525.

5 (3) Interest shall accrue on the underpayment of estimated tax under ORS 314.505 to 314.525 at
6 the rate established under ORS 305.220[*for each month or fraction thereof during which period*] **for**
7 **the period** the estimated tax or any installment thereof remains unpaid. The penalty provisions
8 contained in this chapter and ORS chapters 317 and 318 for underpayment of tax shall not apply to
9 underpayments of estimated tax under ORS 314.505 to 314.525.

10 (4) For purposes of subsection (3) of this section, the underpayment of estimated tax shall be the
11 excess of:

12 (a) The amount of the installment which would be required to be paid if the estimated tax were
13 equal to the lowest of the payments required under subsection (2) of this section (and allowed to be
14 made by the taxpayer under subsection (5) of this section), over

15 (b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

16 (5) In the case of a large corporation, subsection (2)(b) of this section shall apply only to de-
17 termine the amount of the first required installment for any taxable year. Any reduction in the first
18 installment by reason of this subsection shall be added to the amount of the next required install-
19 ment determined without regard to subsection (2)(b) of this section. For purposes of this subsection,
20 a “large corporation” is any corporation that had federal taxable income, determined without regard
21 to any amount carried to any of the three taxable years under section 172 or 1212(a) of the Internal
22 Revenue Code, of \$1 million or more in any of the three taxable years immediately preceding the
23 taxable year involved.

24 (6) The application of this section to taxable years of less than 12 months shall be in accordance
25 with rules adopted by the Department of Revenue.

26 **SECTION 11.** ORS 316.587 is amended to read:

27 316.587. (1) Except as provided in subsection (5) of this section, if an individual makes an
28 underpayment of estimated tax, interest shall accrue at the rate established under ORS 305.220 [*for*
29 *each month, or fraction thereof,*] on the amount underpaid for the period the estimated tax or any
30 installment remains unpaid. The penalty provisions contained in ORS chapter 314 for underpayment
31 of tax shall not apply to underpayments of estimated tax under ORS 316.557 to 316.589.

32 (2) For purposes of subsection (1) of this section, the amount of underpayment shall be the ex-
33 cess of the required installment over the amount (if any) of the installment paid on or before the
34 due date for the installment.

35 (3) The period of underpayment shall run from the date the installment was due to the earlier
36 of the following dates:

37 (a) The 15th day of the fourth month following the close of the taxable year; or

38 (b) With respect to any portion of the underpayment, the date on which the portion is paid.

39 (4) For purposes of subsection (3)(b) of this section, a payment of estimated tax shall be credited
40 against unpaid required installments in the order in which such installments are required to be paid.

41 (5)(a) Interest accruing under subsection (1) of this section shall not be imposed if the individual
42 was a resident of this state throughout the preceding taxable year and had no tax liability for that
43 year, and the preceding taxable year was a taxable year of 12 months.

44 (b) Interest accruing under subsection (1) of this section shall not be imposed with respect to
45 any underpayment of estimated tax to the extent that the Department of Revenue determines that

1 by reason of casualty, disaster or other unusual circumstances the imposition of interest would be
2 against equity and good conscience.

3 (c) Interest accruing under subsection (1) of this section shall not be imposed with respect to
4 any underpayment of estimated tax if the department determines that:

5 (A) In the tax year the estimated tax payment was required to be made or in the tax year pre-
6 ceding such tax year, the taxpayer (i) retired after having attained age 62 or (ii) became disabled;
7 and

8 (B) The underpayment was due to reasonable cause and not to willful neglect.

9 (d) Interest accruing under subsection (1) of this section shall not be imposed with respect to
10 any underpayment of estimated tax attributable to the pro rata share of a shareholder of the income
11 of an S corporation if:

12 (A) The income is taxable income for an initial year for which S corporation status is elected
13 for the corporation; and

14 (B) The shareholder is a nonresident or for the preceding taxable year was a part-year resident
15 for Oregon tax purposes.

16 (6) For purposes of this section, the estimated tax shall be computed without any reduction for
17 the amount of credit estimated to be allowed to the individual for the taxable year under ORS
18 316.187. The amount of the credit allowed under ORS 316.187 for the taxable year shall be consid-
19 ered a payment of estimated tax. An equal part of the credit shall be considered paid on each in-
20 stallment date for the taxable year, unless the taxpayer establishes the date on which all amounts
21 were actually withheld, in which case the amount so withheld shall be considered payment of esti-
22 mated tax on the dates on which the amounts were actually withheld.

23 (7) For purposes of subsections (5) and (8) of this section, the term “tax” means the tax imposed
24 by this chapter minus any credits against tax allowed for purposes of this chapter, other than the
25 credit against tax provided by ORS 316.187.

26 (8) For purposes of subsections (2) and (4) of this section, the term “required installment” means
27 the amount of the installment that would be due if the estimated tax were equal to the lesser of:

28 (a) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed,
29 90 percent of the tax for such year);

30 (b) If the preceding taxable year was a taxable year of 12 months, the percentage of the tax
31 shown on the return filed by the individual for the preceding taxable year that is established by the
32 Department of Revenue by rule; or

33 (c) Ninety percent of the tax for the taxable year computed by placing on an annualized basis
34 the taxable income for the months in the taxable year ending before the month in which the in-
35 stallment is required to be paid.

36 (9) For purposes of subsection (8) of this section:

37 (a) If an amended return is filed on or before the return due date (determined with regard to
38 any extension of time granted to the taxpayer), then the term “return” means the amended return.

39 (b) If during initial processing of the return the department adjusts the amount of tax due, then
40 the term “tax shown on the return” means the tax as adjusted by the department. This paragraph
41 shall not apply if it is ultimately determined that the adjustment was improper.

42 (c) The department shall consider the provisions of section 6654 of the Internal Revenue Code.

43 **SECTION 12.** ORS 320.320 is amended to read:

44 320.320. If the amount paid by the transient lodging tax collector to the Department of Revenue
45 under ORS 320.315 exceeds the amount of tax payable, the department shall refund the amount of

1 the excess with interest thereon at the rate established under ORS 305.220 [*for each month or frac-*
 2 *tion of a month from the date of payment of the excess until the date of the refund*] **during a period**
 3 **beginning 45 days after the later of the due date of the return to which the excess relates**
 4 **or the date the excess was paid, and ending on the date the refund is paid.** A refund may not
 5 be made to a transient lodging tax collector that fails to claim the refund within two years after the
 6 due date for filing the return to which the claim for refund relates.

7 **SECTION 13.** ORS 321.045 is amended to read:

8 321.045. (1) The taxes levied under ORS 321.015 shall be due and payable annually, on or before
 9 the last day of January, for the preceding year. The tax shall be delinquent if not paid by the due
 10 date, which shall be determined without regard to any extension of time for filing the return.

11 (2) Subject to the provisions relating to estimated tax payments provided in subsections (4) and
 12 (5) of this section, on or before the last day of January, each taxpayer shall make out a return on
 13 the form prescribed by the Department of Revenue showing the amount of the tax for which the
 14 taxpayer is liable for the preceding year and the other information the department considers nec-
 15 essary to correctly determine the tax due and shall mail or deliver the return, together with a re-
 16 mittance for the amount of the tax, to the office of the department. The return shall be signed and
 17 verified by the taxpayer or a duly authorized agent of the taxpayer. Whenever in its judgment good
 18 cause exists, the department may allow upon written application made on or before the due date
 19 further time not exceeding 30 days for filing a return.

20 (3) All payments received under ORS 321.005 to 321.185 and 321.560 to 321.600 shall be credited,
 21 first, to penalty and interest accrued, and then to tax due.

22 (4) Each taxpayer expecting to incur a liability pursuant to this section in excess of \$1,500 for
 23 any calendar year shall, on forms prescribed by the Department of Revenue, make and file with the
 24 department on or before the last day of the month following the end of each calendar quarter an
 25 estimate of the taxpayer's tax liability for the year. At least one-quarter of the estimated tax shall
 26 be remitted to the department with each estimated tax report and the balance shall be remitted to
 27 the department on or before the due date of the tax return required by subsection (2) of this section,
 28 without regard for any extension of the due date thereof.

29 (5) If the amount remitted with an estimated tax report filed on or before the due date thereof
 30 is at least 25 percent of the tax of the taxpayer as due for the calendar year preceding the year for
 31 which the report is made or at least 20 percent of the taxpayer's tax liability as due for the year
 32 for which the report is made, or 100 percent of the tax liability on the actual merchantable forest
 33 products harvested for the calendar quarter preceding the due date of the estimated tax report, no
 34 penalty or interest shall be charged. Otherwise a penalty in the form of interest at the rate estab-
 35 lished under ORS 305.220 [*for each month or fraction thereof*] shall be assessed for the period of de-
 36 linquency calculated on the difference between the payment made and the payment that would have
 37 been due had the taxpayer estimated the liability for the quarter in an amount equal to the liability
 38 as due for such quarter. The provisions of ORS chapters 305 and 314 relating to penalties and in-
 39 terest shall not apply to the estimated tax payments described in this section.

40 **SECTION 14.** ORS 321.560 is amended to read:

41 321.560. (1) The provisions of ORS chapters 305 and 314 as to the audit and examination of re-
 42 ports and returns, determination of deficiencies, liens, assessments, claims for refund, conferences
 43 and appeals to the Oregon Tax Court, and the procedures relating thereto, apply to the determi-
 44 nation of taxes, penalties and interest imposed under ORS 321.005 to 321.185, 321.560 to 321.600 or
 45 321.700 to 321.754, except where the context requires otherwise.

1 (2) If a taxpayer fails to file a return required by ORS 321.045 or 321.700 to 321.754, or fails to
 2 pay a tax at the time the tax becomes due, there shall be added to the amount of tax required to
 3 be shown on the return a delinquency penalty of five percent of the amount of such tax.

4 (3) If the failure to file a return continues for a period in excess of three months after the due
 5 date, there shall be added to the amount of tax required to be shown on the return a failure to file
 6 penalty of 20 percent of the amount of such tax. This penalty is in addition to the delinquency
 7 penalty imposed by subsection (2) of this section.

8 (4) If all or any part of the delinquency or deficiency for which a determination is made is due
 9 to fraud or an intent to evade the provisions of ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700
 10 to 321.754, or the rules adopted thereunder, a penalty of 100 percent of such delinquency or defi-
 11 ciency shall be added, plus interest at the rate established under ORS 305.220 *[for each month, or*
 12 *any fraction thereof]*, computed on the full amount of the delinquency or deficiency plus penalty, from
 13 the time the return was due.

14 (5) For purposes of this section, the amount of tax required to be shown on the return shall be
 15 reduced by the amount of any part of the tax that is paid on or before the date prescribed for pay-
 16 ment of the tax and by the amount of any credit against the tax that may be lawfully claimed upon
 17 the return.

18 (6) A delinquent tax or a deficiency shall bear interest at the rate established under ORS 305.220
 19 *[for each month, or any fraction thereof,]* from the time the return was due.

20 **SECTION 15.** ORS 323.195 is amended to read:

21 323.195. Any distributor who fails to pay any amount owing to the purchase of stamps within
 22 the time required, shall pay a penalty of 10 percent of the amount due in addition to the amount
 23 plus interest at the rate established under ORS 305.220 *[for each month, or fraction thereof,]* from the
 24 date on which the amount became due and payable until the date of payment.

25 **SECTION 16.** ORS 323.320 is amended to read:

26 323.320. (1) The Department of Revenue shall, pursuant to rule, refund or credit to a distributor
 27 the denominated values, less the discount given on their purchase, of:

28 (a) Any unused or damaged stamps; or

29 (b) Stamps affixed to packages of cigarettes that, prior to or after distribution, have become
 30 unfit for use or unsalable or have been destroyed, returned for credit or replaced, if the department
 31 has proof of the cigarettes not being used for smoking in the State of Oregon.

32 (2) Interest shall be computed, allowed and paid with respect to a refund made under this sec-
 33 tion, at the rate established under ORS 305.220 for *[each month or fraction of a month during]* a pe-
 34 riod beginning 45 days after the receipt by the department of a claim for refund.

35 **SECTION 17.** ORS 323.330 is amended to read:

36 323.330. Unless the refund is one described in ORS 323.320, interest shall be computed, allowed
 37 and paid upon any overpayment for the purchase of stamps at the rate established under ORS
 38 305.220 for *[each month or fraction of a month during]* a period beginning 45 days after the due date
 39 for payment of the purchase for which the overpayment was made or **on** the date of the payment,
 40 whichever is *[the]* later, *[to]* **and ending at** the time the refund is made. No refund or credit shall
 41 be made of any interest imposed upon the claimant with respect to the amount being refunded or
 42 credited.

43 **SECTION 18.** ORS 323.365 is amended to read:

44 323.365. (1) The Department of Revenue for good cause may extend the time for making any
 45 report or paying any amount of tax required under ORS 323.005 to 323.482. The extension may be

1 granted at any time provided a request is filed with the department within or prior to the period for
 2 which the extension may be granted. The department may not grant an extension of more than 30
 3 days.

4 (2) Any person to whom an extension is granted shall pay, in addition to the amount of tax, in-
 5 terest at the rate established under ORS 305.220 [*for each month, or fraction of a month,*] from the
 6 date on which the amount of tax would have been due without the extension to the date of payment.

7 **SECTION 19.** ORS 323.510 is amended to read:

8 323.510. (1) Except as otherwise provided in ORS 323.500 to 323.645, the tax imposed by ORS
 9 323.505 and 323.565 shall be paid by each distributor and each common carrier or authorized person
 10 specified in ORS 323.565 to the Department of Revenue on or before the last day of January, April,
 11 July and October of each year for the preceding calendar quarter.

12 (2) With each quarterly payment, the taxpayer shall submit a return to the department, in such
 13 form and containing such information as the department shall prescribe.

14 (3) The tax, penalties and interest imposed by ORS 323.500 to 323.645 shall be a personal debt,
 15 from the time liability is incurred, owed by the taxpayer to the State of Oregon until paid.

16 (4) The returns required of distributors and common carriers or authorized persons specified in
 17 ORS 323.565 under this section shall be filed by the distributors, common carriers or authorized
 18 persons regardless of whether any tax is owed by them.

19 (5)(a) The department for good cause may extend the time for making any return under ORS
 20 323.500 to 323.645. The extension may be granted at any time if a written request is filed with the
 21 department within or prior to the period for which the extension may be granted. The department
 22 may not grant an extension of more than one month.

23 (b) When the time for filing a return is extended at the request of a taxpayer, interest shall be
 24 added at the rate established under ORS 305.220 [*for each month, or fraction of a month,*] from the
 25 time the return was originally required to be filed to the time of payment.

26 **SECTION 20.** ORS 324.170 is amended to read:

27 324.170. (1) The provisions of ORS chapters 305 and 314 as to the audit and examination of re-
 28 ports and returns, determination of deficiencies, assessments, claims for refund, conferences and
 29 appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determi-
 30 nation of taxes, penalties and interest under this chapter, except where the context requires other-
 31 wise.

32 (2) A delinquent tax or deficiency shall bear interest at the rate established under ORS 305.220
 33 [*for each month, or any fraction thereof,*] from the time the tax was due.

34 **SECTION 21.** ORS 403.220 is amended to read:

35 403.220. (1) If the amount paid by the provider or seller to the Department of Revenue under
 36 ORS 403.215 exceeds the amount of tax payable, the department shall refund the amount of the ex-
 37 cess with interest thereon at the rate established under ORS 305.220 [*for each month or fraction of*
 38 *a month from the date of payment of the excess until the date of the refund*] **during a period begin-**
 39 **ning 45 days after the later of the due date of the return to which the excess relates or the**
 40 **date the excess was paid, and ending on the date the refund is paid.** The department may not
 41 make a refund to a provider or seller who fails to claim the refund within two years after the due
 42 date for filing of the return with respect to which the claim for refund relates.

43 (2) A consumer or subscriber's exclusive remedy in a dispute involving tax liability is to file a
 44 claim with the department.

45 **SECTION 22.** ORS 453.404 is amended to read:

1 453.404. (1) The State Fire Marshal for good cause may extend, for not to exceed one month, the
2 time for payment of the fee due under ORS 453.396 to 453.414. The extension may be granted at any
3 time if a written request is filed with the State Fire Marshal within or prior to the period for which
4 the extension may be granted. If the time for payment is extended at the request of a person, in-
5 terest at the rate established under ORS 305.220, [*for each month, or fraction of a month,*] from the
6 time the payment was originally due to the time payment is actually made, shall be added and paid.

7 (2) If the person fails to pay the amount due, the State Fire Marshal may either:

8 (a) Bring an action for the recovery of the fee due; or

9 (b) Initiate a contested case hearing according to the applicable provisions of ORS chapter 183.

10 (3) Notwithstanding any provision of ORS chapter 183, nothing in subsection (2) of this section
11 shall be considered to require the State Fire Marshal to conduct a contested case hearing as a
12 prerequisite to bringing an action under subsection (2)(a) of this section.

13 **SECTION 23.** ORS 465.114 is amended to read:

14 465.114. The Department of Revenue for good cause may extend, for not to exceed one month,
15 the time for payment of the fee due under ORS 465.101 to 465.131. The extension may be granted
16 at any time if a written request is filed with the department within or prior to the period for which
17 the extension may be granted. If the time for payment is extended at the request of a person, in-
18 terest at the rate established under ORS 305.220, [*for each month, or fraction of a month,*] from the
19 time the payment was originally due to the time payment is actually made, shall be added and paid.

20 **SECTION 24.** ORS 475B.710, as amended by section 7, chapter 91, Oregon Laws 2016, is
21 amended to read:

22 475B.710. (1) Except as otherwise provided in ORS 475B.700 to 475B.760, the tax imposed upon
23 the consumer under ORS 475B.705 shall be collected at the point of sale and remitted by each
24 marijuana retailer that engages in the retail sale of marijuana items. The tax is a tax upon the
25 marijuana retailer that is required to collect the tax, and the marijuana retailer is a taxpayer.

26 (2) The marijuana retailer shall file a return to the Department of Revenue on or before the last
27 day of January, April, July and October of each year for the previous calendar quarter.

28 (3) The marijuana retailer shall pay the tax to the department in the form and manner pre-
29 scribed by the department, but not later than with each quarterly return, without regard to an ex-
30 tension granted under subsection (5) of this section.

31 (4) Marijuana retailers shall file the returns required under this section regardless of whether
32 any tax is owed.

33 (5) For good cause, the department may extend the time for filing a return under this section.
34 The extension may be granted at any time if a written request is filed with the department during
35 or prior to the period for which the extension may be granted. The department may not grant an
36 extension of more than 30 days.

37 (6) Interest shall be added at the rate established under ORS 305.220 [*for each month, or fraction*
38 *of a month,*] from the time the return was originally required to be filed to the time of payment.

39 (7) If a marijuana retailer fails to file a return or pay the tax as required by this section, the
40 department shall impose a penalty in the manner provided in ORS 314.400.

41 (8) Except as provided in subsections (9) and (10) of this section, the period prescribed for the
42 department to allow or make a refund of any overpayment of tax paid under ORS 475B.700 to
43 475B.760 is as provided in ORS 314.415.

44 (9)(a) The department shall first apply any overpayment of tax by a marijuana retailer to any
45 marijuana tax that is owed by the marijuana retailer.

1 (b) If after any offset against any delinquent amount the overpayment of tax remains greater
2 than \$1,000, the remaining refund shall be applied as a credit against the next subsequent calendar
3 quarter as an estimated payment.

4 (10) The department may not make a refund of, or credit, any overpayment of tax under ORS
5 475B.700 to 475B.760 that was credited to the account of a marijuana retailer under subsection (9)(b)
6 of this section if the return for that tax period is not filed within three years after the due date of
7 that return.

8 **SECTION 25. The amendments to ORS 118.100, 118.260, 305.220, 305.222, 305.265, 305.295,**
9 **314.395, 314.400, 314.415, 314.525, 316.587, 320.320, 321.045, 321.560, 323.195, 323.320, 323.330,**
10 **323.365, 323.510, 324.170, 403.220, 453.404, 465.114 and 475B.710 by sections 1 to 24 of this 2017**
11 **Act apply to tax deficiencies or refunds owing as of January 1, 2018.**

12 **SECTION 26. This 2017 Act takes effect on the 91st day after the date on which the 2017**
13 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

14