

Requested by Representative BARNHART

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2087**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of  
2 the line and line 3 and insert “ORS 305.155, 305.265, 305.860, 305.875, 305.992  
3 and 314.400; and prescribing an effective date.”.

4 Delete lines 5 through 27 and delete pages 2 through 14 and insert:

5 **“SECTION 1.** ORS 305.860 is amended to read:

6 “305.860. (1) The Director of the Department of Revenue shall prepare a  
7 statement which sets forth in simple nontechnical terms:

8 “(a) The rights of a taxpayer and the obligations of the Department of  
9 Revenue during an audit;

10 “(b) The procedures by which a taxpayer may appeal any adverse decision  
11 of the department, including informal conferences and judicial appeals;

12 “(c) The procedures for filing and processing refund claims and filing of  
13 taxpayer complaints; [*and*]

14 “(d) The procedures which the department may use in enforcing the pro-  
15 visions of the laws of this state; **and**

16 **“(e) The procedures used by the department for collection of tax**  
17 **debt, and methods the taxpayer may use to appeal decisions by the**  
18 **department related to collections.**

19 “(2) The statement prepared in accordance with subsection (1) of this  
20 section shall be distributed by the Director of the Department of Revenue  
21 to all taxpayers upon request. The director shall inform taxpayers of their

1 rights in a brief explanatory statement included in all billing or collection  
2 notices, all notices of assessment or deficiency and all notices of refund ad-  
3 justment or denial sent to the taxpayer.

4 **“SECTION 2.** ORS 305.875 is amended to read:

5 “305.875. In any meeting or communication with the Department of Rev-  
6 enue, including but not limited to audits, conferences, interviews and any  
7 other meeting or communication between the taxpayer and the department,  
8 the taxpayer shall have the following rights, unless waived by the taxpayer:

9 “(1) The right to an explanation, by an officer or employee of the de-  
10 partment before or during the meeting of:

11 “(a) The audit, conference or meeting process and the taxpayer’s rights  
12 under such process; and

13 “(b) The collection process and the taxpayer’s rights under such process.

14 “(2) The right to make an audio recording of any meeting relating to the  
15 determination or collection of any tax with the department representative,  
16 using the taxpayer’s own equipment, and at the taxpayer’s own expense.

17 “(3) If the department makes an audio recording of the meeting, the tax-  
18 payer has the right to advance notice of the recording and a copy of the re-  
19 cording upon request. The taxpayer shall reimburse the department the  
20 reasonable cost of the copy.

21 “(4) The right to consult with an attorney, certified public accountant,  
22 enrolled agent, or an other person permitted to represent a taxpayer at any  
23 meeting before the department, if the taxpayer clearly states to the depart-  
24 ment representative at any time during any meeting, that the taxpayer  
25 wishes to consult with the person. This subsection does not apply to a  
26 meeting initiated by an administrative subpoena.

27 “(5) The right to be represented by anyone who is permitted to represent  
28 the taxpayer before the department, as provided under ORS 305.230 and  
29 305.245.

30 “(6) The right not to be present, if represented, at the meeting unless

1 subpoenaed by the department pursuant to ORS 305.190, or other laws of this  
2 state.

3 **“(7) The right not to be contacted by the department if a valid**  
4 **power of attorney has been filed with the department. This provision**  
5 **does not apply to mailed notices.**

6 **“SECTION 3.** ORS 305.155 is amended to read:

7 “305.155. (1) The Department of Revenue shall cancel an unpaid tax im-  
8 posed by laws of the State of Oregon that is collected by the department,  
9 including any penalty or interest applicable to the tax, if the department  
10 determines that:

11 “(a) The tax has been delinquent for seven or more years;

12 “(b) All reasonable efforts have been made to effect collection;

13 “(c) The taxpayer cannot be located or is dead; and

14 “(d) The tax is wholly uncollectible.

15 “(2) The department shall offer to suspend collection of an unpaid tax  
16 imposed by laws of the State of Oregon that is collected by the department,  
17 including any penalty or interest applicable to the tax, if the department  
18 determines that the individual liable for the debt:

19 “(a) Has income that does not exceed 200 percent of the federal poverty  
20 guidelines based on the individual’s household size and household members;

21 “(b) Has less than \$5,000 in assets; and

22 “(c) Has income solely from a source that is exempt from garnishment  
23 under ORS chapter 18.

24 “(3) The department may cancel any tax imposed by laws of the State of  
25 Oregon that is collected by the department or any portion of the tax assessed  
26 against a person, including any penalty and interest that has not been col-  
27 lected, if the department determines that the administration and collection  
28 costs involved would exceed the amount that can reasonably be expected to  
29 be recovered.

30 “(4) When taxes are canceled under subsection (1) or (3) of this section,

1 the department shall make an order canceling the tax, penalties and interest.  
2 The order shall be filed in the records of the department. Upon making the  
3 order, the department also shall cause to be canceled or released any lien  
4 of record of the tax, penalties and interest in the counties that may have  
5 been filed and entered therein.

6 “(5) When collection of taxes is suspended under subsection (2) of this  
7 section:

8 “(a) The department shall continue to charge interest on the taxes for  
9 which collection has been suspended.

10 “(b) The taxpayer may make voluntary payments of unpaid tax. Volun-  
11 tary payment of unpaid tax under this subsection does not affect the  
12 taxpayer’s eligibility for suspension of collection under this section or allow  
13 the department to resume collection of any unpaid tax.

14 “(c) The department may file a lien against the taxpayer’s property.

15 “(d) The department may resume collection as described in subsection (7)  
16 of this section if the taxpayer incurs additional unpaid tax during the period  
17 of suspended collection.

18 “(6) Nothing in this section limits the department’s authority to offset  
19 state or federal payments, including tax refunds, against unpaid taxes that  
20 have been suspended under subsection (2) of this section.

21 “(7)(a) When collection of taxes is suspended under subsection (2) of this  
22 section, the department shall review annually the taxpayer’s eligibility for  
23 suspension of collection activities and ensure that the taxpayer continues to  
24 meet all requirements listed in subsection (2) of this section.

25 “(b) If the department determines that a taxpayer no longer meets the  
26 requirements listed in subsection (2) of this section, the department may re-  
27 sume collection of any unpaid tax. Not less than 30 days before the depart-  
28 ment resumes collection under this subsection, the department shall provide  
29 written notice to the taxpayer that the taxpayer no longer qualifies for sus-  
30 pension of collection under this section and that the department will resume

1 collection of the unpaid tax.

2 “(8) The department may write off the debt on its accounts under ORS  
3 293.240 for any tax period for which collection has been suspended under  
4 subsection (2) for more than three tax years.

5 **“(9) Notwithstanding ORS 305.157 and subsections (1) and (2) of this  
6 section, the department shall cancel any tax imposed by laws of the  
7 State of Oregon that is collected by the department or any portion of  
8 the tax assessed against a person, including any penalty and interest  
9 that has not been collected, if at least 20 years have passed since the  
10 date that the tax was first due and payable.**

11 “[9] (10) The department shall by rule establish policies and procedures  
12 for the administration of this section.

13 **“SECTION 4. Section 5 of this 2017 Act is added to and made a part  
14 of ORS chapter 305.**

15 **“SECTION 5. The Department of Revenue shall by rule adopt and  
16 publish the following:**

17 **“(1) The standards used by the department in reviewing and ana-  
18 lyzing financial statements presented by taxpayers.**

19 **“(2) The standards for determining the amount of a taxpayer’s  
20 wages that are exempted from execution. In these determinations:**

21 **“(a) Notwithstanding ORS 18.385, the department shall rely on the  
22 collection financial standards promulgated by the Internal Revenue  
23 Service; and**

24 **“(b) The department shall allow a taxpayer an additional amount  
25 for special expenses, including the payment of tithes, educational loan  
26 debt and higher education expenses at institutions located in Oregon  
27 of dependents of the taxpayer.**

28 **“(3) The standards used by the department in granting or denying:**

29 **“(a) Requests for agreements to satisfy tax liability through in-  
30 stallment payments under ORS 305.890;**

1       **“(b) Offers of compromise for settlement of debt; or**  
2       **“(c) Applications for penalty abatements based on allegations of**  
3       **circumstances beyond a taxpayer’s control.**

4       **“(4) Procedures and enumerated grounds by which a taxpayer may**  
5       **challenge a recorded distraint warrant, including the procedures by**  
6       **which a taxpayer may request release or subordination of a tax lien**  
7       **or cancellation of a tax lien upon bankruptcy discharge.**

8       **“SECTION 6.** ORS 305.265 is amended to read:

9       “305.265. (1) Except as provided in ORS 305.305, the provisions of this  
10      section apply to all reports or returns of tax or tax liability filed with the  
11      Department of Revenue under the revenue and tax laws administered by it,  
12      except those filed under ORS 320.005 to 320.150.

13      “(2) As soon as practicable after a report or return is filed, the depart-  
14      ment shall examine or audit it, if required by law or the department deems  
15      such examination or audit practicable. If the department discovers from an  
16      examination or an audit of a report or return or otherwise that a deficiency  
17      exists, it shall compute the tax and give notice to the person filing the return  
18      of the deficiency and of the department’s intention to assess the deficiency,  
19      plus interest and any appropriate penalty. Except as provided in subsection  
20      (3) of this section, the notice shall:

21      “(a) State the reason for each adjustment;

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

24      “(c) Be certified by the department that the adjustments are made in good  
25      faith and not for the purpose of extending the period of assessment.

26      “(3) When the notice of deficiency described in subsection (2) of this sec-  
27      tion results from the correction of a mathematical or clerical error and  
28      states what would have been the correct tax but for the mathematical or  
29      clerical error, such notice need state only the reason for each adjustment to  
30      the report or return.

1       “(4) With respect to any tax return filed under ORS chapter 314, 316, 317  
2 or 318, deficiencies shall include but not be limited to the assertion of addi-  
3 tional tax arising from:

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

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

7       “(c) Mathematical errors in the return or the amount of tax shown due  
8 in the records of the department; or

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

10       “(5)(a) The notice of deficiency shall be accompanied by a statement ex-  
11 plaining the person’s right to make written objections, the person’s right to  
12 request a conference and the procedure for requesting a conference. The  
13 statement, and an accompanying form, shall also explain that conference  
14 determinations are routinely transmitted via regular mail and that a person  
15 desiring to have conference determinations transmitted by certified mail may  
16 do so by indicating on the form the person’s preference for certified mail and  
17 by returning the form with the person’s written objections as described in  
18 paragraph (b) of this subsection.

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

25       “(6) If a request for a conference is made, the department shall notify the  
26 person of a time and place for conference and appoint a conference officer  
27 to meet with the person for an informal discussion of the matter. After the  
28 conference, the conference officer shall send the determination of the issues  
29 to the person. The determination letter shall be sent by regular mail, or by  
30 certified mail if the person given notice has indicated a preference for

1 transmission of the determination by certified mail. The department shall  
2 assess any deficiency in the manner set forth in subsection (7) of this section.  
3 If no conference is requested and written objections are received, the de-  
4 partment shall make a determination of the issues considering such ob-  
5 jections, and shall assess any deficiency in the manner provided in  
6 subsection (7) of this section. The failure to request or have a conference  
7 shall not affect the rights of appeal otherwise provided by law.

8 “(7) If neither payment nor written objection to the deficiency is received  
9 by the department within 30 days after the notice of deficiency has been  
10 mailed, the department shall assess the deficiency, plus interest and penal-  
11 ties, if any, and shall send the person a notice of assessment, stating the  
12 amount so assessed, and interest and penalties. The notice of assessment  
13 shall be mailed within one year from the date of the notice of deficiency  
14 unless an extension of time is agreed upon as described in subsection (8) of  
15 this section. The notice shall advise the person of the rights of appeal.

16 “(8) If, prior to the expiration of any period of time prescribed in sub-  
17 section (7) of this section for giving of notice of assessment, the department  
18 and the person consent in writing to the deficiency being assessed after the  
19 expiration of such prescribed period, such deficiency may be assessed at any  
20 time prior to the expiration of the period agreed upon. The period so agreed  
21 upon may be extended by subsequent agreements in writing made before the  
22 expiration of the period agreed upon.

23 “(9) The failure to hold a requested conference within the one-year period  
24 prescribed in subsection (5) of this section shall not invalidate any assess-  
25 ment of deficiency made within the one-year period pursuant to subsection  
26 (7) of this section or within any extension of time made pursuant to sub-  
27 section (8) of this section, but shall invalidate any assessment of interest or  
28 penalties attributable to the deficiency. After an assessment has been made,  
29 the department and the person assessed may still hold a conference within  
30 90 days from the date of assessment. If a conference is held, the 90-day period



1 under ORS 305.280 (2) shall run from the date of the conference officer's  
2 written determination of the issues.

3 “(10)(a) In the case of a failure to file a report or return on the date  
4 prescribed therefor (determined with regard to any extension for filing), the  
5 department shall determine the tax according to the best of its information  
6 and belief, assess the tax plus appropriate penalty and interest, and give  
7 written notice of the failure to file the report or return and of the determi-  
8 nation and assessment to the person required to make the filing. The amount  
9 of tax shall be reduced by the amount of any part of the tax which is paid  
10 on or before the date prescribed for payment of the tax and by the amount  
11 of any credit against the tax which may be lawfully claimed upon the return.

12 “(b) Notwithstanding subsection (14) of this section and ORS 305.280, and  
13 only to the extent allowed by rules adopted by the department, the depart-  
14 ment may accept the filing of a report or return submitted by a person who  
15 has been assessed a tax under paragraph (a) of this subsection.

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

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

18 “(B) That the department determines is not true and correct as to every  
19 material matter as required by ORS 305.815; or

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

22 “(d) If the department rejects a report or return of a person assessed a  
23 tax under paragraph (a) of this subsection, the department shall issue a no-  
24 tice of rejection to the person. The person may appeal the rejection to the  
25 magistrate division of the Oregon Tax Court only if:

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

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

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

5       “(A) Accepts the filing of the report or return, the appeal shall be dis-  
6 missed as moot.

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

9       “(f) If the department accepts the filing of a report or return, the de-  
10 partment may reduce the assessment issued under paragraph (a) of this sub-  
11 section. A report or return filed under this subsection that is accepted by the  
12 department, whether or not the assessment has been reduced, shall be con-  
13 sidered a report or return described in subsection (1) of this section and shall  
14 be subject to the provisions of this section, including but not limited to ex-  
15 amination and adjustment pursuant to subsection (2) of this section.

16       “(g) The department may refund payments made with respect to a report  
17 or return filed and accepted pursuant to this subsection. If the report or  
18 return is filed within three years of the due date for filing the report or re-  
19 turn, excluding extensions, the refund shall be made as provided by ORS  
20 305.270 and 314.415. If the report or return is not filed within three years of  
21 the due date for filing the report or return, excluding extensions, the refund  
22 shall be limited to payments received within the two-year period ending on  
23 the date the report or return is received by the department and payments  
24 received after the date the report or return is received by the department.  
25 Interest shall be paid at the rate established under ORS 305.220 for each  
26 month or fraction of a month from the date the report or return is received  
27 by the department to the time the refund is made.

28       “(11) Mailing of notice to the person at the person’s last-known address  
29 shall constitute the giving of notice as prescribed in this section.

30       “(12) If a return is filed with the department accompanied by payment of

1 less than the amount of tax shown on or from the information on the return  
2 as due, the difference between the tax and the amount submitted is consid-  
3 ered as assessed on the due date of the report or return (determined with  
4 regard to any extension of time granted for the filing of the return) or the  
5 date the report or return is filed, whichever is later. For purposes of this  
6 subsection, the amount of tax shown on or from the information on the re-  
7 turn as due shall be reduced by the amount of any part of the tax that is  
8 paid on or before the due date prescribed for payment of the tax, and by any  
9 credits against the tax that are claimed on the return. If the amount required  
10 to be shown as tax on a return is less than the amount shown as tax on the  
11 return, this subsection shall be applied by substituting the lesser amount.

12 “(13) Every deficiency shall bear interest at the rate established under  
13 ORS 305.220 for each month or fraction of a month computed from the due  
14 date of the return to date of payment. If the return was falsely prepared and  
15 filed with intent to evade the tax, a penalty equal to [100] **25** percent of the  
16 deficiency shall be assessed and collected. All payments received shall be  
17 credited first to penalty, then to interest accrued, and then to tax due.

18 “(14) If the deficiency is paid in full before a notice of assessment is is-  
19 sued, the department is not required to send a notice of assessment, and the  
20 tax shall be considered as assessed as of the date which is 30 days from the  
21 date of the notice of deficiency or the date the deficiency is paid, whichever  
22 is the later. A partial payment of the deficiency shall constitute only a credit  
23 to the account of the person assessed. Assessments and billings of taxes shall  
24 be final after the expiration of the appeal period specified in ORS 305.280,  
25 except to the extent that an appeal is allowed under ORS 305.280 (3) follow-  
26 ing payment of the tax.

27 “(15) Appeal may be taken to the tax court from any notice of assessment.  
28 The provisions of this chapter with respect to appeals to the tax court apply  
29 to any deficiency, penalty or interest assessed.

30 **SECTION 7.** ORS 305.992 is amended to read:

1 “305.992. (1) If any returns required to be filed under ORS 475B.700 to  
2 475B.760 or ORS chapter 118, 314, 316, 317, 318, 321 or 323 or under a local  
3 tax administered by the Department of Revenue under ORS 305.620 are not  
4 filed for three consecutive years by the due date (including extensions) of the  
5 return required for the third consecutive year, there shall be a penalty for  
6 each year of [100] **25** percent of the tax liability determined after credits and  
7 prepayments for each such year.

8 “(2) The penalty imposed under this section is in addition to any other  
9 penalty imposed by law. However, the total amount of penalties imposed for  
10 any taxable year under this section, ORS 305.265 (13), 314.400, 323.403, 323.585  
11 or 475B.755 may not exceed [100] **25** percent of the tax liability.

12 **“SECTION 8.** ORS 314.400 is amended to read:

13 “314.400. (1) If a taxpayer fails to file a report or return or fails to pay  
14 a tax by the date on which the filing or payment is due, the Department of  
15 Revenue shall add to the amount required to be shown as tax on the report  
16 or return a delinquency penalty of five percent of the amount of the unpaid  
17 tax.

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

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

24 “(b) Thereafter the department may send a notice and demand to the  
25 person to file a report or return within 30 days of the mailing of the notice.  
26 If after the notice and demand no report or return is filed within the 30 days,  
27 the department may determine the tax according to the best of its informa-  
28 tion and belief, assess the tax with appropriate penalty and interest plus an  
29 additional penalty of 25 percent of the tax deficiency determined by the de-  
30 partment and give written notice of the determination and assessment to the

1 person required to make the filing.

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

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

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

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

21 “(5) If a report or return that is subject to a failure to file penalty de-  
22 scribed in subsection (2) or (3) of this section is filed before a notice of de-  
23 termination and assessment is issued by the department, the failure to file  
24 penalty referred to in subsection (2)(a) or (3)(a) of this section shall be added  
25 to the amount of tax shown on the report or return.

26 “(6) A penalty equal to [100] **25** percent of any deficiency determined by  
27 the department shall be assessed and collected if:

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

30 “(b) A report or return was falsely prepared and filed with intent to evade

1 the tax.

2 “(7) Interest shall be collected on the unpaid tax at the rate established  
3 under ORS 305.220 for each month or fraction of a month, computed from the  
4 time the tax became due, during which the tax remains unpaid.

5 “(8) Each penalty imposed under this section is in addition to any other  
6 penalty imposed under this section. However, the total amount of penalty  
7 imposed under this section and ORS 305.265 (13) with respect to any defi-  
8 ciency shall not exceed 100 percent of the deficiency.

9 “(9) For purposes of subsections (1) to (3) of this section, the amount of  
10 tax required to be shown or that is shown on the report or return shall be  
11 reduced by the amount that is paid on or before the date prescribed for  
12 payment of the tax and by the amount of any credit against the tax that is  
13 claimed on the report or return. If the amount required to be shown as tax  
14 on the report or return is less than the amount that is actually shown as tax  
15 on the report or return, this subsection shall be applied by substituting the  
16 lower amount.

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

20 “(a) The taxpayer pays the full amount of the tax plus accrued interest  
21 within 30 days of the date shown on the department’s notice sent to the  
22 taxpayer; and

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

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

28 **“SECTION 9. The amendments to ORS 305.265, 305.992 and 314.400**  
29 **by sections 6 to 8 of this 2017 Act apply to tax years beginning on or**  
30 **after January 1, 2018.**

1 **SECTION 10. This 2017 Act takes effect on the 91st day after the**  
2 **date on which the 2017 regular session of the Seventy-ninth Legislative**  
3 **Assembly adjourns sine die.”.**

4 \_\_\_\_\_