

Senate Bill 165

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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 **as introduced**.

Directs employer, on annual tax withholding return submitted to Department of Revenue, to indicate whether employer offers qualified retirement savings plan that would allow exemption from participation in Oregon Retirement Savings Plan. Allows department to share collected information with State Treasurer. Applies to returns submitted to department on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to employer exemption from participation in Oregon Retirement Savings Plan; creating new
3 provisions; amending ORS 314.840 and 316.202; and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.202 is amended to read:

6 316.202. (1) With each payment made to the Department of Revenue, every employer shall de-
7 liver to the department, on a form prescribed by the department showing the total amount of with-
8 held taxes in accordance with ORS 316.167, 316.172 and 320.550, and supply such other information
9 as the department may require. The employer is charged with the duty of advising the employee of
10 the amount of moneys withheld, in accordance with such regulations as the department may pre-
11 scribe, using printed forms furnished or approved by the department for such purpose.

12 (2) Except as provided in subsection [(4)] (5) of this section, every employer shall submit a
13 combined quarterly return to the department on a form provided by it showing the number of pay-
14 ments made, the withheld taxes paid during the quarter and an explanation of federal withholding
15 taxes as computed by the employer. The report shall be filed with the department on or before the
16 last day of the month following the end of the quarter.

17 (3) The employer shall make an annual return to the department on forms provided or approved
18 by it, summarizing the total compensation paid and the taxes withheld for all employees during the
19 calendar year and shall file the same with the department on or before the due date of the corre-
20 sponding federal return for the year for which report is made. Failure to file the annual report
21 without reasonable excuse on or before the 30th day after notice has been given to the employer
22 of failure subjects the employer to a penalty of \$100. The department may by rule require additional
23 information the department finds necessary to substantiate the annual return, including but not
24 limited to copies of federal form W-2 for individual employees, and may prescribe circumstances
25 under which the filing requirement imposed by this subsection is waived.

26 (4) **The employer shall indicate on the return required by subsection (3) of this section**
27 **whether the employer offers a qualified retirement plan, as listed in ORS 178.215 (8), that**
28 **would allow the employer to obtain an exemption from offering employees enrollment in the**

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 **retirement plan developed under ORS 178.205. The department shall provide a means on the**
 2 **return by which the employer may make this indication.**

3 [(4)] (5) Notwithstanding the provisions of subsection (2) of this section, employers of agricul-
 4 tural employees may submit returns annually showing the number of payments made and the with-
 5 held taxes paid. However, such employers shall make and file a combined quarterly tax report with
 6 respect to other tax programs, as required by ORS 316.168.

7 [(5)] (6) In addition to any other penalty required by law:

8 (a) A person who fails to substantiate a report required under subsection (3) of this section, or
 9 who files incomplete or incorrect substantiation, shall be subject to a penalty of \$50 per federal form
 10 W-2 after the date on which the substantiation is due, up to a maximum penalty of \$2,500.

11 (b) A person who knowingly fails to substantiate a report required under subsection (3) of this
 12 section, or who knowingly files incomplete or incorrect substantiation, shall be subject to a penalty
 13 of \$250 per federal form W-2 after the date on which the substantiation is due, up to a maximum
 14 penalty of \$25,000.

15 **SECTION 2.** ORS 314.840 is amended to read:

16 314.840. (1) The Department of Revenue may:

17 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230
 18 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-
 19 tative or designee, with a copy of the taxpayer's income tax return filed with the department for
 20 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with
 21 any other information the department considers necessary.

22 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

23 (c) Publish statistics so classified as to prevent the identification of income or any particulars
 24 contained in any report or return.

25 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social
 26 Security number, employer identification number or other taxpayer identification number to the ex-
 27 tent necessary in connection with collection activities or the processing and mailing of correspond-
 28 ence or of forms for any report or return required in the administration of any local tax under ORS
 29 305.620 or any law imposing a tax upon or measured by net income.

30 (2) The department also may disclose and give access to information described in ORS 314.835
 31 to:

32 (a) The Governor of the State of Oregon or the authorized representative of the Governor with
 33 respect to an individual who is designated as being under consideration for appointment or reap-
 34 pointment to an office or for employment in the office of the Governor. The information disclosed
 35 shall be confined to whether the individual:

36 (A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not
 37 more than the three immediately preceding years for which the individual was required to file an
 38 Oregon individual income tax return.

39 (B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or
 40 otherwise respond to a deficiency notice within 30 days of its mailing.

41 (C) Has been assessed any penalty under the Oregon personal income tax laws and the nature
 42 of the penalty.

43 (D) Has been or is under investigation for possible criminal offenses under the Oregon personal
 44 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose
 45 of making the appointment, reappointment or decision to employ or not to employ the individual in

1 the office of the Governor.

2 (b) An officer or employee of the Oregon Department of Administrative Services duly authorized
3 or employed to prepare revenue estimates, or a person contracting with the Oregon Department of
4 Administrative Services to prepare revenue estimates, in the preparation of revenue estimates re-
5 quired for the Governor's budget under ORS 291.201 to 291.224, or required for submission to the
6 Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative As-
7 sembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue
8 Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of
9 Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes
10 of this paragraph only if:

11 (A) The request for information is made in writing, specifies the purposes for which the request
12 is made and is signed by an authorized representative of the Oregon Department of Administrative
13 Services. The form for request for information shall be prescribed by the Oregon Department of
14 Administrative Services and approved by the Director of the Department of Revenue.

15 (B) The officer, employee or person receiving the information does not remove from the premises
16 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-
17 rate taxpayer.

18 (c) The Commissioner of Internal Revenue or authorized representative, for tax administration
19 and compliance purposes only.

20 (d) For tax administration and compliance purposes, the proper officer or authorized represen-
21 tative of any of the following entities that has or is governed by a provision of law that meets the
22 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

23 (A) A state;

24 (B) A city, county or other political subdivision of a state;

25 (C) The District of Columbia; or

26 (D) An association established exclusively to provide services to federal, state or local taxing
27 authorities.

28 (e) The Multistate Tax Commission or its authorized representatives, for tax administration and
29 compliance purposes only. The Multistate Tax Commission may make the information available to
30 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
31 governmental entity described in and meeting the qualifications of paragraph (d) of this subsection.

32 (f) The Attorney General, assistants and employees in the Department of Justice, or other legal
33 representative of the State of Oregon, to the extent the department deems disclosure or access
34 necessary for the performance of the duties of advising or representing the department pursuant to
35 ORS 180.010 to 180.240 and the tax laws of the state.

36 (g) Employees of the State of Oregon, other than of the Department of Revenue or Department
37 of Justice, to the extent the department deems disclosure or access necessary for such employees
38 to perform their duties under contracts or agreements between the department and any other de-
39 partment, agency or subdivision of the State of Oregon, in the department's administration of the
40 tax laws.

41 (h) Other persons, partnerships, corporations and other legal entities, and their employees, to
42 the extent the department deems disclosure or access necessary for the performance of such others'
43 duties under contracts or agreements between the department and such legal entities, in the
44 department's administration of the tax laws.

45 (i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS

1 173.850. Such officer or representative shall not remove from the premises of the department any
2 materials that would reveal the identity of any taxpayer or any other person.

3 (j) The Department of Consumer and Business Services, to the extent the department requires
4 such information to determine whether it is appropriate to adjust those workers' compensation
5 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or
6 earned income received by an individual.

7 (k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
8 or person to whom disclosure or access is given by state law and not otherwise referred to in this
9 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
10 Article VI, section 2, of the Oregon Constitution; the Department of Human Services pursuant to
11 ORS 412.094; the Division of Child Support of the Department of Justice and district attorney re-
12 garding cases for which they are providing support enforcement services under ORS 25.080; the
13 State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy,
14 pursuant to ORS 673.415.

15 (L) The Director of the Department of Consumer and Business Services to determine that a
16 person complies with ORS chapter 656 and the Director of the Employment Department to determine
17 that a person complies with ORS chapter 657, the following employer information:

18 (A) Identification numbers.

19 (B) Names and addresses.

20 (C) Inception date as employer.

21 (D) Nature of business.

22 (E) Entity changes.

23 (F) Date of last payroll.

24 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
25 pay for care that includes services provided by the Oregon State Hospital, or the Oregon Health
26 Authority to collect any unpaid cost of care as provided by ORS chapter 179.

27 (n) Employees of the Employment Department to the extent the Department of Revenue deems
28 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary
29 to performance of their duties in administering the tax imposed by ORS chapter 657.

30 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
31 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and
32 standard industrial classification, if available.

33 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
34 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
35 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
36 refund amount.

37 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement
38 agencies to assist in the investigation or prosecution of the following criminal activities:

39 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
40 to the stolen document, the name, address and taxpayer identification number of the payee, the
41 amount of the check and the date printed on the check.

42 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
43 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
44 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
45 dress and taxpayer identification number of the payee, the amount of the check, the date printed

1 on the check and the altered name and address.

2 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
3 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
4 lowing criminal activities:

5 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
6 to the stolen document, the name, address and taxpayer identification number of the payee, the
7 amount of the check and the date printed on the check.

8 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
9 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
10 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
11 dress and taxpayer identification number of the payee, the amount of the check, the date printed
12 on the check and the altered name and address.

13 (s) The United States Financial Management Service, for purposes of facilitating the offsets de-
14 scribed in ORS 305.612.

15 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in
16 the administration of a tax of the municipal corporation that is imposed on or measured by income,
17 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only
18 pursuant to a written agreement between the Department of Revenue and the municipal corporation
19 that ensures the confidentiality of the information disclosed.

20 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
21 314.843.

22 (v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes
23 of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the
24 purposes of ORS 237.635 (3) and 237.637 (2).

25 (w) The Secretary of State for the purpose of initiating or supporting a recommendation under
26 ORS 60.032 (3) or 63.032 (3) to administratively dissolve a corporation or limited liability company
27 that the Director of the Department of Revenue determines has failed to comply with applicable tax
28 laws of the state.

29 **(x) The State Treasurer, for the purpose of providing employer responses, as indicated**
30 **on annual withholding reports submitted to the Department of Revenue, about whether an**
31 **employer offers a qualified retirement savings plan as listed in ORS 178.215.**

32 (3)(a) Each officer or employee of the department and each person described or referred to in
33 subsection (2)(a), (b), (f) to (L), (n) to (q) or (w) of this section to whom disclosure or access to the
34 tax information is given under subsection (2) of this section or any other provision of state law,
35 prior to beginning employment or the performance of duties involving such disclosure or access,
36 shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the
37 violation of ORS 314.835, and shall as a condition of employment or performance of duties execute
38 a certificate for the department, in a form prescribed by the department, stating in substance that
39 the person has read these provisions of law, that the person has had them explained and that the
40 person is aware of the penalties for the violation of ORS 314.835.

41 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a
42 written agreement has been entered into between the Department of Revenue and the person de-
43 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is
44 given, providing that:

45 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-

1 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
2 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of
3 this section;

4 (B) The information shall be protected as confidential under applicable federal and state laws;
5 and

6 (C) The United States Postal Inspection Service or the federal law enforcement agency shall
7 give notice to the Department of Revenue of any request received under the federal Freedom of In-
8 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

9 (4) The Department of Revenue may recover the costs of furnishing the information described
10 in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

11 **SECTION 3. The amendments to ORS 314.840 and 316.202 by sections 1 and 2 of this 2019**
12 **Act apply to returns submitted to the Department of Revenue on or after January 1, 2020.**

13 **SECTION 4. This 2019 Act takes effect on the 91st day after the date on which the 2019**
14 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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