

Requested by HOUSE COMMITTEE ON REVENUE (at the request of the Department of Revenue)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2119**

1 On page 1 of the printed bill, line 2, after “administration;” delete the rest  
2 of the line and insert “creating new provisions; amending ORS 316.162,  
3 316.167, 316.171, 316.172, 316.177, 316.182, 316.189, 316.202, 316.207, 316.212,  
4 447.060, 455.800 and 693.020; and prescribing an effective date.”.

5 Delete lines 4 through 30 and delete page 2 and insert:

6 **“SECTION 1.** ORS 316.162 is amended to read:

7 “316.162. As used in ORS 316.162 to 316.221:

8 “[*(1) ‘Number of withholding exemptions claimed’ means the number of*  
9 *withholding exemptions claimed in a withholding exemption certificate in ef-*  
10 *fect under ORS 316.182, except that if no such certificate is in effect, the*  
11 *number of withholding exemptions claimed is considered to be zero.*]

12 **“(1) ‘Employer’ means:**

13 **“(a) A person who is in relation to another person such that the**  
14 **person may control the work of that other person and direct the**  
15 **manner in which the work is to be done; or**

16 **“(b) An officer or employee of a corporation, or a member or em-**  
17 **ployee of a partnership, who as an officer, employee or member is**  
18 **under a duty to perform the acts required of employers by ORS 316.167,**  
19 **316.182, 316.197, 316.202 and 316.207.**

20 **“(2) ‘Wages’ means remuneration for services performed by an employee**  
21 **for an employer, including the cash value of all remuneration paid in any**

1 medium other than cash, except that ‘wages’ does not include remuneration  
2 paid:

3 “(a) For active service in the Armed Forces of the United States as to  
4 which no withholding is required by the Internal Revenue Code.

5 “(b) To an employee of a common carrier to the extent that 49 U.S.C.  
6 14503 and 40116 prohibit the remuneration from withholding for state income  
7 taxes.

8 “(c) For domestic service in a private home, a local college club or a local  
9 chapter of a college fraternity or sorority.

10 “(d) For casual labor not in the course of the employer’s trade or busi-  
11 ness.

12 “(e) To an employee whose services to the employer consist solely of labor  
13 in connection with the planting, cultivating or harvesting of seasonal agri-  
14 cultural crops if the total amount paid to [*such*] **the** employee is less than  
15 \$300 annually.

16 “(f) To seamen who are exempt from garnishment, attachment or exe-  
17 cution under title 46 of the United States Code.

18 “(g) To persons temporarily employed as emergency forest fire fighters.

19 “(h) To employees’ trusts exempt from tax under provisions of the federal  
20 Internal Revenue Code.

21 “(i) For services performed by a duly ordained, commissioned or licensed  
22 minister of a church in the exercise of the minister’s ministry or by a mem-  
23 ber of a religious order in the exercise of religious duties required by  
24 [*such*] **the** order, which duties are not commercial in nature.

25 “(j) For services provided by an independent contractor, as defined in ORS  
26 670.600.

27 “(k) To or on behalf of an employee, a beneficiary of an employee or an  
28 alternate payee under or to an eligible deferred compensation plan that, at  
29 the time of the payment, is a plan described in section 457(b) of the Internal  
30 Revenue Code and that is maintained by an eligible employer described in

1 section 457(e)(1)(A) of the Internal Revenue Code.

2 “(L) When the remuneration is exempt from taxation under this chapter.

3 “[~~(3)~~ ‘Employer’ means:]

4 “[~~(a)~~ A person who is in such relation to another person that the person  
5 may control the work of that other person and direct the manner in which it  
6 is to be done; or]

7 “[~~(b)~~ An officer or employee of a corporation, or a member or employee of  
8 a partnership, who as such officer, employee or member is under a duty to  
9 perform the acts required of employers by ORS 316.167, 316.182, 316.197,  
10 316.202 and 316.207.]

11 **“SECTION 2.** ORS 316.167 is amended to read:

12 “316.167. (1) Every employer at the time of the payment of wages to any  
13 employee shall deduct and retain from [~~such~~] **the** wages an amount  
14 determined[, *at the employer’s election, either (a) by a ‘percentage method’*  
15 *withholding table or (b) by ‘wage bracket’ withholding tables, prepared and*  
16 *furnished under the rules and regulations of the*] **by the** Department of Rev-  
17 enue **under ORS 316.172.** However, in the case of wages paid to an employee  
18 whose services to the employer consist solely of labor in connection with the  
19 planting, cultivating or harvesting of seasonal agricultural crops, the em-  
20 ployer may elect to withhold two percent of the total wages paid without  
21 regard to any **exemption from** withholding [~~exemptions~~] **requirements.**

22 “[~~(2)~~ *Except in the case of an agricultural employee, the amount withheld*  
23 *shall be computed on the basis of the total amount of the wages and the*  
24 *number of withholding exemptions claimed by the employee, without deduction*  
25 *for any amount withheld.*]

26 “[~~(3)~~] **(2)** If a lender, surety or other person who supplies funds to or for  
27 the account of an employer for the purpose of paying wages of the employees  
28 of [~~such~~] **the** employer has actual notice or knowledge that [~~such~~] **the** em-  
29 ployer does not intend to or will not be able to make timely payment or de-  
30 posit of the tax required to be deducted and withheld, [~~such~~] **the** lender,

1 surety or other person shall be liable to the State of Oregon in a sum equal  
2 to the taxes together with interest which are not timely paid over to the  
3 department. [*Such*] **This** liability shall be limited to the principal amount  
4 supplied by [*such*] **the** lender, surety or other person, and any amounts so  
5 paid to the department shall be credited against the liability of the employer.

6 “[(4)] **(3)** With the approval of the Oregon Department of Administrative  
7 Services, the department may enter into contracts with banking institutions  
8 including but not limited to Federal Reserve Banks, incorporated banks,  
9 trust companies, domestic building and loan associations, savings and loan  
10 associations or credit unions authorizing them to receive as financial agents  
11 of the department any tax required to be withheld and paid to the depart-  
12 ment.

13 **“SECTION 3.** ORS 316.171 is amended to read:

14 “316.171. Except as provided in this section and ORS 314.840, 316.168,  
15 316.197, 316.202 and 657.571, the statutes and regulations applicable to each  
16 agency, requiring a report and imposing a tax, shall govern [*the audit and*  
17 *examination of reports and returns, determination of deficiencies, assessments,*  
18 *claims for refund, penalties, interest, administrative and judicial appeals and*  
19 *the procedures relating thereto*] **as to the audit and examination of re-**  
20 **turns, periods of limitation, determinations of and notices of defi-**  
21 **ciencies, assessments, collections, liens, delinquencies, claims for**  
22 **refund and refunds, conferences, judicial appeals, stays of collection**  
23 **pending appeal, confidentiality of returns and the related penalties,**  
24 **and the related procedures.**

25 **“SECTION 4.** ORS 316.172 is amended to read:

26 “316.172. (1) The Department of Revenue shall [*prepare a table for use with*  
27 *the percentage method that provides for the deduction and withholding of a tax*  
28 *equal to a specific percent (to be determined by the department) of the amount*  
29 *by which the wages for a given payroll period (daily, weekly, biweekly, semi-*  
30 *monthly, monthly, quarterly, semiannually or annually, as the case may be)*

1 exceed the number of withholding exemptions claimed, multiplied by the  
2 amount of one such exemption for each payroll period (such amount being de-  
3 termined by the department for each such period). The determinations of the  
4 department shall result, so far as is practicable, in withholding from the em-  
5 ployee a sum substantially equivalent to the amount of the tax that the em-  
6 ployee will be required to pay under this chapter upon such wages.] **specify**  
7 **and disseminate information providing for the deduction and with-**  
8 **holding of tax in an amount substantially equivalent to the amount**  
9 **of the tax that each employee will be required to pay under this**  
10 **chapter upon wages or other income. The amount shall be determined**  
11 **based upon wages for a given daily, weekly, biweekly, semimonthly,**  
12 **monthly or other payroll period.** To accomplish this purpose, the depart-  
13 ment may make special provision for employees who are in the state for  
14 limited periods of time.

15 “[*(2) The department shall prepare tables for use in computing withholding*  
16 *of tax by wage brackets. The wage brackets shall be graduated so that the*  
17 *amount withheld is, as far as practicable, substantially equivalent to the*  
18 *amount of the tax that the employee will be required to pay under this chapter*  
19 *upon such wages.*]

20 “**(2) The department shall determine the amount, form and manner**  
21 **of withholding of tax by employers on behalf of employees for purposes**  
22 **of ORS 316.162 to 316.221.**

23 “**SECTION 5.** ORS 316.177 is amended to read:

24 “316.177. [*(1) If an employee does not claim a different number of with-*  
25 *holding exemptions for state withholding purposes, the employee shall be en-*  
26 *titled to the same number of withholding exemptions as the number of*  
27 *withholding exemptions to which the employee is entitled for federal income*  
28 *tax withholding purposes. If an employee does not claim a different number*  
29 *of withholding exemptions for state withholding purposes, the employer may*  
30 *rely upon the number of federal withholding exemptions claimed by the em-*

1 *ployee, or authorized or specified under the Internal Revenue Code. If the*  
2 *employee does claim a different number of withholding exemptions for state*  
3 *withholding purposes, the employer shall rely on the number specified on that*  
4 *claim.]*

5 “[(2) *If any employee makes a statement for federal income tax withholding*  
6 *purposes which claims more than 10 withholding exemptions, or claims ex-*  
7 *emption from withholding and the employee’s income is expected to exceed \$200*  
8 *per week for both federal and state purposes, or claims exemption from with-*  
9 *holding for state purposes but not for federal purposes, and as of the time the*  
10 *statement was made there was no reasonable basis for the statement, the De-*  
11 *partment of Revenue shall assess and collect from the employee a penalty of*  
12 *\$500.]*

13 “(1) **If an employee provides the employer with a withholding**  
14 **statement or exemption certificate under ORS 316.182, the employer**  
15 **may rely upon the instruction provided by the employee. If the em-**  
16 **ployee instructs the employee’s employer to withhold an amount of tax**  
17 **from the employee’s pay or claim exemption from withholding, and**  
18 **as of the time the instruction was made there was no reasonable basis**  
19 **for the instruction, the Department of Revenue shall assess and collect**  
20 **from the employee a penalty of \$500.**

21 “[3] (2) The penalty imposed under this section is in addition to any  
22 other penalty imposed by law. Any employee against whom a penalty is as-  
23 sessed under this section may appeal to the tax court as provided in ORS  
24 305.404 to 305.560. If the penalty is not paid within 10 days after the order  
25 of the tax court becomes final, the department may record the order and  
26 collect the amount assessed without interest in the same manner as income  
27 tax deficiencies are recorded and collected under ORS 314.430.

28 “[4] (3) The department may waive all or any part of the penalty im-  
29 posed under subsection [(2)] (1) of this section if the income tax liability of  
30 the employee for the taxable year is equal to or less than the sum of:

1 “(a) The credits against taxes allowed for purposes of this chapter; and

2 “(b) The payments of estimated tax which are considered payments on  
3 account of the tax liability of the employee under ORS 316.579 and 316.583.

4 **“SECTION 6.** ORS 316.182 is amended to read:

5 “316.182. *[(1) Subject to subsection (2) or (3) of this section and if the em-*  
6 *ployee does not claim a different number of withholding exemptions for pur-*  
7 *poses of this chapter, an employer shall use the exemption certificate filed by*  
8 *the employee with the employer under the income tax withholding provisions*  
9 *of the Internal Revenue Code for determining the number of withholding ex-*  
10 *emptions to be used in computing the tax to be withheld under ORS 316.167*  
11 *and 316.172. If a new exemption certificate is not filed as provided under sec-*  
12 *tion 1581 of the Tax Reform Act of 1986 (P.L. 99-514) for federal purposes, the*  
13 *employer shall use the same number of withholding exemptions as used for*  
14 *purposes of the Internal Revenue Code for determining the amount of tax to*  
15 *be withheld under ORS 316.167 and 316.172.]*

16 “[2)] (1) The Department of Revenue may require **a withholding state-**  
17 **ment or** an exemption certificate to be filed on a form prescribed by the  
18 department *[in any circumstance where the department finds that an ex-*  
19 *emption certificate filed for purposes of the Internal Revenue Code does not*  
20 *properly reflect the number of withholding exemptions allowable under this*  
21 *chapter]* **for purposes of an employee instructing the employee’s em-**  
22 **ployer of the proper amount of tax to withhold from the employee’s**  
23 **pay, or of the employee’s exemption from withholding requirements.**

24 “[3) No] (2) **A withholding statement or** exemption certificate need **not**  
25 be procured from an employee whose wages consist of wages as defined in  
26 ORS 316.162 (2)(e).

27 **“(3) If a statement or certificate is not provided to the employer as**  
28 **required under subsection (1) of this section, the employer shall with-**  
29 **hold tax from the wages paid to the employee at the rate of eight**  
30 **percent of the wages.**

1       **“SECTION 7.** ORS 316.189, as amended by section 17, chapter 93, Oregon  
2 Laws 2018, is amended to read:

3       “316.189. (1) As used in this section:

4       “(a) ‘Commercial annuity’ means an annuity, endowment or life insurance  
5 contract issued by an insurance company authorized to transact insurance  
6 in the State of Oregon.

7       “(b) ‘Department’ means the Oregon Department of Revenue.

8       “(c) ‘Designated distribution’ means any distribution or payment from or  
9 under an employer deferred compensation plan, an individual retirement plan  
10 or a commercial annuity. ‘Designated distribution’ does not include any  
11 amount treated as wages as defined in ORS 316.162, the portion of any dis-  
12 tribution or payment that is not includable in the gross income of the re-  
13 cipient or any distribution or payment made under section 404(k)(2) of the  
14 Internal Revenue Code.

15       “(d) ‘Employer deferred compensation plan’ means any pension, annuity,  
16 profit-sharing or stock bonus plan or other plan deferring the receipt of  
17 compensation.

18       “(e) ‘Individual retirement plan’ means an individual retirement account  
19 described in section 408(a) of the Internal Revenue Code or an individual  
20 retirement annuity described in section 408(b) of the Internal Revenue Code.

21       “(f) ‘Nonperiodic distribution’ means any designated distribution which  
22 is not a periodic payment.

23       “(g) ‘Payer’ means any payer of a designated distribution doing business  
24 in or making payments or distributions from sources in this state.

25       “(h) ‘Periodic payment’ means a designated distribution which is an an-  
26 nuity or similar periodic payment.

27       “(i) ‘Plan administrator’ means a plan administrator as described in sec-  
28 tion 414(g) of the Internal Revenue Code, who is the administrator of a plan  
29 created by an Oregon employer.

30       “(j) ‘Qualified total distribution’ means any designated distribution made



1 under a retirement, annuity or deferred compensation plan described in sec-  
2 tion 401(a), 403(a) or 457(b) of the Internal Revenue Code, that consists of  
3 the balance to the credit of the employee, exclusive of accumulated deduct-  
4 ible employee contributions, made within one tax year of the recipient.

5 “(2)(a) The payer of any periodic payment shall withhold from [*such*] **the**  
6 payment the amount which would be required to be withheld from [*such*] **the**  
7 payment under ORS 316.167 if the payment were wages paid by an employer  
8 to an employee. The time and manner of payment of withheld amounts to the  
9 department shall be the same as that required under ORS 316.197 for with-  
10 holding of income taxes from wages.

11 “(b) The payer of any nonperiodic distribution shall withhold from  
12 [*such*] **the** distribution an amount determined [*under tables prescribed*] by the  
13 department.

14 “(c) The maximum amount to be withheld under this section on any des-  
15 ignated distribution shall not exceed 10 percent of the amount of money and  
16 the fair market value of other property received in the distribution. If the  
17 distribution is not subject to withholding for federal income tax purposes  
18 under section 3405 of the Internal Revenue Code, it shall not be subject to  
19 withholding under this section.

20 “(3)(a) Except as provided in paragraph (b) of this subsection, the payer  
21 of a designated distribution shall withhold and be liable for payment of  
22 amounts required to be withheld under this section.

23 “(b) In the case of any plan described in section 401(a), 403(a) or 457(b)  
24 of the Internal Revenue Code, or section 301(d) of the Tax Reduction Act of  
25 1975, the plan administrator shall withhold and be liable for payment of  
26 amounts required to be withheld under this section, unless the plan admin-  
27 istrator has directed the payer to withhold the tax and has provided the  
28 payer with the information required by rule of the department.

29 “(4)(a) An individual may elect to have no withholding by a payer under  
30 subsection (2) of this section. If an individual has elected to have no federal

1 withholding from payments or distributions described in this section the in-  
2 dividual shall be deemed to have elected no withholding for state purposes,  
3 unless the individual notifies the payer otherwise.

4 “(b) An election made under this subsection shall be effective as provided  
5 under rules promulgated by the department. The rules required under this  
6 paragraph shall provide the manner in which an election may be revoked and  
7 when [*such*] **the** revocation shall be effective.

8 “(5) The payer of any periodic payment or nonperiodic distribution shall  
9 give notice to the payee of the right to make an election to have no state  
10 withholding from the payment or distribution. The department shall provide  
11 by rule for the time and manner of giving the notice required under this  
12 subsection.

13 “(6) Any rules permitted or required to be promulgated by the department  
14 under this section shall, insofar as is practicable, be consistent with corre-  
15 sponding provisions of section 3405 of the Internal Revenue Code and regu-  
16 lations promulgated thereunder.

17 “(7) Any designated distribution shall be treated as if it were wages paid  
18 by an employer to an employee within the meaning of ORS 316.162 to 316.221  
19 for all other purposes of ORS 316.162 to 316.221. In the case of any designated  
20 distribution not subject to withholding by reason of an election under sub-  
21 section (4) of this section, the amount withheld shall be treated as zero.

22 “**SECTION 8.** ORS 316.202 is amended to read:

23 “316.202. (1) With each payment made to the Department of Revenue, ev-  
24 ery employer shall deliver to the department, on a form prescribed by the  
25 department showing the total amount of withheld taxes in accordance with  
26 ORS 316.167, 316.172 and 320.550, and supply [*such*] **any** other information  
27 as the department may require. The employer is charged with the duty of  
28 advising the employee of the amount of moneys withheld, in accordance with  
29 [*such*] **any** regulations as the department may prescribe, using printed forms  
30 furnished or approved by the department for [*such*] **this** purpose.

1       “(2) Except as provided in subsection (4) of this section, every employer  
2 shall submit a combined quarterly return to the department on a form pro-  
3 vided by it showing the number of payments made[,] **and** the withheld taxes  
4 paid during the quarter [*and an explanation of federal withholding taxes as*  
5 *computed by the employer*]. The report shall be filed with the department on  
6 or before the last day of the month following the end of the quarter.

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

19       “(4) Notwithstanding the provisions of subsection (2) of this section, em-  
20 ployers of agricultural employees may submit returns annually showing the  
21 number of payments made and the withheld taxes paid. However, such em-  
22 ployers shall make and file a combined quarterly tax report with respect to  
23 other tax programs, as required by ORS 316.168.

24       “(5) In addition to any other penalty required by law:

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

29       “(b) A person who knowingly fails to substantiate a report required under  
30 subsection (3) of this section, or who knowingly files incomplete or incorrect

1 substantiation, shall be subject to a penalty of \$250 per federal form W-2  
2 after the date on which the substantiation is due, up to a maximum penalty  
3 of \$25,000.

4 **“SECTION 9.** ORS 316.207 is amended to read:

5 “316.207. (1) Every employer who deducts and retains any amount under  
6 ORS 316.162 to 316.221 and 320.550 shall hold the same in trust for the State  
7 of Oregon and for the payment thereof to the Department of Revenue in the  
8 manner and at the time provided in ORS 316.162 to 316.221.

9 “(2) At any time the employer fails to remit any amount withheld, the  
10 department may enforce collection by the issuance of a distraint warrant for  
11 the collection of the delinquent amount and all penalties, interest and col-  
12 lection charges accrued thereon. *[Such]* **The** warrant shall be issued, re-  
13 corded and proceeded upon in the same manner and shall have the same force  
14 and effect as is prescribed with respect to warrants for the collection of de-  
15 linquent income taxes.

16 “(3)(a) In the case of an employer that is assessed pursuant to the pro-  
17 visions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice  
18 of liability to any officer, employee or member described in ORS 316.162  
19 *[(3)(b)] (1)(b)* of *[such]* **the** employer within three years from the time of as-  
20 sessment. Within 30 days from the date the notice of liability is mailed to  
21 the officer, employee or member, *[such]* **the** officer, employee or member shall  
22 pay the assessment, plus penalties and interest, or advise the department in  
23 writing of objections to the liability and, if desired, request a conference.  
24 Any conference shall be governed by the provisions of ORS 305.265 pertain-  
25 ing to a conference requested from a notice of deficiency.

26 “(b) After a conference or, if no conference is requested, a determination  
27 of the issues considering the written objections, the department shall mail  
28 the officer, employee or member a conference letter affirming, canceling or  
29 adjusting the notice of liability. Within 90 days from the date the conference  
30 letter is mailed to the officer, employee or member, *[such]* **the** officer, em-

1 ployee or member shall pay the assessment, plus penalties and interest, or  
2 appeal to the tax court in the manner provided for an appeal from a notice  
3 of assessment.

4 “(c) If neither payment nor written objection to the notice of liability is  
5 received by the department within 30 days after the notice of liability has  
6 been mailed, the notice of liability becomes final. In *[such]* **this** event, the  
7 officer, employee or member may appeal the notice of liability to the tax  
8 court within 90 days after it became final in the manner provided for an  
9 appeal from a notice of assessment.

10 “(4)(a) In the case of a failure to file a withholding tax report on the due  
11 date, governed by the provisions of ORS 305.265 (10) and 314.400, the de-  
12 partment, in addition to the provisions of ORS 305.265 (10) and 314.400, may  
13 send notices of determination and assessment to any officer, employee or  
14 member described in ORS 316.162 *[(3)(b)]* **(1)(b)** any time within three years  
15 after the assessment of an employer described in ORS 316.162 *[(3)(a)]* **(1)(a)**.  
16 The time of assessment against *[such]* **the** officer, employee or member shall  
17 be 30 days after the date the notice of determination and assessment is  
18 mailed. Within 30 days from the date the notice of determination and as-  
19 sessment is mailed to the officer, employee or member, *[such]* **the** officer,  
20 employee or member shall pay the assessment, plus penalties and interest,  
21 or advise the department in writing of objections to the assessment, and if  
22 desired, request a conference. Any conference shall be governed by the pro-  
23 visions of ORS 305.265 pertaining to a conference requested from a notice  
24 of deficiency.

25 “(b) After a conference or, if no conference is requested, a determination  
26 of the issues considering the written objections, the department shall mail  
27 the officer, employee or member a conference letter affirming, canceling or  
28 adjusting the notice of determination and assessment. Within 90 days from  
29 the date the conference letter is mailed to the officer, employee or member,  
30 *[such]* **the** officer, employee or member shall pay the assessment, plus pen-

1 alties and interest, or appeal in the manner provided for an appeal from a  
2 notice of assessment.

3 “(c) If neither payment nor written objection to the notice of determi-  
4 nation and assessment is received by the department within 30 days after the  
5 notice of determination and assessment has been mailed, the notice of de-  
6 termination and assessment becomes final. In [*such*] **this** event, the officer,  
7 employee or member may appeal the notice of determination and assessment  
8 to the tax court within 90 days after it became final in the manner provided  
9 for an appeal from a notice of assessment.

10 “(5)(a) More than one officer or employee of a corporation may be held  
11 jointly and severally liable for payment of withheld taxes.

12 “(b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if  
13 more than one officer or employee of a corporation may be held jointly and  
14 severally liable for payment of withheld taxes, the department may require  
15 any or all of the officers, members or employees who may be held liable to  
16 appear before the department for a joint determination of liability. The de-  
17 partment shall notify each officer, member or employee of the time and place  
18 set for the determination of liability.

19 “(c) Each person notified of a joint determination under this subsection  
20 shall appear and present [*such*] **any** information as is necessary to establish  
21 that person’s liability or nonliability for payment of withheld taxes to the  
22 department. If any person notified fails to appear, the department shall make  
23 its determination on the basis of all the information and evidence presented.  
24 The department’s determination shall be binding on all persons notified and  
25 required to appear under this subsection.

26 “(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS  
27 305.404 to 305.560 by any person determined to be liable for unpaid with-  
28 holding taxes under this subsection, each person required to appear before  
29 the department under this subsection shall be impleaded by the plaintiff. The  
30 department may implead any officer, employee or member who may be held

1 jointly and severally liable for the payment of withheld taxes. Each person  
2 impleaded under this paragraph shall be made a party to the action before  
3 the tax court and shall make available to the tax court [*such*] **any** informa-  
4 tion as was presented before the department, as well as [*such*] **any** other  
5 information as may be presented to the court.

6 “(B) The court may determine that one or more persons impleaded under  
7 this paragraph are liable for unpaid withholding taxes without regard to any  
8 earlier determination by the department that an impleaded person was not  
9 liable for unpaid withholding taxes.

10 “(C) If any person required to appear before the court under this sub-  
11 section fails or refuses to appear or bring such information in part or in  
12 whole, or is outside the jurisdiction of the tax court, the court shall make  
13 its determination on the basis of all the evidence introduced. All such evi-  
14 dence shall constitute a public record and shall be available to the parties  
15 and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determi-  
16 nation of the tax court shall be binding on all persons made parties to the  
17 action under this subsection.

18 “(e) Nothing in this section shall be construed to preclude a determi-  
19 nation by the department or the Oregon Tax Court that more than one offi-  
20 cer, employee or member are jointly and severally liable for unpaid  
21 withholding taxes.

22 **“SECTION 10.** ORS 316.212 is amended to read:

23 “316.212. The provisions of the income tax laws in ORS chapters 305 and  
24 314 and this chapter, [*relating to penalties, misdemeanors and jeopardy as-*  
25 *sessments,*] **as to the audit and examination of returns, periods of limi-**  
26 **tation, determinations of and notices of deficiencies, assessments,**  
27 **collections, liens, delinquencies, claims for refund and refunds, con-**  
28 **ferences, judicial appeals, stays of collection pending appeal,**  
29 **confidentiality of returns and the related penalties, and the related**  
30 **procedures,** apply to employers subject to the provisions of ORS 316.162 to

1 316.221 and 320.550, and for these purposes any amount deducted or required  
2 to be deducted and remitted to the Department of Revenue under ORS 316.162  
3 to 316.221 and 320.550 is considered the tax of the employer and with respect  
4 to [*such*] **the** amount the employer is considered as a taxpayer.

5 **“SECTION 11.** ORS 447.060 is amended to read:

6 “447.060. (1) ORS 447.010 to 447.156 do not apply to a person:

7 “(a) Engaging in plumbing work when not so engaged for hire.

8 “(b) Using the services of regular employees in performing plumbing work  
9 for the benefit of property owned, leased or operated by the person. For  
10 purposes of this paragraph, ‘regular employee’ means a person who is subject  
11 to the provisions of ORS 316.162 to 316.221 and who has completed a with-  
12 holding [*exemptions*] **statement or an exemption** certificate required by  
13 ORS 316.162 to 316.221.

14 “(c) Using the services of an employee or contractor of a utility company,  
15 energy service provider or water supplier to install an approved low-flow  
16 showerhead or faucet aerator in existing plumbing fixtures. The devices in-  
17 stalled under this paragraph are exempt from the certification, permit and  
18 inspection requirements of ORS 447.010 to 447.156 and ORS chapter 693.

19 “(d) Engaging in plumbing work on a recreational vehicle as defined by  
20 the State Plumbing Board by rule.

21 “(2) A landscape contracting business licensed under ORS 671.560 is not  
22 required to be licensed under ORS 447.010 to 447.156 to install, repair or  
23 maintain backflow assemblies for irrigation systems and ornamental water  
24 features if the work is performed by an individual who is licensed as required  
25 by ORS 671.615 and is an owner or employee of the landscape contracting  
26 business. The repair and maintenance of the backflow assembly must be  
27 performed by a tester certified under ORS 448.279. The licensing exemption  
28 established under this subsection does not exempt the landscape contracting  
29 business from the inspection and permit requirements of ORS 447.010 to  
30 447.156.



1 “(3) This section applies to any person, including but not limited to, in-  
2 dividuals, corporations, associations, firms, partnerships, joint stock compa-  
3 nies, public and municipal corporations, political subdivisions, this state, the  
4 federal government and state or federal agencies.

5 **“SECTION 12.** ORS 455.800 is amended to read:

6 “455.800. As used in ORS 455.800 to 455.820:

7 “(1) ‘Building official’ means a person who is a building official as defined  
8 in ORS 455.715 or a Department of Consumer and Business Services employee  
9 charged with enforcement or administration of the state building code.

10 “(2) ‘Building trade committee’ means a group composed of experienced  
11 and knowledgeable local general contractors or other persons having sub-  
12 stantial expertise in various aspects of one and two family dwelling con-  
13 struction under the Low-Rise Residential Dwelling Code.

14 “(3) ‘General contractor’ has the meaning given that term in ORS 701.005.

15 “(4) ‘Master builder’ means a person certified under ORS 455.810.

16 “(5) ‘Qualified construction company’ means a company that has been:

17 “(a) Continuously licensed by the Construction Contractors Board during  
18 the preceding 60 months as a general contractor; or

19 “(b) Continuously licensed by the Construction Contractors Board during  
20 at least the preceding 24 months as a general contractor and by one or more  
21 other states during the balance of the preceding 60 months in an occupation  
22 equivalent to that of a general contractor.

23 “(6) ‘Regular employee’ means a person who:

24 “(a) Is continuously employed by, and on the regular payroll of, a quali-  
25 fied construction company;

26 “(b) Has filed a withholding **statement or an** exemption certificate pur-  
27 suant to ORS 316.182 for work performed for the qualified construction  
28 company; and

29 “(c) Is available during working hours to supervise on-site dwelling con-  
30 struction, including but not limited to supervising the installation of:

- 1 “(A) Drywall;
- 2 “(B) Electrical systems;
- 3 “(C) Footings;
- 4 “(D) Foundations;
- 5 “(E) Framing;
- 6 “(F) Insulation;
- 7 “(G) Mechanical systems;
- 8 “(H) Plumbing systems; and
- 9 “(I) Stairs.

10 “(7) ‘Whole dwelling remodel’ means a project that includes the installa-  
11 tion in an existing dwelling of all of the following:

- 12 “(a) Drywall;
- 13 “(b) Electrical systems;
- 14 “(c) Footings;
- 15 “(d) Foundations;
- 16 “(e) Framing;
- 17 “(f) Insulation;
- 18 “(g) Mechanical systems; and
- 19 “(h) Plumbing systems.

20 **“SECTION 13.** ORS 693.020 is amended to read:

21 “693.020. (1) Except as provided in subsection (2) of this section, this  
22 chapter does not apply to:

23 “(a) A person working on a building or premises owned by the person,  
24 regardless of whether the person holds a license under this chapter, if the  
25 person complies with all the rules adopted under this chapter and ORS  
26 447.010 to 447.156 and ORS chapter 455.

27 “(b) A person testing, repairing, servicing, maintaining, installing or re-  
28 placing new or existing potable water pump equipment not exceeding seven  
29 and one-half horsepower on residential property and piping between the  
30 pumps and storage tanks for the pumps, regardless of whether the person

1 holds any license under this chapter.

2 “(c) A person installing exterior storm drains that are not connected to  
3 a sanitary sewer or combination sanitary storm sewer.

4 “(d) An employee or contractor of a utility, energy service provider or  
5 water supplier who is installing an approved low-flow showerhead or faucet  
6 aerator in existing plumbing fixtures. The devices installed under this para-  
7 graph are exempt from the certification, permit and inspection requirements  
8 of this chapter and ORS 447.010 to 447.156.

9 “(e) A person who owns, leases or operates residential property and who  
10 repairs, or uses regular employees to repair, existing plumbing on property  
11 owned, leased or operated by the person, regardless of whether the person  
12 or employee holds a license under this chapter. As used in this paragraph:

13 “(A) ‘Repair’ means the act of replacing or putting together plumbing  
14 parts that restore the existing plumbing system to a safe and sanitary oper-  
15 ating condition.

16 “(B) ‘Regular employee’ means a person who is subject to the provisions  
17 of ORS 316.162 to 316.221 and who has completed a withholding  
18 [exemptions] **statement or an exemption** certificate required by the pro-  
19 visions of ORS 316.162 to 316.221.

20 “(f) A person installing plumbing in a prefabricated structure, as defined  
21 in ORS 455.010, that is designed for residential use and intended for delivery  
22 in another state.

23 “(g) A person making plumbing installations, repairs or replacements in  
24 a recreational vehicle as defined by the State Plumbing Board by rule.

25 “(2) Subsection (1)(a) to (d) of this section does not allow a person other  
26 than a journeyman plumber or apprentice plumber to install, remodel or alter  
27 plumbing in a commercial or industrial building being constructed or offered  
28 for sale, exchange, rent or lease. As used in this subsection, ‘install, remodel  
29 or alter’ means activities that involve installations or changes to the  
30 plumbing inside a wall, floor, crawl space or ceiling, or a change in the

1 configuration of a plumbing system.

2 “(3) This section applies to any person, including but not limited to indi-  
3 viduals, corporations, associations, firms, partnerships, joint stock compa-  
4 nies, public and municipal corporations, political subdivisions, this state and  
5 any agencies thereof and the federal government and any agencies thereof.

6 “(4) Except as provided in subsection (1)(d) of this section, nothing in this  
7 section exempts a person from the plumbing inspection requirements of ORS  
8 447.010 to 447.156.

9 **“SECTION 14. The amendments to ORS 316.162, 316.167, 316.171,  
10 316.172, 316.177, 316.182, 316.189, 316.202, 316.207 and 316.212 by sections  
11 1 to 10 of this 2019 Act apply to wages or other income paid on or after  
12 January 1, 2020.**

13 **“SECTION 15. This 2019 Act takes effect on the 91st day after the  
14 date on which the 2019 regular session of the Eightieth Legislative  
15 Assembly adjourns sine die.”.**

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