House Bill 2131

Introduced and printed pursuant to House Rule 12.00. Presession filed (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 as introduced.

Provides for liability of officer, employee or member of entity for unpaid amounts of taxes or fees collected by entity and held in trust for payment to Department of Revenue. Extends uniform liable entity procedures to liabilities under various tax and fee programs.

Applies to amounts due as of January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to liability for amounts held in trust; creating new provisions; amending ORS 307.883, 320.325 and 403.225; and prescribing an effective date.

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

SECTION 1. ORS 307.883 is amended to read:

ORS 307.883. (1) Every qualified heavy equipment provider is deemed to hold the amount of heavy equipment rental taxes collected in trust for the State of Oregon and for payment to the Department of Revenue in the manner and at the time provided under ORS 307.878.

(2) At any time the qualified heavy equipment provider fails to remit any amount of heavy equipment rental taxes deemed to be held in trust for the State of Oregon, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued on the delinquent amount. The warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as warrants for the collection of delinquent income taxes.

(3)(a) In the case of a qualified heavy equipment provider that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member of the qualified heavy equipment provider within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

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

(4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In this event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer, employee or member of a qualified heavy equipment provider may be held jointly and severally liable for payment of taxes.

(b) Notwithstanding the confidentiality provisions of ORS 307.885, if more than one officer, employee or member of a qualified heavy equipment provider may be held jointly and severally liable for payment of taxes, the department may require any or all of the officers, employees or members who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, employee or member of the time and place set for the determination of liability.

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

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any person determined to be liable for unpaid taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the
plaintiff. The department may implead any officer, employee or member who may be held
jointly and severally liable for the payment of taxes. Each person impleaded under this par-
agraph shall be made a party to the action before the tax court and shall make available to
the tax court any information as was presented before the department, as well as any other
information as may be presented to the court.

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

(C) If any person required to appear before the court under this subsection fails or re-
fuses to appear or bring such information in part or in whole, or is outside the jurisdiction
of the tax court, the court shall make its determination on the basis of all the evidence in-
troduced. All such evidence shall constitute a public record and shall be available to the
parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of
the tax court shall be binding on all persons made parties to the action under this sub-
section.

(e) This section may not be construed to preclude a determination by the department or
the Oregon Tax Court that more than one officer, employee or member are jointly and se-
verally liable for unpaid taxes.

SECTION 2. ORS 320.325 is amended to read:

320.325. (1) Every transient lodging tax collector is deemed to hold the amount of state transient
lodging taxes collected in trust for the State of Oregon and for payment to the Department of Re-
venue in the manner and at the time provided under ORS 320.315.

(2) At any time that the transient lodging tax collector fails to remit any amount of state tran-
sient lodging taxes deemed to be held in trust for the State of Oregon, the department may enforce
collection by the issuance of a distraint warrant for the collection of the delinquent amount and all
penalties, interest and collection charges accrued on the delinquent amount. The warrant shall be
issued, docketed and proceeded upon in the same manner and shall have the same force and effect
as warrants for the collection of delinquent income taxes.

(3)(a) In the case of a transient lodging tax collector that is assessed pursuant to the
provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability
to any officer, employee or member of the transient lodging tax collector within three years
from the time of assessment. Within 30 days from the date the notice of liability is mailed
to the officer, employee or member, the officer, employee or member shall pay the assess-
ment, plus penalties and interest, or advise the department in writing of objections to the
liability and, if desired, request a conference. Any conference shall be governed by the pro-
visions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues
considering the written objections, the department shall mail the officer, employee or mem-
er a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
from the date the conference letter is mailed to the officer, employee or member, the officer,
employee or member shall pay the assessment, plus penalties and interest, or appeal to the
tax court in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of liability is received by the
department within 30 days after the notice of liability has been mailed, the notice of liability
becomes final. In this event, the officer, employee or member may appeal the notice of li-
ability to the tax court within 90 days after it became final in the manner provided for an 
appeal from a notice of assessment.

(4)(a) In the case of a failure to file a return on the due date, governed by the provisions 
of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 
(10) and 314.400, may send notices of determination and assessment to any officer, employee 
or member any time within three years after the assessment. The time of assessment 
against the officer, employee or member shall be 30 days after the date the notice of deter-
mination and assessment is mailed. Within 30 days from the date the notice of determination 
and assessment is mailed to the officer, employee or member, the officer, employee or 
member shall pay the assessment, plus penalties and interest, or advise the department in 
writing of objections to the assessment and, if desired, request a conference. Any conference 
shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from 
a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues 
considering the written objections, the department shall mail the officer, employee or mem-
er a conference letter affirming, canceling or adjusting the notice of determination and as-
sessment. Within 90 days from the date the conference letter is mailed to the officer, 
employee or member, the officer, employee or member shall pay the assessment, plus pen-
alties and interest, or appeal in the manner provided for an appeal from a notice of assess-
ment.

(c) If neither payment nor written objection to the notice of determination and assess-
ment is received by the department within 30 days after the notice of determination and as-
sessment has been mailed, the notice of determination and assessment becomes final. In this 
event, the officer, employee or member may appeal the notice of determination and assess-
ment to the tax court within 90 days after it became final in the manner provided for an 
appeal from a notice of assessment.

[(3) (5)(a) Notwithstanding ORS 320.305, if the transient lodging is owned by more than one 
person, each and every owner, officer, employee or member may be held jointly and severally li-
able for any tax imposed under ORS 320.305 with respect to a transient lodging transaction.

(b) Notwithstanding the confidentiality provisions of ORS 320.330, if more than one offi-
cer, employee or member of a transient lodging tax collector may be held jointly and se-
verally liable for payment of taxes, the department may require any or all of the officers, 
employees or members who may be held liable to appear before the department for a joint 
determination of liability. The department shall notify each officer, employee or member of 
the time and place set for the determination of liability.

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

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 
by any person determined to be liable for unpaid taxes under this subsection, each person 
required to appear before the department under this subsection shall be impleaded by the 
plaintiff. The department may implead any officer, employee or member who may be held
jointly and severally liable for the payment of taxes. Each person impleaded under this para-
graph shall be made a party to the action before the tax court and shall make available to
the tax court any information as was presented before the department, as well as any other
information as may be presented to the court.

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

(C) If any person required to appear before the court under this subsection fails or re-
fuses to appear or bring such information in part or in whole, or is outside the jurisdiction
of the tax court, the court shall make its determination on the basis of all the evidence in-
troduced. All such evidence shall constitute a public record and shall be available to the
parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of
the tax court shall be binding on all persons made parties to the action under this sub-
section.

(e) This section may not be construed to preclude a determination by the department or
the Oregon Tax Court that more than one officer, employee or member are jointly and se-
verally liable for unpaid taxes.

SECTION 3. ORS 403.225 is amended to read:

403.225. (1) Every provider or seller required to collect the tax imposed by ORS 403.200 to
403.230 is deemed to hold the same in trust for the State of Oregon and for the payment thereof to
the Department of Revenue in the manner and at the time provided by ORS 403.215.

(2) If the provider or seller required to collect the tax fails to remit any amount deemed to be
held in trust for the State of Oregon or if the consumer or subscriber fails to pay the tax, the de-
partment may enforce collection by the issuance of a distraint warrant for the collection of the de-
linquent amount and all penalties, interest and collection charges accrued thereon. The warrant is
issued and proceeded upon in the same manner and has the same force and effect as is prescribed
with respect to warrants for the collection of delinquent income taxes.

(3)(a) In the case of a provider or seller that is assessed pursuant to the provisions of
ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer,
employee or member of the provider or seller within three years from the time of assess-
ment. Within 30 days from the date the notice of liability is mailed to the officer, employee
or member, the officer, employee or member shall pay the assessment, plus penalties and
interest, or advise the department in writing of objections to the liability and, if desired, re-
quest a conference. Any conference shall be governed by the provisions of ORS 305.265 per-
taining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues
considering the written objections, the department shall mail the officer, employee or mem-
ber a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
from the date the conference letter is mailed to the officer, employee or member, the officer,
employee or member shall pay the assessment, plus penalties and interest, or appeal to the
tax court in the manner provided for an appeal from a notice of assessment.

(e) If neither payment nor written objection to the notice of liability is received by the
department within 30 days after the notice of liability has been mailed, the notice of liability
becomes final. In this event, the officer, employee or member may appeal the notice of li-
ability to the tax court within 90 days after it became final in the manner provided for an
appeal from a notice of assessment.

(4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In this event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer, employee or member of a provider or seller may be held jointly and severally liable for payment of taxes.

(b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer, employee or member of a provider or seller may be held jointly and severally liable for payment of taxes, the department may require any or all of the officers, employees or members who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, employee or member of the time and place set for the determination of liability.

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

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

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

(C) If any person required to appear before the court under this subsection fails or re-
fuses to appear or bring such information in part or in whole, or is outside the jurisdiction
of the tax court, the court shall make its determination on the basis of all the evidence in-
troduced. All such evidence shall constitute a public record and shall be available to the
parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of
the tax court shall be binding on all persons made parties to the action under this sub-
section.

(e) This section may not be construed to preclude a determination by the department or
the Oregon Tax Court that more than one officer, employee or member are jointly and se-
verally liable for unpaid taxes.

SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS 465.101 to
465.131.

SECTION 5. (1) Every seller of a petroleum product withdrawn from a bulk facility re-
quired to collect the fee imposed by ORS 465.101 to 465.131 is deemed to hold the same in
trust for the State of Oregon and for the payment thereof to the Department of Revenue in
the manner and at the time provided by ORS 465.104.

(2) If the seller fails to remit any amount of the fee deemed to be held in trust for the
State of Oregon, the department may enforce collection by the issuance of a distraint war-
rant for the collection of the delinquent amount and all penalties, interest and collection
charges accrued on the delinquent amount. The warrant shall be issued, docketed and pro-
ceeded upon in the same manner and shall have the same force and effect as warrants for
the collection of delinquent income taxes.

(3)(a) In the case of a seller that is assessed pursuant to the provisions of ORS 305.265
(12) and 314.407 (1), the department may issue a notice of liability to any officer, employee
or member of the seller within three years from the time of assessment. Within 30 days
from the date the notice of liability is mailed to the officer, employee or member, the officer,
employee or member shall pay the assessment, plus penalties and interest, or advise the
department in writing of objections to the liability and, if desired, request a conference. Any
conference shall be governed by the provisions of ORS 305.265 pertaining to a conference
requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues
considering the written objections, the department shall mail the officer, employee or mem-
ber a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
from the date the conference letter is mailed to the officer, employee or member, the officer,
employee or member shall pay the assessment, plus penalties and interest, or appeal to the
tax court in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of liability is received by the
department within 30 days after the notice of liability has been mailed, the notice of liability
becomes final. In this event, the officer, employee or member may appeal the notice of li-
ability to the tax court within 90 days after it became final in the manner provided for an
appeal from a notice of assessment.

(4)(a) In the case of a failure to remit payment on the due date, the department may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In this event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer, employee or member of a seller may be held jointly and severally liable for payment of fees.

(b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer, employee or member of a seller may be held jointly and severally liable for payment of fees, the department may require any or all of the officers, employees or members who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, employee or member of the time and place set for the determination of liability.

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

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any person determined to be liable for unremitting fees under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any officer, employee or member who may be held jointly and severally liable for the remitting payment of fees. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court any information as was presented before the department, as well as any other information as may be presented to the court.
(B) The court may determine that one or more persons impleaded under this paragraph are liable for unpaid fees without regard to any earlier determination by the department that an impleaded person was not liable for unpaid fees.

(C) If any person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. All such evidence shall constitute a public record and shall be available to the parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of the tax court shall be binding on all persons made parties to the action under this subsection.

(e) This section may not be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unremitted fees.

SECTION 6. Section 5 of this 2021 Act and the amendments to ORS 307.883, 320.325 and 403.225 by sections 1 to 3 of this 2021 Act apply to amounts due as of January 1, 2022.

SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.