

House Bill 3373

Sponsored by Representative FAHEY

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**.

Establishes office of Taxpayer Advocate in Department of Revenue. Establishes functions, powers and duties of office. Becomes operative January 1, 2022.

Directs magistrate division of Oregon Tax Court to order attorney fees if opposing party disobeys court order or makes assertion without objectively reasonable basis. Allows attorney fees in cases involving transit self-employment taxes. Applies to judgments entered on or after effective date of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxpayers; creating new provisions; amending ORS 20.105 and 305.490; and prescribing
3 an effective date.

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

5 **SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter**
6 **305.**

7 **SECTION 2. (1) The office of the Taxpayer Advocate is established in the Department of**
8 **Revenue. The office shall be responsible for directly assisting taxpayers and their represen-**
9 **tatives to ensure their understanding and utilization of the policies, processes and proce-**
10 **dures available to them in the resolution of problems related to taxes collected by the**
11 **department. The Director of the Department of Revenue shall select the employees of the**
12 **office, who may include employees of the department and residents of this state with**
13 **knowledge of taxation.**

14 **(2) The office shall assist taxpayers in:**

15 **(a) Obtaining easily understandable tax information and information on audits, cor-**
16 **rections and appeals procedures of the department;**

17 **(b) Answering questions regarding preparing and filing returns with the department; and**

18 **(c) Locating documents or payments filed with or submitted to the department by tax-**
19 **payers.**

20 **(3) The office may also:**

21 **(a) Receive and evaluate complaints of improper, abusive or inefficient service by em-**
22 **ployees of the department and recommend to the director appropriate action to correct such**
23 **service;**

24 **(b) Identify policies and practices of the department that might be barriers to the equi-**
25 **table treatment of taxpayers and recommend alternatives to the director;**

26 **(c) Provide expeditious service to taxpayers whose problems are not resolved through**
27 **ordinary channels;**

28 **(d) Collaborate with department personnel to resolve the most complex and sensitive**

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 **taxpayer problems;**

2 (e) **Report to the director if, in the determination of the office, the manner in which a**
 3 **law administered by the department is being carried out is improper;**

4 (f) **Participate and represent taxpayers' interests and concerns in planning meetings,**
 5 **reviewing instructions and formulating department policies and procedures;**

6 (g) **Compile data each year on the number and type of taxpayer complaints and evaluate**
 7 **the actions taken to resolve complaints;**

8 (h) **Survey taxpayers each year to obtain their evaluation of the quality of service pro-**
 9 **vided by the department; and**

10 (i) **Perform other functions that relate to taxpayer assistance as prescribed by the di-**
 11 **rector.**

12 (4) **Actions taken by the office may be reviewed only by the director upon request of the**
 13 **department or a taxpayer. The director may modify action taken by the office.**

14 **SECTION 3. The office of the Taxpayer Advocate shall establish procedures to maintain**
 15 **the confidentiality of the records and files of taxpayers. The procedures must meet the fol-**
 16 **lowing requirements:**

17 (1) **The office may not disclose the identity of any taxpayer unless the taxpayer or the**
 18 **legal representative of the taxpayer consents in writing to the disclosure and specifies to**
 19 **whom the disclosure may be made.**

20 (2) **The identity of any taxpayer on whose behalf a complaint is made, or any individual**
 21 **providing information on behalf of the taxpayer, shall be confidential. If the complaint be-**
 22 **comes the subject of judicial proceedings, the investigative information held by the office**
 23 **shall be disclosed for the purpose of the proceedings if requested by the court.**

24 **SECTION 4. (1) Not later than February 15 of each odd-numbered year, the office of the**
 25 **Taxpayer Advocate shall report in the manner required by ORS 192.245 to a committee of the**
 26 **Legislative Assembly related to revenue regarding the operation of the office.**

27 (2) **The report required under this section shall include, for the two calendar years im-**
 28 **mediately proceeding:**

29 (a) **The number of and description of taxpayer complaints received by the office.**

30 (b) **Actions taken to resolve complaints made to the office.**

31 (c) **Evaluations by taxpayers of the quality of service provided by the department.**

32 (d) **Operational issues or other barriers that office staff perceive as preventing equitable**
 33 **and fair collection of taxes.**

34 **SECTION 5. ORS 20.105 is amended to read:**

35 20.105. (1) **In any civil action, suit or other proceeding in a circuit court or in the regular di-**
 36 **vision or the magistrate division of the Oregon Tax Court, or in any civil appeal to or review by**
 37 **the Court of Appeals or Supreme Court, the court shall award reasonable attorney fees to a party**
 38 **against whom a claim, defense or ground for appeal or review is asserted, if that party is a pre-**
 39 **ailing party in the proceeding and to be paid by the party asserting the claim, defense or ground,**
 40 **upon a finding by the court that the party willfully disobeyed a court order or that there was no**
 41 **objectively reasonable basis for asserting the claim, defense or ground for appeal.**

42 (2) **All attorney fees paid to any agency of the state under this section shall be deposited to the**
 43 **credit of the agency's appropriation or cash account from which the costs and expenses of the pro-**
 44 **ceeding were paid or incurred. If the agency obtained an Emergency Board allocation to pay costs**
 45 **and expenses of the proceeding, to that extent the attorney fees shall be deposited in the General**

1 Fund available for general governmental expenses.

2 **SECTION 6.** ORS 305.490 is amended to read:

3 305.490. (1)(a) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay
4 the filing fee established under ORS 21.135 at the time of filing for each complaint or petition.

5 (b) In addition to the fee imposed under paragraph (a) of this subsection, plaintiffs or petitioners
6 filing a complaint under ORS 305.501 (5) shall pay the filing fee established under ORS 21.135 at the
7 time of filing the complaint.

8 (2) Neither the State of Oregon, nor any county, school district, municipal corporation or other
9 public corporation therein, nor any officer of any such public political division or corporation, ap-
10 pearing in the representative capacity of the officer of any public political division or corporation,
11 shall be required to pay the fee prescribed under this section. The party entitled to costs and dis-
12 bursements on such appeal shall recover from the opponent of the party the amount so paid upon
13 order of the court, as in equity suits in the circuit court.

14 (3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net
15 income in which an individual taxpayer is a party, or involving inheritance or estate taxes, **or in-**
16 **volving transit taxes imposed on net earnings from self-employment,** the court grants a refund
17 claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes
18 claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow
19 the taxpayer, in addition to costs and disbursements, the following:

20 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
21 ceeding in the matter, if any, before the magistrate; and

22 (B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees
23 of other experts incurred by the executor or individual taxpayer in preparing for and conducting the
24 proceeding before the tax court judge and the prior proceeding in the matter, if any, before the
25 magistrate.

26 (b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the
27 Department of Revenue in the manner provided by ORS 305.790.

28 (4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation,
29 exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the
30 court may allow the taxpayer, in addition to costs and disbursements, the following:

31 (A) Reasonable attorney fees for the proceeding under this subsection and for the prior pro-
32 ceeding in the matter, if any, before the magistrate; and

33 (B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred
34 by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge
35 and the prior proceeding in the matter, if any, before the magistrate.

36 (b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the
37 Department of Revenue in the manner provided by ORS 305.790.

38 (5) All fees and other moneys received or collected by the clerk by virtue of the office of the
39 clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund
40 as miscellaneous receipts.

41 **SECTION 7. (1) Sections 2 to 4 of this 2021 Act become operative January 1, 2022.**

42 **(2) The amendments to ORS 20.105 and 305.490 by sections 5 and 6 of this 2021 Act apply**
43 **to judgments entered on or after the effective date of this 2021 Act.**

44 **SECTION 8. This 2021 Act takes effect on the 91st day after the date on which the 2021**
45 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

