

LEGISLATIVE REPORT

IMPLEMENTATION OF SENATE BILL 1



August 2024

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BACKGROUND

Senate Bill 1

The concept of collecting race and ethnicity information through tax returns was first considered in [Senate Bill 1569](#) in 2022. That bill was not approved, but the concept was introduced in 2023 as [Senate Bill 1](#) (SB 1) that was passed by the Legislature and signed into law in July 2023. As approved by the Legislature, SB 1 requires the Department of Revenue (DOR) to provide a method for Oregon taxpayers, and Oregonians without a filing requirement, to voluntarily provide their race and ethnicity information—voluntary self-identification (VSI).

During legislative deliberations on SB 1, lawmakers discussed data security and data access. The bill requires that race and ethnicity data be kept separate from tax return data; it will only be accessible to staff from the department's Research Section and staff processing the information. Staff from the Legislative Revenue Office (LRO) and the Oregon Department of Administrative Services Office of Economic Analysis (OEA) are also authorized to access the data.

Oregon will be the first state to collect this demographic data, so early years of filing experience will inform the department about how to help taxpayers, and others, navigate this voluntary process. Through the development of the schedule (form) and instructions for data collection, the department engaged with key external partners from various organizations, including the Oregon Health Authority (OHA) and Oregon Center for Public Policy (OCPP), to solicit suggestions that were incorporated into the program materials and process.

SECTION 1: Status and Implementation of Data Collection Schedule (Form)

The bill requires the department to use race and ethnicity categories developed by OHA, and a one-page form (Form OR-VSI) was created using the Race, Ethnicity, Language and Disability ([REALD](#)) form as a model. Beginning January 2025, taxpayers may choose from 40 three-digit codes to identify their primary race or ethnicity and one or two additional three-digit codes to identify additional races or ethnicities. Alternatively, the taxpayer may indicate they do not have or do not know their primary race or ethnicity. Instructions (Form OR-VSI Instructions) provide more detail about the form, use of the data, and basic steps for completing and filing the form.

The form and instructions explain that providing this data is voluntary, and doing so will have no impact on an individual's personal income tax return or other accounts with the department. The form and instructions state the purpose for collecting this data, and that it cannot be used for any other reason, either by the department, tax professionals, or tax software companies. The instructions outline who may use or access the data and for what purpose. Based on input from OHA, the instructions will be available in 23 languages.

For electronically filed returns, tax software vendors will be required to make the form available for taxpayers to fill out. Taxpayers will be required to choose "yes" or "no" to provide the information on the form. For individuals filing a joint return, each person may choose to provide their own race or ethnicity information on separate forms.

The form and instructions will also be available through Revenue Online (ROL) for people who are not required to file a tax return or who prefer to submit information separately from their return.

Beginning January 2025, the department will start collecting VSI data.

Most data will be submitted to DOR electronically (about 95 percent of all tax returns) via a form when taxpayers file their personal income tax return. Data are entered directly into the department's GenTax software application. GenTax is the integrated tax administration software used by the department and many tax and revenue agencies worldwide. Taxpayers and tax preparers will have access to an electronic version of the VSI form and instructions, and they will have the option to opt in or opt out of providing VSI data. Taxpayers may submit the data with their initial or amended return.

If a taxpayer files the VSI form on paper, the department will process the paper form with paper tax returns via the standard process using scanning machines and software to digitize data before transferring it to the GenTax system. If a paper form is received without association to a specific tax return, the form will be destroyed.

The paper form will be configured to be read by optical character recognition (OCR) technology. Data validation will confirm accuracy of what is collected from paper forms.

Since Oregon is the first state to collect race and ethnicity information with a tax return, it is unknown how many taxpayers will submit their information voluntarily. In the first year, enough data might not be collected for meaningful race and ethnicity analysis, as it applies to tax policy. However, the department could compare the demographic data with populations that were emphasized during program outreach. This analysis could help the department improve methods to reach different populations and inform them about the opportunity to be part of the VSI program. It may take several years to gather meaningful data to analyze policy trends.

SECTION 2: Effectiveness Of Measures Undertaken by The Department to Ensure Data Security

When a form is filed electronically, the GenTax software will assign a filing year and a unique code called a “doc key” to index the form to the tax return data. The VSI data will then be securely stored separately from tax return data. The doc key will allow association to the separately stored tax return data initially filed, along with any amended data for that return, for the given filing period.

Two additional separate and secure data stores will be created: one for forms filed through the ROL application from people who log in—meaning their identity is confirmed; a second for forms submitted without logging in—meaning their identity is not confirmed. The same data stores will host multiple years of VSI data.

When a form is filed on paper, the department will image the form, along with VSI forms (if included). The physical paper returns are stored in a secured locked location, which has limited access by staff, for 90 days after imaging. For images that are scanned and stored by the scanning software during the processing of paper returns, staff have limited access to those scanned images, which are purged after 90 days.

VSI data and images will be sent to GenTax and separated from other return information in specific VSI data stores. An audit trail is maintained during the processing of paper and 2D-bar code imaged returns. These audit trails identify who has accessed data or made modifications.

All VSI data, whether filed electronically or on paper, will be transferred from the data stores in GenTax to a secured database location on an internal department application called TARDIS, which department Research staff uses for analysis. Within TARDIS, VSI data will be stored separately, and only staff authorized by Research leadership will have access to it when required.

SECTION 3: Prevention of Data Sharing

Within the Department of Revenue

In order to protect VSI data, new security groups will be created to control access to VSI data stores and TARDIS. Within the department, specific Research personnel and IT technical staff will be granted access to support the program function. “Security groups” refers to the method used to control access to shared storage, networks, and/or applications.

Staff of LRO and OEA in the Oregon Department of Administrative Services will also be authorized to access the VSI data.

Currently, if LRO and OEA staff visit DOR to access data, they are required to provide a letter from the director of LRO or state economist to the research director of DOR, stating what data they need, the purpose for examining the data, and which LRO or OEA staff member will examine the data. Next, Research staff download the requested data for review to a computer in the Research office that is dedicated for use by LRO or OEA. LRO and OEA staff may access DOR data only through this computer while Research staff are present in the area. After LRO or OEA staff complete their analysis, Research staff review any aggregate data that has been created to ensure any components of an individual’s return cannot be identified.

The department will implement a similar VSI data access and review process for LRO and OEA, with the following modifications: The VSI data will be downloaded from their secure location; it will be on the dedicated Research computer only while LRO or OEA examines it in conjunction with any particular return data that was requested; the data will be deleted from the Research computer after use; and downloading and deleting of VSI data will be logged by Research staff.

With the IRS

All e-filed returns are first validated by the IRS. The IRS does some limited validation on state returns and then passes them to the state; it does not keep or use any state information. Validation includes information such as vendor ID information, a state government code, tax year, form type, taxpayer Social Security numbers, and first four letters of taxpayer's last name. The IRS does not validate Extensible Markup Language (XML) data, which is information created using electronic coding language for file formatting, storing, transmitting, and reconstructing arbitrary data. This data includes taxpayer return information and schedules.

If a state return is "linked" (state and federal return submitted at the same time), the IRS will "pull" the federal return and send the state return to the state. If the state return is "unlinked" (state-only return), the IRS sends the entire return to the state.

Although the IRS does not access or retain any state-specific information, including VSI, the department will inform the IRS they are prohibited from accessing this data.

Between Software Vendors and Commercial Interests

The Oregon Letter of Intent (LOI) is a form e-file software companies file with the department if they intend to submit electronic Oregon returns. The form signifies that companies agree to meet standards established by the department. Once a vendor files the LOI, the department will review it, and if the vendor meets the standards and requirements, they are granted access to the latest Modernized e-File (MeF) schema, which is a layout of the Oregon return and schedules in an XML format. MeF provides an option to e-file corporate, exempt organization, individual, partnership, excise tax, and withholding tax returns through the internet.

The LOI states that the use or retention of information about a taxpayer's race or ethnicity, beyond the extent allowed by ORS 305.686, may result in the department revoking their status as an approved software provider.

The final 2024 LOI will be posted to a secure site, accessible to software vendors, by August 30, 2024. Software vendors who intend to e-file Oregon returns can file their LOI beginning September 2, 2024.

The VSI form will be added to the Individual MeF schema, which will be available for download by approved software vendors. In addition to the MeF schema, the department will also post a "Developer Handbook" explaining new aspects of the schema.

Software vendors use the MeF schema to build their products. The department tests the products of the software vendors (assurance testing) to ensure they work as expected. Each return line, or data element, in the MeF schema has specific parameters to encourage clean data filing. Parameters may include field type, restrictions, and whether the field is optional or required. The department will begin assurance testing with vendor products in November 2024. Products must pass assurance tests before being approved for e-filing Oregon returns.

Between Tax Practitioners and Commercial Interests

The department holds quarterly tax professional liaison trainings, and these have included VSI information in recent presentations. The department will provide additional training sessions for tax professionals in winter 2024 to prepare for the upcoming tax filing season. These training sessions include review of the purpose of the VSI program, and they highlight the confidentiality of the data and its allowed and prohibited uses.



SUMMARY

The VSI form and instructions will be available at the same time as the 2024 tax return, in early January 2025. People may submit VSI data when they file either through software, tax professionals, ROL, or paper forms. Data security and confidentiality are very important, and the department is establishing necessary systems and processes to ensure the data are used and accessed only as required by law. While some data may be available in late 2025, it may take several years of data collection to gather meaningful information that can illustrate policy trends.

Enrolled Senate Bill 1

Sponsored by Senator WAGNER; Senators CAMPOS, DEMBROW, JAMA, PATTERSON, Representative PHAM K (Pre-session filed.)

CHAPTER

AN ACT

Relating to data collected by the Department of Revenue; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 316.

SECTION 2. (1) The Department of Revenue shall attach to personal income tax returns required to be filed under this chapter a schedule that allows taxpayers to provide to the department, at the time of filing the return and on a voluntary basis, self-reported identification of the taxpayer's race and ethnicity.

(2) The data collection schedule required under subsection (1) of this section must:

(a) Allow each taxpayer to select from the full list of demographic data categories of racial or ethnic identity adopted as uniform standards by the Oregon Health Authority pursuant to ORS 413.161.

(b) Allow each individual listed on a return to select one primary identifier and as many as two additional identifiers.

(c) Provide that individuals filing a joint return may each elect whether to indicate identifiers on the schedule.

(d) Be accompanied by the statement that the collection of data is voluntary and self-reported and that the department may not use the collected data for the purposes of audit, collection or other enforcement activities.

(e) Be accompanied by a statement explaining the purpose of collecting data for use in analysis of revenue policy.

(f) Be optional to complete, but provide that individuals shall opt out of completion of the schedule.

(3) The department shall establish policies and procedures to enable individuals who are not required to file an income tax return under this chapter for a given tax year to elect to complete the schedule provided under this section without filing a return.

SECTION 3. Sections 4 to 8 of this 2023 Act are added to and made a part of ORS chapter 305.

SECTION 4. (1) The Department of Revenue shall:

(a) Ensure that all data collected pursuant to section 2 of this 2023 Act is used only for the purposes described in sections 2 and 7 of this 2023 Act.

(b) Maintain and store data collected pursuant to section 2 of this 2023 Act separately from other information provided on tax returns filed under ORS chapter 316, and provide that the data is accessible only to the following:

- (A) Research section staff of the department.
 - (B) Other department staff that are assigned to process the data and process or program the underlying systems for the data collection schedule, but only to the extent necessary for that purpose.
 - (C) The staff of the Legislative Revenue Office.
 - (D) The division of the Oregon Department of Administrative Services that serves as office of economic analysis.
- (c) Maintain records sufficient to verify that Department of Revenue personnel having access to data collected pursuant to section 2 of this 2023 Act are limited to those personnel listed in paragraph (b)(A) and (B) of this subsection and sufficient to ensure compliance with this subsection.
- (2) Tax practitioners and tax preparation software vendors may use and retain data collected pursuant to section 2 of this 2023 Act only to the extent necessary to assist taxpayers in the preparing and filing of returns required under ORS chapter 316 and may not use the data, or allow it to be used, for any other reason.
- (3) Notwithstanding any intergovernmental reciprocal agreements entered into by the Department of Revenue, the department may not allow the Internal Revenue Service access to the data collected under section 2 of this 2023 Act.

SECTION 5. Not later than September 15 of each year, beginning in 2024, the Department of Revenue shall report, in the manner provided in ORS 192.245, on the status of the development and implementation of the data collection schedule required under section 2 of this 2023 Act and on the use of the data collected, to an appropriate committee or interim committee of the Legislative Assembly related to information management and technology. The report required by this section shall include an update of the effectiveness of measures undertaken by the department to ensure data security. The report shall address the prevention of any sharing of data collected pursuant to section 2 of this 2023 Act:

- (1) Within the department, between research staff and audit and collection staff.
- (2) Between the department and the Internal Revenue Service.
- (3) Between tax practitioners and commercial interests.
- (4) Between tax preparation software vendors and commercial interests.

SECTION 6. Section 5 of this 2023 Act is repealed on January 2, 2029.

SECTION 7. (1) The Department of Revenue shall use data collected on the data collection schedule required under section 2 of this 2023 Act to the extent feasible, to inform:

- (a) The development of racial impact statements;
- (b) The analysis of proposed administrative rules and budget requests; and
- (c) The response by the department to certain requests for information from the Legislative Assembly.

(2) If the Department of Revenue, the Legislative Revenue Officer or the Oregon Department of Administrative Services includes data collected under section 2 of this 2023 Act in a report or as other output, the data shall be presented only in aggregated and anonymized form.

SECTION 8. (1) The Department of Revenue shall first attach the data collection schedule required under section 2 of this 2023 Act to income tax returns filed for the 2024 tax year.

(2) The department shall develop programming and forms for the implementation of the schedule and, by rule, shall adopt policies and procedures for the implementation of the use of the schedule.

SECTION 9. (1) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Revenue by section 1 (3), chapter __, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, for the Personal Tax and Compliance Division, is increased by \$259,658, for developing a schedule allowing personal income taxpayers to voluntarily report self-identified race and ethnicity identifiers.

(2) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Revenue by section 1 (6), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, for the Information Technology Services Division, is increased by \$164,842, for developing and maintaining data collection of self-identified race and ethnicity identifiers.

(3) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Revenue by section 1 (1), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, for administration, is increased by \$46,224, for the research and development of racial impact statements.

SECTION 10. (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (3), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in section 2, chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), collected or received by the Department of Revenue, for the Personal Tax and Compliance Division, is increased by \$6,357, for developing a schedule allowing personal income taxpayers to voluntarily report self-identified race and ethnicity identifiers.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (7), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in section 2, chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), collected or received by the Department of Revenue, for the Information Technology Services Division, is increased by \$11,460, for developing and maintaining data collection of self-identified race and ethnicity identifiers.

(3) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in section 2, chapter ___, Oregon Laws 2023 (Enrolled House Bill 5034), collected or received by the Department of Revenue, for administration, is increased by \$10,392, for the research and development of racial impact statements.

SECTION 11. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate June 20, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House June 21, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

.....
Secretary of State

OREGON COUNTS ON US

