

Senate Bill 160

Sponsored by Senator MEEK (Pre-session filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would end the tax on wages that funds statewide transportation uses. (Flesch Readability Score: 63.4).

Repeals the state payroll tax on wages imposed to finance transportation investments and improvements and maintain existing public transportation services.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to transportation taxes; creating new provisions; amending ORS 184.751, 184.758, 184.766,
3 316.164, 316.169, 316.197, 316.202, 316.207 and 316.212; repealing ORS 320.550, 320.555 and
4 320.560; and prescribing an effective date.

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

6 **SECTION 1. ORS 320.550, 320.555 and 320.560 are repealed.**

7 **SECTION 2.** ORS 184.751 is amended to read:

8 184.751. (1) The Statewide Transportation Improvement Fund is established in the State Treas-
9 ury, separate and distinct from the General Fund. Interest earned by the Statewide Transportation
10 Improvement Fund shall be credited to the fund. Moneys in the fund are continuously appropriated
11 to the Department of Transportation to finance investments and improvements or to maintain ex-
12 isting public transportation services, except that the moneys may not be used for light rail capital
13 expenses but may be used for light rail operation expenses.

14 (2) The Statewide Transportation Improvement Fund consists of:

15 [*(a) All moneys received from the tax imposed under ORS 320.550;*]

16 [*(b) (a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;*

17 [*(c) (b) Moneys transferred to the fund under ORS 184.642, 323.455 or 323.457 (1)(d) and (2)(b);*

18 [*(d) (c) Distribution repayments, if any; and*

19 [*(e) (d) Other moneys deposited in the fund from any source.*

20 (3) Unless approved by the department, the moneys in the Statewide Transportation Improve-
21 ment Fund may not be used to supplant local and regional agency moneys currently directed to
22 public transportation service providers.

23 **SECTION 3.** ORS 184.758 is amended to read:

24 184.758. (1) The Oregon Transportation Commission shall distribute the moneys in the Statewide
25 Transportation Improvement Fund established under ORS 184.751 to the Department of Transporta-
26 tion to pay for:

27 (a) Program administration; and

28 (b) Projects of statewide significance that support the transit network and manage the operation
29 of public transportation services.

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 (2) The moneys described in subsection (1) of this section that remain after the distribution of
2 moneys described in subsection (1) of this section shall be distributed as follows:

3 (a) Conditioned upon the commission's approval of a public transportation improvement plan, 90
4 percent to qualified entities;

5 (b) Five percent to public transportation service providers based on a competitive grant program
6 adopted by the commission by rule;

7 (c) Four percent to public transportation service providers to provide funding assistance to
8 cover the costs of improving public transportation services between two or more communities; and

9 (d) One percent to the Department of Transportation to establish a statewide public transpor-
10 tation technical resource center, the purpose of which is to assist public transportation service
11 providers in rural areas with technical assistance, training, transportation planning and information
12 technology.

13 (3) A portion of the 90 percent distribution under subsection (2)(a) of this section shall be dedi-
14 cated to transit services for older adults and individuals with disabilities. Each biennium the com-
15 mission shall first distribute the moneys transferred to the fund under ORS 184.751 as needed to
16 maintain funding that benefits older adults and individuals with disabilities in the amount distrib-
17 uted during the 2019-2021 biennium. Each biennium thereafter, the commission shall adjust this
18 amount upward or downward based on the rate of growth or decline of the Statewide Transportation
19 Improvement Fund. Moneys dedicated to transit services for older adults and individuals with disa-
20 bilities under this subsection shall be distributed as follows:

21 (a) Each transportation district and mass transit district shall receive that share of the moneys
22 as the population of the counties in which the district is situated, determined under ORS 190.510 to
23 190.610 last preceding apportionment of the moneys, bears to the total population of this state.
24 However, if two or more districts are situated in a single county, distribution of moneys under this
25 subsection shall be determined as though only the mass transit district is located in that county or,
26 if there are two or more transportation districts in the county, as though only the transportation
27 district with the highest population is located in that county.

28 (b) Each county in which no part of a mass transit district or transportation district is located
29 shall receive that share of the moneys as its population, determined under ORS 190.510 to 190.610
30 last preceding apportionment of the moneys, bears to the total population of this state.

31 (c) Each federally recognized Indian tribe shall receive that share of the moneys as the popu-
32 lation of the tribe residing in Oregon, determined by the commission by rule, bears to the total
33 population of this state.

34 (4) Each qualified entity under subsection (3) of this section shall receive an annual target
35 amount of \$67,700. Each biennium, the commission shall adjust this amount upward or downward
36 based on the rate of growth or decline of the Statewide Transportation Improvement Fund.

37 (5) After a portion of the 90 percent distribution under subsection (2)(a) of this section is dis-
38 tributed to transit services for older adults and individuals with disabilities under subsection (3) of
39 this section, the commission shall distribute the remaining amount to qualified entities as follows:

40 (a) Each distribution must be in such shares that the amount of *[tax paid, as required under ORS*
41 *320.550, in]* **the moneys described in ORS 184.751 (2) attributable to** the area of each qualified
42 entity bears to the total amount of *[the tax paid statewide]* **such moneys attributable to the entire**
43 **state**, provided that each qualified entity receives an annual target amount of \$100,000. Each
44 biennium, the commission shall adjust this amount upward or downward based on the rate of growth
45 or decline of the Statewide Transportation Improvement Fund.

1 (b) If more than one mass transit district or transportation district is located within a single
2 county, the commission shall distribute the moneys to the larger district.

3 (6) The commission shall adopt by rule:

4 (a) A competitive grant program, by which a public transportation service provider may apply
5 for a percentage distribution under subsection (2)(b) of this section, and the terms and conditions
6 of grants.

7 (b) A competitive grant program, by which a public transportation service provider may apply
8 for a percentage distribution under subsection (2)(c) of this section, and the terms and conditions
9 of grants.

10 (c) A process to review and approve a public transportation improvement plan submitted under
11 subsection (7) of this section.

12 (d) Procedures for appealing a rejection of a public transportation improvement plan submitted
13 under subsection (7) of this section.

14 (e) Any other provisions or procedures that are necessary for the commission to carry out the
15 provisions of ORS 184.758 to 184.766.

16 (7) To be eligible to receive a percentage distribution under subsection (2)(a) of this section, a
17 qualified entity shall prepare and submit a public transportation improvement plan to the commis-
18 sion. The commission must approve the plan submitted by the qualified entity before the commission
19 may make a percentage distribution to the qualified entity.

20 (8) At a minimum, a public transportation improvement plan submitted under this section must
21 include:

22 (a) For each proposed project, the amount of moneys from the percentage distribution that would
23 be allocated to the project to fund the following:

24 (A) Increased frequency of bus service schedules in communities with a high percentage of
25 low-income households;

26 (B) Procurement of buses that are powered by natural gas or electricity for use in areas with
27 a population of 200,000 or more;

28 (C) Implementation of programs to reduce fares for public transportation in communities with
29 a high percentage of low-income households;

30 (D) Expansion of bus routes and bus services to reach communities with a high percentage of
31 low-income households;

32 (E) Improvement in the frequency and reliability of service connections between communities
33 inside and outside of the qualified entity's service area;

34 (F) Coordination between public transportation service providers to reduce fragmentation in the
35 provision of transportation services;

36 (G) Implementation of programs to provide student transit services for students in grades 9
37 through 12; and

38 (H) Services for older adults and people with disabilities;

39 (b) For the current fiscal year, a summary of any plans and project proposals approved by an
40 advisory committee under ORS 184.761; and

41 (c) If a qualified entity was a recipient of a percentage distribution in the preceding fiscal year,
42 the amount of moneys received from the distribution that were allocated to a project for the pur-
43 poses described under paragraph (a) of this subsection.

44 (9) If practicable, as determined by the commission by rule each qualified entity shall spend at
45 least one percent of the amount received each year under subsection (2)(a) of this section to imple-

1 ment programs to provide student transit services for students in grades 9 through 12.

2 (10) After the commission makes a distribution under subsection (2) of this section, qualified
3 entities may enter into intergovernmental agreements under ORS chapter 190 to combine the mon-
4 eys received for public transportation improvements.

5 (11) If the commission rejects a public transportation improvement plan or a grant application
6 submitted under this section, the commission shall notify the entity or provider in writing and state
7 the reasons for the rejection.

8 (12) The Department of Transportation shall make all grant applications submitted under this
9 section available to the public.

10 **SECTION 4.** ORS 184.766 is amended to read:

11 184.766. (1) Every qualified entity that receives a percentage distribution under ORS 184.758
12 shall submit the following to the Department of Transportation:

13 *[(a) No later than 60 days after the end of the fiscal year, a report on any actions taken by a public*
14 *transportation service provider located within the area of a qualified entity to mitigate the impact of the*
15 *tax imposed under ORS 320.550 on passengers who reside in low-income communities;]*

16 *[(b)] (a)* No later than 30 days after adoption, the annual budget for the upcoming fiscal year;
17 and

18 *[(c)] (b)* No later than 30 days after receipt of the final results of any audits of the qualified
19 entity or of a public transportation service provider located within the area of the qualified entity
20 as required by a local, state or federal oversight agency for purposes of statewide reporting, the
21 final results including, but not limited to:

22 (A) The state financial report required under ORS 291.040;

23 (B) The results of any comprehensive review completed by the Federal Transit Administration
24 or the department;

25 (C) Any information submitted by the qualified entity as a part of the requirements of a state-
26 wide audit in accordance with the federal Single Audit Act of 1984 (31 U.S.C. 7501 to 7507), as
27 amended by the Single Audit Act Amendments of 1996 (P.L. 104-156); and

28 (D) Any quarterly reports that detail project progress, outcomes achieved and the expenditure
29 of funds described under ORS 184.758 (2)(a).

30 (2) The Oregon Transportation Commission shall establish rules concerning the making of
31 agreements for the distributions made to qualified entities under ORS 184.758. Each agreement must
32 include a condition that requires a qualified entity to repay, in full, distributions paid to the quali-
33 fied entity, if the commission determines that the recipient has failed meet to any terms or condi-
34 tions of the agreement.

35 **SECTION 5.** ORS 316.164 is amended to read:

36 316.164. (1) Except as provided in subsection (3) of this section, if the Department of Revenue
37 makes the findings required under subsection (2) of this section, the department may require any
38 employer subject to ORS 316.162 to 316.221, except the state or its political subdivisions, to post a
39 surety bond, or irrevocable letter of credit issued by an insured institution, as defined in ORS
40 706.008, with the department, to secure future payment of amounts required to be withheld and paid
41 over to the department under ORS 316.162 to 316.221 [*or 320.550*]. The bond or letter of credit shall
42 be in an amount equal to the amounts required to be withheld upon the wages paid or estimated to
43 be paid by the employer for a period of four calendar quarters. The bond or letter of credit shall
44 be in a form acceptable to the department. Posting of the bond or letter of credit shall not relieve
45 the employer from withholding and paying over amounts based on wages paid by the employer under

1 any provision of ORS 316.162 to 316.221 [*or 320.550*]. The department may, in its discretion, at any
2 time apply such bond or letter of credit or part thereof to the delinquencies or indebtedness of the
3 employer arising under any provision of ORS 316.162 to 316.221 [*and 320.550*] and accruing after the
4 date the bond or letter of credit was posted. Appeal of an action of the department under this sec-
5 tion shall not relieve an employer of the requirement during the pendency of the appeal.

6 (2) Before requiring an employer to post a bond or irrevocable letter of credit under subsection
7 (1) of this section, the department shall determine that the employer has failed to make payment to
8 the department of amounts required to be withheld and paid over under any provision of ORS
9 316.162 to 316.221 [*or 320.550*] for at least three calendar quarters, and the total amount of delin-
10 quent payments exceeds \$2,500, exclusive of interest or penalties. For purposes of this subsection,
11 a payment shall not be considered delinquent if the employer's liability to withhold is subject to
12 appeal to the tax court.

13 (3) The department shall not require a bond or irrevocable letter of credit to be posted under
14 this section if the employer elects to notify the department of the times of payment of wages to the
15 employees of the employer, and, notwithstanding ORS 316.197, to pay over amounts withheld within
16 three banking days after the dates the wages were paid.

17 (4) Before requiring an employer to post a bond or irrevocable letter of credit or make payment
18 of amounts required to be withheld in the manner prescribed in subsection (3) of this section, the
19 department shall attempt to obtain payment of delinquent amounts through other methods of col-
20 lection, however, the department is not required to seize or sell real or personal property in order
21 to comply with the requirements of this subsection.

22 (5) Any bond or irrevocable letter of credit required under subsection (1) of this section shall
23 become the sole property of the department and shall be held by the department to guarantee pay-
24 ment of withholding taxes by the employer. The bond or letter of credit shall be held for the benefit
25 of the State of Oregon, subject only to the provisions of subsection (6) of this section. The bond or
26 letter of credit shall be prior to all other liens, claims or encumbrances and shall be exempt from
27 any process, attachment, garnishment or execution.

28 (6) If an employer ceases to be an employer subject to ORS 316.162 to 316.221 [*or 320.550*], the
29 department shall, upon receipt of all payments due from the employer for withheld amounts, cancel
30 any bond or irrevocable letter of credit given under this section. Such bonds or letters of credit held
31 for the benefit of the State of Oregon shall first be applied to any indebtedness or deficiencies due
32 from the employer under ORS 316.162 to 316.221 [*and 320.550*] and accruing after the date the bond
33 or letter of credit was posted before any return is made to the employer. The employer shall have
34 no interest in such bond or letter of credit prior to full compliance with this section and all pro-
35 visions of ORS 316.162 to 316.221 [*and 320.550*].

36 (7) If an employer required to post a bond or irrevocable letter of credit or make payment of
37 amounts withheld in the manner prescribed under this section makes full payment of all delinquent
38 amounts due and owing at the time the bond, letter of credit or accelerated payment schedule was
39 required and makes payment of amounts due under ORS 316.162 to 316.221 [*and 320.550*] and files
40 returns required in connection with those payments in a timely manner for the succeeding four
41 calendar quarters, the department shall release the employer from the requirement to post the bond
42 or letter of credit or make accelerated payments of amounts withheld.

43 (8) If any employer fails to comply with subsections (1) to (7) of this section, the Oregon Tax
44 Court, upon commencement of an action by the department for that purpose, may order the employer
45 to post the required bond or irrevocable letter of credit or make accelerated payments of amounts

1 withheld. The employer's failure to obey an order of the court is punishable by contempt. If the
 2 Oregon Tax Court determines that an order of compliance enforceable by contempt proceedings will
 3 not assure the payment of withheld taxes by the employer, the court may enjoin the employer from
 4 further employing individuals in this state or continuing in business therein until the employer has
 5 complied with subsections (1) to (7) of this section.

6 **SECTION 6.** ORS 316.169 is amended to read:

7 316.169. (1) If a lender, surety or other person who is not an employer with respect to an em-
 8 ployee pays wages directly to the employee, or to an agent on behalf of the employee, the lender,
 9 surety or other person shall deduct and retain from the wages, and shall be liable to this state for,
 10 an amount equal to the amount required to be withheld from the employee's wages by the employer
 11 under ORS 316.167 [*and 320.550*].

12 (2) A lender, surety or other person described under this section shall file a combined quarterly
 13 tax report and make payment of the tax or assessment that is due in the time and manner prescribed
 14 for employers under ORS 316.168.

15 (3) Amounts paid under this section shall be credited against the liability of the employer under
 16 ORS 316.167 [*and 320.550*].

17 (4) A lender, surety or other person described under this section shall be considered to be an
 18 employer with respect to withholdings made under this section or required to be made under this
 19 section for purposes of ORS 316.191, 316.197, 316.202, 316.207[,] **and** 316.212 [*and 320.550*].

20 (5) The employer of an employee that receives wages from a lender, surety or other person shall
 21 not be discharged from any liability or other obligation under ORS 316.162 to 316.221 [*or 320.550*]
 22 except as provided for in subsection (3) of this section.

23 **SECTION 7.** ORS 316.197 is amended to read:

24 316.197. (1)(a) Except as provided under ORS 316.191 or paragraph (b) of this subsection, within
 25 the time that each employer is required to pay over taxes withheld for federal income tax purposes
 26 for any period, the employer shall pay over to the Department of Revenue or to a financial agent
 27 of the department the amounts required to be withheld under ORS 316.167[,] **and** 316.172 [*and*
 28 *320.550*] for the same period. Any employer not required to withhold federal income taxes for any
 29 period but who is required to deduct and retain amounts from wages paid to an employee under ORS
 30 316.167[,] **and** 316.172 [*and 320.550*] for the same period shall pay over to the department, or finan-
 31 cial agent of the department, taxes withheld for the period, within the time and in the manner, as
 32 if the employer were required to withhold taxes for the period under federal law.

33 (b) Notwithstanding the provisions of paragraph (a) of this subsection, any employer of agricul-
 34 tural employees who is not required to withhold federal income taxes for any period but who is re-
 35 quired to deduct and retain amounts from wages paid to those employees under ORS 316.167 and
 36 316.172 shall pay over to the department, or financial agent of the department, taxes so withheld
 37 at the same time and for the same period for which the employer is required to pay over employer
 38 and employee taxes under chapter 21 of the Internal Revenue Code (Federal Insurance Contributions
 39 Act).

40 (2) Every amount so paid over shall be accounted for as part of the collections under this
 41 chapter. No employee has any right of action against an employer in respect of any moneys deducted
 42 from wages and paid over in compliance or intended compliance with this section.

43 (3) If any amount required to be withheld and paid over to the department is delinquent, interest
 44 shall accrue at the rate prescribed under ORS 305.220 on that amount from the last day of the month
 45 following the end of the calendar quarter within which the amount was required to be paid to the

1 department to the date of payment. The provisions of this subsection shall not relieve any employer
2 from liability for a late payment penalty under any other provision of law.

3 **SECTION 8.** ORS 316.202 is amended to read:

4 316.202. (1) With each payment made to the Department of Revenue, every employer shall de-
5 liver to the department, on a form prescribed by the department showing the total amount of with-
6 held taxes in accordance with ORS 316.167[,] **and** 316.172 [*and 320.550*], and supply any other
7 information as the department may require. The employer is charged with the duty of advising the
8 employee of the amount of moneys withheld, in accordance with any regulations as the department
9 may prescribe, using printed forms furnished or approved by the department for this purpose.

10 (2) Except as provided in subsection (5) of this section, every employer shall submit a combined
11 quarterly return to the department on a form provided by it showing the number of payments made
12 and the withheld taxes paid during the quarter. The report shall be filed with the department on
13 or before the last day of the month following the end of the quarter.

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

23 (4) The employer shall indicate on the return required by subsection (3) of this section whether
24 the employer offers a qualified retirement plan, as listed in ORS 178.215 (8), that would allow the
25 employer to obtain an exemption from offering employees enrollment in the retirement plan devel-
26 oped under ORS 178.205. The department shall provide a means on the return by which the employer
27 may make this indication.

28 (5) Notwithstanding the provisions of subsection (2) of this section, employers of agricultural
29 employees may submit returns annually showing the number of payments made and the withheld
30 taxes paid. However, such employers shall make and file a combined quarterly tax report with re-
31 spect to other tax programs, as required by ORS 316.168.

32 (6) In addition to any other penalty required by law:

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

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

40 **SECTION 9.** ORS 316.207 is amended to read:

41 316.207. (1) Every employer who deducts and retains any amount under ORS 316.162 to 316.221
42 [*and 320.550*] shall hold the same in trust for the State of Oregon and for the payment thereof to the
43 Department of Revenue in the manner and at the time provided in ORS 316.162 to 316.221.

44 (2) At any time the employer fails to remit any amount withheld, the department may enforce
45 collection by the issuance of a distraint warrant for the collection of the delinquent amount and all

1 penalties, interest and collection charges accrued thereon. The warrant shall be issued, recorded
2 and proceeded upon in the same manner and shall have the same force and effect as is prescribed
3 with respect to warrants for the collection of delinquent income taxes.

4 (3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265 (12)
5 and 314.407 (1), the department may issue a notice of liability to any officer, employee or member
6 described in ORS 316.162 (1)(b) of the employer within three years from the time of assessment.
7 Within 30 days from the date the notice of liability is mailed to the officer, employee or member, the
8 officer, employee or member shall pay the assessment, plus penalties and interest, or advise the de-
9 partment in writing of objections to the liability and, if desired, request a conference. Any confer-
10 ence shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from
11 a notice of deficiency.

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

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

23 (4)(a) In the case of a failure to file a withholding tax report on the due date, governed by the
24 provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS
25 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee
26 or member described in ORS 316.162 (1)(b) any time within three years after the assessment of an
27 employer described in ORS 316.162 (1)(a). The time of assessment against the officer, employee or
28 member shall be 30 days after the date the notice of determination and assessment is mailed. Within
29 30 days from the date the notice of determination and assessment is mailed to the officer, employee
30 or member, the officer, employee or member shall pay the assessment, plus penalties and interest,
31 or advise the department in writing of objections to the assessment, and if desired, request a con-
32 ference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a confer-
33 ence requested from a notice of deficiency.

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

40 (c) If neither payment nor written objection to the notice of determination and assessment is
41 received by the department within 30 days after the notice of determination and assessment has
42 been mailed, the notice of determination and assessment becomes final. In this event, the officer,
43 employee or member may appeal the notice of determination and assessment to the tax court within
44 90 days after it became final in the manner provided for an appeal from a notice of assessment.

45 (5)(a) More than one officer or employee of a corporation may be held jointly and severally lia-

1 ble for payment of withheld taxes.

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

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

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

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

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

29 (e) Nothing in this section shall be construed to preclude a determination by the department or
30 the Oregon Tax Court that more than one officer, employee or member are jointly and severally li-
31 able for unpaid withholding taxes.

32 **SECTION 10.** ORS 316.212 is amended to read:

33 316.212. The provisions of the income tax laws in ORS chapters 305 and 314 and this chapter,
34 as to the audit and examination of returns, periods of limitation, determinations of and notices of
35 deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, confer-
36 ences, judicial appeals, stays of collection pending appeal, confidentiality of returns and the related
37 penalties, and the related procedures, apply to employers subject to the provisions of ORS 316.162
38 to 316.221 [*and 320.550*], and for these purposes any amount deducted or required to be deducted and
39 remitted to the Department of Revenue under ORS 316.162 to 316.221 [*and 320.550*] is considered the
40 tax of the employer and with respect to the amount the employer is considered as a taxpayer.

41 **SECTION 11.** The amendments to ORS 184.751, 184.758, 184.766, 316.164, 316.169, 316.197,
42 316.202, 316.207 and 316.212 by sections 2 to 10 of this 2025 Act and the repeal of ORS 320.550,
43 320.555 and 320.560 by section 1 of this 2025 Act apply to calendar years beginning on or after
44 January 1, 2026.

45 **SECTION 12.** This 2025 Act takes effect on the 91st day after the date on which the 2025

1 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

2
