

D R A F T

SUMMARY

Authorizes mass transit district to impose tax on employees of employers within district if district imposes excise tax on those employers. Restricts use of employee tax revenue to enhancing frequency of bus service, acquisition of buses, bus service expansion or maintenance and operations of buses. Applies to tax reporting periods beginning on or after January 1, 2017.

Authorizes municipal transit agencies to levy taxes as authorized for mass transit districts.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 18.854, 267.260,
3 267.300, 267.385 and 267.615; and prescribing an effective date.

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

5 **SECTION 1.** ORS 267.385 is amended to read:

6 267.385. (1) To carry out the powers granted by ORS 267.010 to 267.390, a
7 district may by ordinance impose an excise tax on every employer equal to
8 not more than eight-tenths of one percent of the wages paid **by the em-**
9 **ployer** with respect to the employment of individuals. For the same purposes,
10 a district may by ordinance impose a tax on each individual equal to not
11 more than eight-tenths of one percent of the individual's net earnings from
12 self-employment.

13 **(2) If a district imposes a tax under subsection (1) of this section,**
14 **the district may by ordinance impose a tax on every employee of each**
15 **employer that is subject to the tax under subsection (1) of this section**
16 **equal to 0.185 percent of the wages paid with respect to the employee's**
17 **employment.**

1 **(3) If a district imposes a tax under subsection (2) of this section,**
2 **each employer shall make a deduction from the wages of each em-**
3 **ployee described in subsection (2) of this section in the amount of the**
4 **tax owed by the employee under subsection (2) of this section. An**
5 **employer may not make a deduction from an employee's wages for any**
6 **other amount of tax imposed under this section.**

7 **(4) Every employer required to collect taxes imposed under this**
8 **section is deemed to hold the taxes in trust for the district imposing**
9 **the tax. An employee for whom taxes are due under subsection (2) of**
10 **this section is irrebuttably presumed to have paid the tax imposed**
11 **under subsection (2) of this section if the taxes have been deducted**
12 **from the employee's wages.**

13 *[(2) No employer shall make a deduction from the wages of an employee to*
14 *pay all or any portion of a tax imposed under this section.]*

15 **[(3)] (5) The provisions of ORS 305.620 are applicable to collection,**
16 **enforcement, administration and distribution of a tax imposed under this**
17 **section.**

18 **[(4)] (6) At any time an employer or individual fails to remit the amount**
19 **of taxes when due under [an ordinance of the district board imposing a tax**
20 **under] this section, the Department of Revenue may enforce collection by the**
21 **issuance of a distraint warrant for the collection of the delinquent amount**
22 **and all penalties, interest and collection charges accrued thereon. Such**
23 **warrant shall be issued and may be enforced in the same manner and have**
24 **the same force and effect as prescribed with respect to warrants for the**
25 **collection of delinquent state income taxes.**

26 **[(5)] (7) Any ordinance adopted under subsection (1) of this section shall**
27 **require an individual having net earnings from self-employment from activity**
28 **both within and without the district taxable by the State of Oregon to allo-**
29 **cate and apportion such net earnings to the district in the manner required**
30 **for allocation and apportionment of income under ORS 314.280 and 314.605**
31 **to 314.675. Such ordinance shall give the individual the option of appor-**

1 tioning income based on a single factor designated by the ordinance.

2 [(6)] (8) Any ordinance adopted under subsection (1) of this section with
3 respect to net earnings from self-employment may impose a tax for a taxable
4 year measured by each individual's net earnings from self-employment for the
5 prior taxable year, whether such prior taxable year begins before or after
6 November 1, 1981, or such ordinance.

7 [(7)] (9) Any ordinance imposing a tax authorized by subsection (1) of this
8 section shall not apply to any business, trade, occupation or profession upon
9 which a tax is imposed under ORS 267.360.

10 [(8)] (10) The district board may not adopt an ordinance increasing a tax
11 authorized by subsection (1) of this section unless the board makes a finding
12 that the economy in the district has recovered to an extent sufficient to
13 warrant the increase in tax. In making the finding, the board shall consider
14 regional employment and income growth.

15 **SECTION 2.** ORS 267.300 is amended to read:

16 267.300. (1) Subject to restrictions in the Oregon Constitution, a district
17 board may finance construction, acquisition, purchase, lease, operation and
18 maintenance of a mass transit system and related facilities for the purposes
19 authorized under ORS 267.010 to 267.390 by:

20 (a) Levy of ad valorem taxes under ORS 267.305.

21 (b) Service charges and user fees collected under ORS 267.320.

22 (c) Use of the revolving fund authorized under ORS 267.310.

23 (d) Sale of bonds under ORS 267.330 to 267.345.

24 (e) Levy of business license fees under ORS 267.360.

25 (f) Levy of a tax measured by net income under ORS 267.370.

26 (g) Levy of [*a tax*] **taxes** measured by [*employer payrolls*] **wages paid**
27 **with respect to employment** under ORS 267.380, 267.385 and 267.420.

28 (h) Use of funds accepted under ORS 267.390.

29 (i) Short-term borrowings under ORS 267.400.

30 (j) Levy of a tax measured by net earnings from self-employment under
31 ORS 267.380 and 267.385.

1 (k) Any combination of the provisions of paragraphs (a) to (j) of this
2 subsection.

3 (2) All or any part of the funds raised or received by the district under
4 subsection (1)(a) to (k) of this section may be expended by the district for the
5 purpose of financing the construction, reconstruction, improvement, repair,
6 maintenance, operation and use of the primary transit supportive system.
7 However, only those funds raised or received by the district that are re-
8 stricted by the Oregon Constitution for the purpose of financing the con-
9 struction, reconstruction, operation and use of public highways, roads,
10 streets and roadside rest areas may be expended by the district for the sec-
11 ondary transit supportive system. As used in this subsection:

12 (a) "Transit supportive system" means those facilities in any county in
13 which a district operates that constitute the surface transportation system
14 in the county, including highways, roads, streets, roadside rest areas, park-
15 and-ride stations, transfer stations, parking lots, malls and skyways.

16 (b) "Primary transit supportive system" means those facilities upon which
17 or adjacent to which the district physically operates.

18 (c) "Secondary transit supportive system" means the remainder of those
19 facilities that constitute the surface transportation system, but over which
20 the district's operation or facilities are not physically present.

21 **SECTION 3.** ORS 267.615 is amended to read:

22 267.615. (1) For the purpose of performing any of the powers conferred by
23 ORS 267.510 to 267.650, a transportation district may use any of the following
24 methods of financing:

25 (a) Service charges and user fees collected under ORS 267.570 (1)(d).

26 (b) Levy of ad valorem taxes under ORS 267.620.

27 (c) Use of a revolving fund as authorized for mass transit districts under
28 ORS 267.310.

29 (d) Sale of bonds under ORS 267.630 and 267.640.

30 (e) Levy of business license fees as authorized for mass transit districts
31 under ORS 267.360.

1 (f) Levy of a tax measured by net income as authorized for mass transit
2 districts under ORS 267.370.

3 (g) Levy of [*a tax*] **taxes** measured by [*employer payrolls*] **wages paid**
4 **with respect to employment** as authorized for mass transit districts under
5 ORS 267.380 and 267.385 **(1) and (2)**.

6 (h) Acceptance and use of any contributions or loans from the United
7 States, without limitation by any other provision of ORS 267.510 to 267.650
8 requiring approval of indebtedness.

9 (i) Any combination of the provisions of paragraphs (a) to (h) of this
10 subsection.

11 (2) A district shall not use any method of financing authorized under
12 subsection (1)(c) to (g) of this section without first obtaining authorization
13 at a properly called election held for that purpose.

14 **SECTION 4.** ORS 267.260 is amended to read:

15 267.260. (1) As used in this section, “withdrawal date” means the effective
16 date of an ordinance approving withdrawal of an affected area under ORS
17 267.250 to 267.263.

18 (2) An ordinance approving the withdrawal of an affected area under ORS
19 267.250 to 267.263 shall take effect on the first day of January next following
20 the date which is 30 days after the adoption of the ordinance.

21 (3) Commencing immediately upon the withdrawal date and notwith-
22 standing any other provision of law, the rate of each tax imposed by the
23 district shall automatically be increased to a rate equal to the rate deter-
24 mined by dividing the rate at which such tax was levied immediately prior
25 to the withdrawal date by a fraction, not more than one, which is equal to
26 the total revenue derived from such tax by the district for the calendar year
27 preceding the year in which the withdrawal ordinance is adopted attributable
28 to the area of the district other than the withdrawn affected area divided
29 by the total revenue derived from such tax by the district for the same pe-
30 riod.

31 (4) If the tax rates required under subsection (3) of this section do not

1 produce tax revenues sufficient to enable the district to make the annual or
2 semiannual payments, when due, and otherwise satisfy the requirements of
3 the bonded or other indebtedness of the district incurred prior to the with-
4 drawal, the district may increase the rate of each tax to a rate that produces
5 revenues sufficient to enable the district to make the annual or semiannual
6 payments, when due, and otherwise satisfy the requirements of such indebt-
7 edness.

8 (5) The district board shall determine rates in accordance with the for-
9 mula prescribed by subsection (3) of this section and adopt the rates as part
10 of the ordinance approving the withdrawal of the affected area. Any such
11 determination and adoption shall be final and conclusive unless it is shown
12 to be arbitrary and capricious.

13 (6) If a district adopts an ordinance that increases the rate of an excise
14 tax described in ORS 267.385 (1), the increase shall be adjusted as prescribed
15 in subsection (3) of this section to take into account the withdrawal of an
16 affected area that occurred or occurs at any time after the date the district
17 first imposed any taxes pursuant to ORS 267.385 (1).

18 **SECTION 5. Section 8 of this 2016 Act and the amendments to ORS**
19 **267.300, 267.385 and 267.615 by sections 1, 2 and 3 of this 2016 Act apply**
20 **to tax reporting periods beginning on or after January 1, 2017.**

21 **SECTION 6. Section 7 of this 2016 Act is added to and made a part**
22 **of ORS 267.010 to 267.390.**

23 **SECTION 7. Following the payment of any refunds of tax otherwise**
24 **due, revenues from the tax imposed under ORS 267.385 (2) are dedi-**
25 **cated to and may be expended by a mass transit district only on:**

- 26 (1) **Enhancing the frequency of bus service;**
27 (2) **Acquisition of buses;**
28 (3) **Bus service expansion; or**
29 (4) **Maintenance and operations of buses.**

30 **SECTION 8. (1) As used in this section, “municipal transit agency”**
31 **means a municipal agency or department that is authorized to trans-**

1 **port people by bus or rail and that provides to the public general**
2 **transportation services, other than school, charter or sightseeing**
3 **transportation services, on a regular and continuing basis.**

4 **(2) The governing body of a municipality that operates a municipal**
5 **transit agency may levy taxes as authorized for mass transit districts**
6 **under ORS 267.385 (1). If the municipality imposes a tax as described**
7 **in ORS 267.385 (1), the municipality may impose a tax as described in**
8 **ORS 267.385 (2). Taxes levied under this section must be used to fund**
9 **the operations or acquisition of assets of the municipal transit agency**
10 **but are not subject to section 7 of this 2016 Act.**

11 **SECTION 9.** ORS 18.854 is amended to read:

12 18.854. (1) Any state agency authorized to issue warrants to collect taxes
13 and debts owed to the State of Oregon, including but not limited to warrants
14 issued pursuant to ORS 179.655, 184.644, 267.385, 293.250, 314.430, 316.207,
15 320.080, 321.570, 323.390, 411.703, 651.065, 657.396, 657.642, 657.646, 705.175 and
16 825.504 **and section 8 of this 2016 Act**, or any county tax collector author-
17 ized to issue warrants to collect taxes and debts owed to the county pursuant
18 to ORS 311.625, may garnish property of a debtor in the possession, control
19 or custody of a person other than the debtor by delivering to the person all
20 of the following:

- 21 (a) A notice of garnishment;
- 22 (b) A warrant, or a true copy of a warrant;
- 23 (c) The items specified in ORS 18.650 (1)(b) to (d); and
- 24 (d) Any garnishee's search fee payable as provided in ORS 18.790.

25 (2) A notice of garnishment may be issued by any person designated by
26 the state agency or by the county tax collector. A warrant need not be re-
27 corded in the County Clerk Lien Record as a condition of issuing a notice
28 of garnishment under the provisions of this section. The provisions of ORS
29 18.800 do not apply to a notice of garnishment.

30 (3) If any of the items described in subsection (1) of this section are not
31 delivered to the garnishee, a notice of garnishment shall not be effective to

1 garnish any property of the debtor, and the garnishee shall not be required
2 to respond to the garnishment and may proceed to deal with any property
3 of the debtor as though the notice of garnishment had not been issued.

4 (4)(a) Notwithstanding ORS 18.652, but subject to paragraph (c) of this
5 subsection, a notice of garnishment and the other items required by sub-
6 section (1) of this section may be delivered in person to the garnishee by any
7 employee of the state agency or of the county tax collector who is authorized
8 by the agency or the county to deliver the notice of garnishment, may be
9 mailed to the garnishee by first class or certified mail or may be sent to the
10 garnishee by other means if the garnishee has agreed to a different delivery
11 method.

12 (b) An employee who delivers documents under paragraph (a) of this
13 subsection need not be covered by the errors and omissions insurance re-
14 quired in ORS 18.652.

15 (c) A state agency or a county may not seek sanctions against a non-
16 complying garnishee under ORS 18.775 unless the notice of garnishment and
17 the other items required by subsection (1) of this section are personally de-
18 livered to the garnishee under paragraph (a) of this subsection or mailed to
19 the garnishee by certified mail.

20 (5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calcu-
21 lation form need not be prepared or delivered for any notice of garnishment.

22 (6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any
23 property of the debtor that may be contained in a safe deposit box that is
24 in the garnishee's possession, control or custody at the time of delivery of
25 the notice of garnishment to the garnishee is conditioned upon the state
26 agency or the county tax collector first paying to the garnishee, in addition
27 to the search fee provided for in ORS 18.790, all reasonable costs incurred
28 by the garnishee in gaining entry to the safe deposit box. The costs shall be
29 paid to the garnishee by the state agency or the county tax collector at least
30 five days before the date the state agency or the county tax collector takes
31 possession of the property in the safe deposit box. If the state agency or the

1 county tax collector fails to pay such costs to the garnishee within 20 days
2 after the delivery of the garnishee response, the garnishment shall not be
3 effective to garnish any property of the debtor that may be contained in the
4 safe deposit box and the garnishee may proceed to deal with the safe deposit
5 box and its contents as though the notice of garnishment had not been is-
6 sued. Nothing in this subsection limits the rights of a state agency or
7 county tax collector to reach the contents of any safe deposit box in any
8 manner otherwise provided by law.

9 (7) Except as provided in this section and ORS 18.855 and 18.857, all pro-
10 visions of ORS 18.600 to 18.850 apply to notices of garnishment. The state
11 agency or county tax collector shall modify the forms provided in ORS 18.600
12 to 18.850 as necessary to allow use of those forms for notices of garnishment.
13 The form of the notice of garnishment must clearly indicate that the docu-
14 ment is a notice of garnishment and must reflect the date of all warrants
15 on which the notice of garnishment is based.

16 (8) The Attorney General may adopt model forms for notices of
17 garnishment and other documents issued by state agencies and county tax
18 collectors under this section and ORS 18.855 and 18.857. There is a
19 presumption, as described in ORS 40.120, that any state agency or county tax
20 collector that uses a model form adopted by the Attorney General under this
21 subsection has complied with the requirements of ORS 18.600 to 18.850, and
22 with the provisions of this section and ORS 18.855 and 18.857, with respect
23 to the form of notices of garnishment.

24 **SECTION 10. This 2016 Act takes effect on the 91st day after the**
25 **date on which the 2016 regular session of the Seventy-eighth Legisla-**
26 **tive Assembly adjourns sine die.**

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