TITLE 29

REVENUE AND TAXATION

Chapter 305. Administration of Revenue and Tax Laws; Appeals
306. Property Taxation Generally
307. Property Subject to Taxation; Exemptions
308. Assessment of Property for Taxation
308A. Land Special Assessments
309. Board of Property Tax Appeals; Ratio Studies
310. Property Tax Rates and Amounts; Tax Limitations; Tax Reduction Programs
311. Collection of Property Taxes
312. Foreclosure of Property Tax Liens
314. Taxes Imposed Upon or Measured by Net Income
315. Personal and Corporate Income or Excise Tax Credits
316. Personal Income Tax
317. Corporation Excise Tax
318. Corporation Income Tax
319. Motor Vehicle and Aircraft Fuel Taxes
320. Miscellaneous Taxes
321. Timber and Forestland Taxation
323. Cigarettes and Tobacco Products
324. Oil and Gas Tax

Chapter 305

2003 EDITION

Administration of Revenue and Tax Laws; Appeals

DEPARTMENT OF REVENUE

(Organization)

305.005 Definitions

305.015 Policy

305.025 Department of Revenue; organization; planning; seal

305.035 Director of Department of Revenue; appointment; confirmation; compensation and expenses; bond

305.045 Duties of director

305.057 Delegation of authority

305.060 Offices of department; equipment and supplies

305.063 Department of Revenue Administration Account; use; limitation

305.065 Deputy director; appointment; qualifications

305.075 Employees; appointment; duties; compensation and expenses

305.085 Charges for maps, documents or publications

(Tax Administration)

305.100 Rules; forms

305.102 Constitutional property tax limit; rules

305.105 Declaratory rulings by department; rules

305.110 Duty to construe tax laws; instruction of officers acting under tax laws

305.120 Enforcement of tax laws

305.130 Department as party to actions involving property subject to certain tax liens; complaint and summons

305.140 Power to release real property from certain tax liens

305.145 When interest required to be waived; power to waive, reduce or compromise small tax balance or penalty and interest

305.150 Closing agreements

305.155 Cancellation of uncollectible tax; filing order; releasing liens

305.157 Extending statutory periods of limitation

305.160 Reports from public officers

305.170 Complaints concerning tax laws; reports and recommendations to Legislative Assembly

305.180 Effect of tax warrant for purposes of out-of-state collection

305.182 Filing of warrants for unpaid taxes; release, cancellation and satisfaction

305.184 Certificate of outstanding warrants; fee

305.190 Subpoenaing and examining witnesses, books and papers; application to tax court for disobeyance of subpoena

305.192 Disclosure of books and papers relating to appraisal or assessment of industrial property

305.193 Disclosure of tax information to designated persons; rules

305.195 Written interrogatories; contents; time and manner of service; answer; objection; order for answer; demand for information by taxpayer; order for information

305.200 Witness fees and mileage

305.215 Conflicting claims for credit for dependent; notice procedure; appeal; evidence as public record

305.217 When deduction for amounts paid as wages or remuneration permitted

305.220 Interest on deficiency, delinquency or refunds; adjustments in rates; rules; computation

305.222 Determination of interest rate

305.225 Request of assistance by law enforcement agency; disclosure of tax records

305.228 Penalty for second dishonored payment of taxes; waiver

305.229 When penalties not imposed; rules

(Representation of Taxpayer)

305.230 Qualifications of persons representing taxpayer; procedure for designating representative

305.242 Representation before department or magistrate of designated partnership tax matters; designated tax partner

305.245 Representation before tax court magistrate by officer or employee of county or department

305.260 Representation before department or magistrate by former department personnel prohibited

(Tax Deficiencies; Notice; Appeals)

305.263 Order requiring filing report or return; show cause; contempt; appeal

305.265 Deficiency notice; payment of deficiency; assessment; appeal; interest

305.267 Extension of time to issue notice of deficiency or assessment

305.270 Refund of excess tax paid; claim procedure

305.271 Refund transfer or assignment prohibited; exception

305.275 Persons who may appeal due to acts or omissions

305.280 Time for filing appeals; denial of appeal

305.285 Correction of tax and assessment rolls for subsequent tax years during pendency of appeal

305.288 Valuation changes for residential property substantial value error and for good and sufficient cause

305.290 Extension of time for making assessment due to bankruptcy

305.295 Cancellation of tax, penalty or interest

305.305 Procedure where deficiency based on federal or other state audit report; effect of appeal; interest suspension

305.375 Disposition of penalties; payment of refunds

(License Lists)

305.380 Definitions for ORS 305.385

305.385 Agencies to supply licensee and contractor lists; contents; effect of department determination on taxpayer status of licensee or contractor; rules

SUBPOENAS RELATING TO INDUSTRIAL PROPERTY

305.390 Subpoenas of records containing information on industrial plant for use to determine value of different industrial plant

305.392 Process for limiting scope of third-party subpoena

305.394 When industrial plant owner may choose not to produce information sought by subpoena

305.396 Protection of confidentiality of industrial property information obtained by subpoena

305.398 Disclosure and use of industrial property confidential information obtained by third-party subpoena

305.400 Payment of costs of subpoena compliance; determination of costs

APPEALS OF INDUSTRIAL PROPERTY OR PLANTS

305.403 Election to appeal value of principal or secondary industrial property to tax court; dismissal of appeal to board of property tax appeals

OREGON TAX COURT

(General)

305.404 Oregon Tax Court; definitions; usage

305.405 Oregon Tax Court; creation; jurisdiction

305.410 Authority of court in tax cases within its jurisdiction; concurrent jurisdiction; exclusive jurisdiction in certain cases

305.415 Service of papers and process

305.418 When mailed complaint considered to be filed

305.419 Tax, penalty and interest payable before appeal; how determined; waiver; refund

305.420 Issuance of subpoenas; administration of oaths; depositions

305.422 Waiver of penalty for failure to timely file property return

305.425 Proceedings to be without jury and de novo; issues reviewable; rules of procedure

305.427 Burden of proof in tax court proceedings

305.430 Hearings to be open to public; report of proceedings; exception; confidential information

305.437 Damages for frivolous or groundless appeal or appeal to delay

305.440 Finality of unappealed decision of tax court; effect of appeal to Supreme Court

305.445 Appeals to Supreme Court; reviewing authority and action on appeal

305.447 Recovery by taxpayer of certain costs and expenses upon appeal to Supreme Court

305.450 Publication of tax court decisions

305.452 Election and term of judge; vacancy; recommendation of appointees to fill vacancy

305.455 Qualifications of judge; inapplicability of disqualification-for-prejudice provision

305.460 Salary, expenses, disability and retirement of judge and magistrates

305.470 Presiding judge; functions

305.475 Offices of tax court; location of hearings

305.480 State Court Administrator as administrator and clerk; other personnel; expenses; limitation on activities of personnel

305.485 Records

305.490 Filing fees; recovery of certain costs and disbursements; additional recovery for certain taxpayers; disposition of receipts

305.492 Fees and expenses of witnesses

305.493 Fees for transcripts or copies of records

305.494 When shareholder may represent corporation in tax court proceedings

(Magistrate Division)

305.498 Magistrates; appointment; qualifications; oaths; duties; dismissal; appointment of presiding magistrate

305.501 Appeals to tax court to be heard by magistrate division; exception; mediation; conduct of hearings; decisions; appeal de novo to tax court judge

305.505 Magistrate division records; statistical reports

(Small Claims Procedure)

305.514 Small claims procedure; election; appraisal of property in lieu of hearing

305.525 Notice to taxpayer of right to appeal

(Appeals Procedure; Effect of Pendency of Appeal)

305.560 Appeals procedure generally; procedure where taxpayer is not appellant; intervention

305.565 Stay of collection of taxes, interest and penalties pending appeal; exception; bond

305.570 Standing to appeal to regular division of tax court; perfection of appeal

305.575 Authority of tax court to determine deficiency

(Constitutional Limits Upon Property Taxes; Effects; Determination)

305.580 Exclusive remedies for certain determinations; priority of petitions

305.583 Interested taxpayer petitions for certain determinations; petition contents; manner and time for filing; classification notice requirements; bond proceed use notice requirements

305.585 Local government petitions concerning taxes of another local government under 1990 Measure 5; manner and time for filing

305.586 Legislative findings; policy on remedies for misspent bond proceeds

305.587 Tax court findings; orders; refunds; bond measure construction; other relief

305.589 Judicial declarations; petition by local government; notice; intervention; appeal; remedies; costs

305.591 Court determination that 1990 Measure 5 tax limit is inapplicable; collection of tax; appeal; stay denied

INTERGOVERNMENTAL TAX RELATIONS

(Federal and Other States)

305.605 Application of tax laws within federal areas in state

305.610 Reciprocal recognition of tax liability; actions in other states for Oregon taxes

305.612 Reciprocal offset of tax refunds in payment of liquidated tax obligations; rules

305.615 Apportionment of moneys received from United States in lieu of property taxes

(Local)

305.620 Collection and distribution of local taxes on income and sales; costs; court review of determinations and orders; appeals

305.625 State and political subdivisions are employers for purpose of withholding city or county income tax

305.630 Compliance with city or county income tax ordinance required

305.635 Rate of withholding to be designated by city or county; forms

305.640 Discrimination among employers prohibited

MULTISTATE TAX COMPACT

305.655 Multistate Tax Compact

305.660 Director of department to represent state; alternate

305.665 Appointment of consultants from political subdivisions imposing taxes having multistate impact

305.675 Application of compact provisions relating to interstate audits

305.676 Mediation and arbitration laws not applicable to Multistate Tax Commission processes

305.685 Multistate Tax Commission Revolving Account

CHARITABLE CHECKOFF PROGRAM

305.690 Definitions for ORS 305.690 to 305.753

305.695 Oregon Charitable Checkoff Commission; qualifications; term; compensation and expenses

305.700 Officers; meetings; quorum; director as nonvoting member

305.705 Duties of chairperson

305.710 Notice of availability of space in tax return for checkoffs; determination of entities eligible for checkoff

305.715 Determination of eligibility; certification of entities to be listed on tax return

305.720 Qualification for entity for contributions by checkoff

305.725 Application of entity

305.727 Instruction listing; qualifications

305.730 Financial report of entity

305.735 Effect of qualification; notice if entity not qualified

305.740 Standards for continuing eligibility
305.745 Inclusion of eligible entities on tax return
305.747 Administrative expenses; crediting contributions to entities; rules
305.749 Payment to checkoff programs; rules; notice and effect of low contributions; form on tax return
305.751 Rules
305.753 State Treasurer may solicit donations to eligible entities; department rules; inapplicability of certain statutes to certain checkoffs

REFUNDS

305.760 Paying over funds to State Treasurer and writing checks for refunds
305.762 Election for direct deposit of personal income tax refund
305.765 Refund of taxes adjudged invalid
305.770 Report of taxpayers paying invalid tax; issuance and payment of warrants
305.775 Interest on amount of refund in certain cases
305.780 Taxes due prior to year in which suit brought
305.785 Appropriation
305.790 Manner of payment of certain costs and expenses
305.792 Surplus refund donations to education
305.794 Appropriation to State School Fund

MISCELLANEOUS PROVISIONS

305.805 Repeal of intangibles income tax law not to affect accrued taxes
305.810 Verification of return, statement or document filed under tax laws
305.815 False return, statement or document prohibited
305.820 Date when writing, remittance or electronic filing deemed received by tax officials
305.822 Prohibition on state or local tax on Internet access
305.823 Local government tax on telephone services prohibited
305.830 Collection of fines, penalties and forfeitures; disbursement; cost of collection
305.840 Forms furnished by county assessors; assessor not liable when taxpayer fails to receive mailed form
305.845 Remedies exclusive
305.850 Use of collection agency

TAXPAYER BILL OF RIGHTS

305.860 Statement of rights of taxpayers; distribution
305.865 Taxpayer rights
305.870 Personnel evaluation not based on amount of taxes collected
305.875 Rights of taxpayer in meeting or communication with department
305.880 Waiver of interest or penalty when department misleads taxpayer
305.885 Right of clear explanation
305.890 Right to enter into agreement to satisfy liability in installment payments
305.895 Action against property before issuance of warrant prohibited; prerequisites for warrant
305.900 Short title

PENALTIES

305.990 Criminal penalties
305.992 Civil penalty for failure to file return for three consecutive years

DEPARTMENT OF REVENUE
(Organization)

305.005 Definitions. As used in the revenue and tax laws of this state, unless the context requires otherwise:

(1) "Department" means the Department of Revenue.

(2) "Director" means the Director of the Department of Revenue. [1969 c.520 §2; 1995 c.79 §105; 1995 c.650 §105]

305.010 [Formerly 306.010; repealed by 1969 c.520 §49]

305.015 Policy. It is the intent of the Legislative Assembly to place in the Department of Revenue and its director the administration of the revenue and tax laws of this state, except as specifically otherwise provided in such laws. [1969 c.520 §1; 1977 c.870 §1]

305.020 [Formerly 306.020; repealed by 1969 c.520 §49]

305.025 Department of Revenue; organization; planning; seal. (1) The Department of Revenue is established.

(2) The Department of Revenue shall consist of administrative divisions. Each of the administrative divisions of the department shall be headed by an administrator who shall be in the unclassified service under the State Personnel Relations Law and appointed by the Director of the Department of Revenue. Each administrator shall be well qualified by technical training and experience in the functions to be performed.

(3) The Director of the Department of Revenue, from time to time, may alter or amend the organization of the department, including its administrative divisions, as the director deems necessary to achieve the greatest efficiency and economy in its operation.

(4) The director, acting in concert with the chief officers of other state agencies charged with raising revenue, shall use all reasonable means to increase efficiency and economy by coordinating work and sharing resources with other agencies, including but not limited to the mutual use of field officers and field auditors. With respect to such activity the director shall cause to be prepared a report relating to the utilization and coordination of revenue raising functions of the state agencies charged with such responsibility, including but not limited to suggested plans for departmental or governmental reorganization in the revenue raising field. Such report shall be submitted to the Governor and the Legislative Assembly when it next convenes.

(5) The department shall have an official seal, with the words "Department of Revenue" and "State of Oregon" and such other design as the director may prescribe. The seal shall be used to authenticate all papers and proceedings requiring authentication. [1969 c.520 §§3,5; 1973 c.402 §2; 1981 c.848 §1]

305.030 [Formerly 306.030; repealed by 1969 c.520 §49]

305.035 Director of Department of Revenue; appointment; confirmation; compensation and expenses; bond. (1) The Department of Revenue shall be under the supervision of the Director of the Department of Revenue who shall be appointed for a term of four years and shall hold office at the pleasure of the Governor. The director shall be skilled and expert in matters of taxation and shall devote the entire time of the director to the performance of the duties imposed upon the department.

(2) The appointment of the director is subject to confirmation by the Senate under ORS 171.562 and 171.565. In case the Governor's choice of a director is not confirmed, the Governor shall make another appointment subject to the confirmation by the Senate as provided in this subsection.

(3) The director shall receive such salary as may be provided by law. In addition to salary, the director, subject to the limitations otherwise provided by law, shall be reimbursed for all reasonable expenses necessarily incurred by the director in the performance of official duties. Before entering upon the duties of office, the director shall be bonded under ORS 291.011. [1969 c.520 §4; 1985 c.565 §52; 1985 c.761 §5]

305.040 [Formerly 306.040; repealed by 1969 c.520 §49]

305.045 Duties of director. (1) Except as otherwise provided by law, the Director of the Department of Revenue shall coordinate all of the activities of the Department of Revenue, and has the power of general supervision over the administration of each division within the department, and the administrative head thereof, and is directly responsible to the Governor therefor.

(2) The director shall provide administrative staff, fiscal, planning and research facilities and services for the agencies within the department. [1969 c.520 §6; 1995 c.650 §106]

305.050 [Formerly 306.050; repealed by 1969 c.520 §49]

305.055 [Formerly 306.230; repealed by 1969 c.520 §49]

305.057 Delegation of authority. Whenever a power is granted to the Director of the Department of Revenue, the power may be exercised by such officer or employee within the Department of Revenue as designated in writing by the director. Any such designation shall be filed in the office of the Secretary of State. [1969 c.520 §7; 1975 c.605 §15a]

305.060 Offices of department; equipment and supplies. (1) The Department of Revenue shall maintain its principal offices in the state capital and shall be furnished with suitable office quarters under ORS 276.004. The department may maintain offices or conduct its business in other places in the state in order to facilitate the discharge of its functions.

(2) Necessary printing for the department shall be performed in the same manner as other state printing. All necessary office equipment and supplies required by the department shall be purchased from the appropriation made for the salaries and the general and contingent expenses of the department. [Formerly 306.060; 1969 c.520 §25; 1969 c.706 §64c; 1997 c.325 §1]

305.063 Department of Revenue Administration Account; use; limitation. (1) There is established in the General Fund of the State Treasury the Department of Revenue Administration Account. Notwithstanding any other law, such amounts as may be necessary to pay the administrative expenses of the Department of Revenue shall be continuously credited to the Department of Revenue Administration Account from the biennial appropriations, or transferred to such administration account from the accounts or funds of the divisions and other agencies within the department. Such amounts as may be requested quarterly by the Director of the Department of Revenue, with the approval of the Oregon Department of Administrative Services, shall be credited or transferred to the Department of Revenue Administration Account from the biennial appropriations, accounts or funds of the divisions and other agencies within the department. The Department of Revenue is subject to the allotment system provided for in ORS 291.234 to 291.260.

(2) The amounts credited and transferred to the Department of Revenue Administration Account shall not be greater than the total of any budget approved for the department by the Legislative Assembly and shall be determined by the costs of the administrative, supervisory, legal and review services provided the respective divisions and agencies within the department. All moneys appropriated, credited or transferred to the Department of Revenue Administration Account are appropriated continuously to pay the administrative expenses of the department. [1969 c.520 §48]

305.065 Deputy director; appointment; qualifications. The Director of the Department of Revenue, with the approval of the Governor, may designate a deputy director, to serve at the pleasure of the director, with full authority to act for the director, but subject to the control of the director. The deputy director shall be skilled and expert in matters of taxation and shall devote the entire time of the deputy director to the performance of the duties of the deputy director in the department. The designation of a deputy director shall be by written order filed with the Secretary of State. [1969 c.520 §§8,9; 1973 c.402 §3]

305.070 [Formerly 306.070; repealed by 1969 c.520 §49]

305.075 Employees; appointment; duties; compensation and expenses. (1) Subject to any applicable provisions of the State Personnel Relations Law:

(a) The Director of the Department of Revenue may appoint and remove such officers, agents and employees as the director considers necessary. Such persons shall have the duties and powers the director from time to time prescribes.

(b) The compensation of all such officers, agents and employees shall be fixed by the director.

(2) Subject to and in the manner otherwise provided by law, all officers, agents and employees of the Department of Revenue shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties. [1969 c.520 §11; 1985 c.761 §6]

305.080 [Formerly 306.080; repealed by 1969 c.520 §49]

305.083 [1969 c.520 §13; repealed by 1973 c.402 §30]

305.085 Charges for maps, documents or publications. The Department of Revenue is hereby authorized to charge a reasonable sum reflecting its costs, for each copy sold of maps, documents, or publications such as those containing its laws and administrative rules or reports. The proceeds from such sales are to be deposited in the department's miscellaneous receipts account established under the authority of ORS 279.833. [1969 c.479 §3; 1973 c.402 §4]

Note: The amendments to 305.085 by section 253, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

305.085. The Department of Revenue is hereby authorized to charge a reasonable sum reflecting its costs, for each copy sold of maps, documents, or publications such as those containing its laws and administrative rules or reports. The proceeds from such sales are to be deposited in the department's miscellaneous receipts account established under the authority of ORS 279A.290.

305.090 [Formerly 306.090; repealed by 1983 c.605 §6]

(Tax Administration)

305.100 Rules; forms. The Department of Revenue shall:

(1) Make such rules and regulations it deems proper to regulate its own procedure and to effectually carry out the purposes for which it is constituted.

(2) Prescribe all forms of books and blanks used in the assessment and collection of taxes not otherwise prescribed by law and change the forms of blanks and books prescribed by law in case change is necessary. [Formerly 306.100]

305.102 Constitutional property tax limit; rules. The Department of Revenue shall adopt rules that it considers necessary to carry out the provisions of chapter 459, Oregon Laws 1991, relating to Local Budget Law, appeals to boards of property tax appeals, administration of the property tax laws, imposition and collection of taxes on property or compliance by local taxing officials with the requirements of section 11b, Article XI of the Oregon Constitution. [1991 c.459 §35; 1995 c.650 §107; 1997 c.541 §§49,50]

Note: 305.102 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 459, Oregon Laws 1991," for the words "this Act" in section 35, chapter 459, Oregon Laws 1991, compiled as 305.102. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1991 Comparative Section Table located in Volume 18 of ORS.

305.105 Declaratory rulings by department; rules. The Department of Revenue in its discretion may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it. The department shall prescribe by rule the form, content and procedure for submission, consideration and disposition of such petitions. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the department and all parties to the proceedings on the state of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the Oregon Tax Court and Supreme Court in the manner provided by ORS 305.445. [Formerly 306.710; 1989 c.414 §2]

305.110 Duty to construe tax laws; instruction of officers acting under tax laws. The Department of Revenue shall construe the tax and revenue laws of this state whenever requested by any interested person or by any officer acting under such laws and shall instruct such officers as to their duties under such laws. Such officers shall submit all questions arising with them which affect the construction of tax and revenue laws of the state to the department. [Formerly 306.110]

305.115 [1969 c.520 §10; 1977 c.870 §8; 1979 c.527 §1; 1979 c.687 §5; 1981 c.139 §6; 1985 c.761 §7; 1987 c.512 §1; 1987 c.758 §7; 1991 c.459 §11; repealed by 1995 c.650 §114]

305.120 Enforcement of tax laws. (1) The Department of Revenue shall see that revenue officers comply with the tax and revenue laws, that all taxes are collected, that complaint is made against any person violating such laws and that penalties prescribed by such laws are enforced.

(2) The Director of the Department of Revenue may call upon the district attorney or Attorney General to institute and conduct prosecutions for violations of the laws in respect to the assessment and taxation of property and the collection of public taxes and revenues. [Formerly 306.140]

305.130 Department as party to actions involving property subject to certain tax liens; complaint and summons. (1) The Department of Revenue may be made a party in any action in any court of this state or of the United States having jurisdiction of the subject matter to quiet title to, to remove a cloud from the title to, or for the foreclosure of a mortgage or other lien upon, any real property or personal property, or both, upon which the State of Oregon has or claims to have a lien under ORS 311.673, 311.679, 311.771, 314.430 or 321.570 or ORS chapter 323, and the judgment in such action shall be conclusive and binding upon the State of Oregon and such department.

(2) The complaint in such action shall set forth with particularity the nature of any such lien had or claimed by the State of Oregon. The summons in such action, together with a copy of the complaint therein, shall be served on such department in the manner prescribed by ORCP 7 D(3)(d), and such summons shall require such department to appear and answer the complaint within 60 days from the date of such service. [1961 c.573 §4; 1979 c.284 §134; 1981 c.706 §6; 1985 c.816 §37; 1987 c.158 §43; 1989 c.948 §7; 2003 c.804 §63]

305.140 Power to release real property from certain tax liens. (1) Any person having an interest in or lien upon any real property may request the Department of Revenue in writing to release such real property from a cloud on the title of or lien on such property existing, created or continued under any one or more of the following:

(a) A warrant provided for in ORS 314.430, 321.570 or 323.610; or

(b) The provisions of ORS 311.673, 311.679, 311.689, 311.711 or 311.771.

(2) If, upon a request under subsection (1) of this section, the department finds that a sale of such real property would not result

in satisfaction in whole or in part of the taxes due, it shall execute a release of such cloud or lien upon such property, and such release shall be conclusive evidence of the removal and extinguishment of such cloud or lien in respect of such real property.

(3) In addition to the release of cloud or lien provided for in subsection (1) of this section, the department may execute releases on part or all of any real property in the following cases, which releases shall be conclusive evidence of the removal and extinguishment of such cloud or lien:

(a) If the department finds that liability for the amount assessed, together with all interest thereon and penalties and costs in respect thereof, has been satisfied;

(b) If the department finds that the fair market value of that part of the property remaining subject to the cloud or lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property;

(c) If there is supplied to the department either an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or a bond, in such form and with such surety as the department considers sufficient, conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of the release; or

(d) If there is paid to the department in partial satisfaction of the amount of the warrant provided for in ORS 314.430, 321.570 or 323.610 or the amount of any lien under ORS 311.673, 311.679, 311.689, 311.711 or 311.771, an amount not less than the value, as determined by the department, of the lien of the State of Oregon upon the part of the property so to be released. In determining such value the department shall give consideration to the fair market value of the part of the property so to be released and to such liens thereon as have priority to the lien of the State of Oregon. [1961 c.573 §3 (enacted in lieu of 314.435, 315.635 and 321.085); 1981 c.706 §7; 1985 c.816 §38; 1987 c.158 §44; 1989 c.948 §8; 1991 c.331 §53; 1997 c.631 §448]

305.145 When interest required to be waived; power to waive, reduce or compromise small tax balance or penalty and interest. (1) The Department of Revenue or a county tax collector shall waive interest on an assessment if the taxpayer has failed to make a timely payment or has received an incorrect refund because:

(a) An employee of the department or of a county tax collector acting in an official capacity, who had knowledge of the necessary facts, misled the taxpayer either by some erroneous factual representation or by a course of dealing or conduct;

(b) The taxpayer relied on the misleading factual representation or conduct; and

(c) The taxpayer failed to make a timely payment or has received an incorrect refund by reason of the taxpayer's reliance on the information or course of conduct.

(2) Notwithstanding the provisions of subsection (1) of this section, interest shall not be waived after the appeal period for a final determination has expired.

(3) The Department of Revenue may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any tax balance of $50 or less or any part or all of the penalties and interest provided by the laws of the State of Oregon which are collected by the Department of Revenue. [1965 c.293 §1; 1971 c.611 §1; 1985 c.761 §8; 1987 c.477 §1; 1995 c.650 §108]

305.150 Closing agreements. (1) The Department of Revenue is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person or estate for whom the person acts, for any taxable period open to adjustment under the pertinent statutes of limitation, in respect of any revenue measure which the department is required to administer.

(2) Such agreement shall be final and conclusive on the date agreed to, and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact, the question, issue or case shall not be reopened as to the matters agreed upon, and, in any action, suit or proceeding, such agreement, or any determination, assessment, collection, refund, abatement or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded. [Formerly 306.720; 1969 c.520 §26]

305.155 Cancellation of uncollectible tax; filing order; releasing liens. (1) The Department of Revenue shall cancel an unpaid tax imposed by laws of the State of Oregon that is collected by the department, including any penalty or interest applicable to the tax, if the department determines that:

(a) The tax has been delinquent for seven or more years;

(b) All reasonable efforts have been made to effect collection;

(c) The taxpayer cannot be located or is dead; and

(d) The tax is wholly uncollectible.

(2) The department may cancel any tax imposed by laws of the State of Oregon that is collected by the department or any portion of the tax assessed against a person, including any penalty and interest that has not been collected, if the department determines that the administration and collection costs involved would exceed the amount that can reasonably be expected to be recovered.

(3) When taxes are canceled under subsection (1) or (2) of this section, the department shall make an order canceling the tax, penalties and interest. The order shall be filed in the records of the department. Upon making the order, the department also shall cause to be canceled or released any lien of record in the counties that may have been filed and entered therein. [1965 c.293 §2; 1973 c.402 §5; 1989 c.934 §2; 2003 c.46 §2]

305.157 Extending statutory periods of limitation. (1) The Director of the Department of Revenue by order may extend any statutory period of limitation for taking action on any tax that is collected by the Department of Revenue when the director determines, in the director's sole discretion, that an action of the Internal Revenue Service or a state-declared emergency will impair the ability of Oregon taxpayers or the state to take the action required within the time prescribed by law. The order may apply retroactively and extend a period of limitation that, as of the date of the order, has expired.

(2) The Secretary of State shall publish the order in the bulletin referred to in ORS 183.360. [2003 c.168 §2]

305.160 Reports from public officers. The Department of Revenue shall require from any state, county or municipal officer, whose duties pertain to the assessment, apportionment, levy or collection of taxes and public revenues, or the disbursement of public funds, reports and statements in such forms as the department may prescribe, as to any matter deemed material and relevant to the attainment of uniformity in the assessment and collection of taxes and public revenues. [Formerly 306.160]

305.170 Complaints concerning tax laws; reports and recommendations to Legislative Assembly. The Department of Revenue:

(1) Shall see that complaints concerning the law may be heard, information as to its effects may be collected and all proper suggestions as to amendments may be made.

(2) Shall report to the Legislative Assembly, at each regular session, the total amount of taxes collected in the state for state, county and municipal purposes.

(3) May investigate the tax laws of this and other states and the possible taxable resources of this state for the purpose of recommending to the legislature methods by which a more just and equitable system of taxation may be developed.

(4) Shall recommend to the Legislative Assembly at each regular session such amendments of the Constitution or laws as may seem necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public taxes and revenues. [Formerly 306.170; 1975 c.605 §16]

305.180 Effect of tax warrant for purposes of out-of-state collection. (1) For the purposes of out-of-state collections, a tax warrant shall have the effect of a judgment as provided by ORS 205.125 and 314.430. However, if the laws of another state require a judgment issued by a court for the purposes of executing creditor's remedies in that state, the Department of Revenue may obtain a judgment based upon a tax warrant as provided in this section.

(2) The department shall give 30 days' written notice to any person subject to a warrant for the collection of taxes, penalties or interest of its intention to obtain a judgment in the Oregon Tax Court. Such notice shall be given by either certified or registered mail. The person subject to the warrant shall have 30 days from the date of mailing of the notice to:

(a) Pay the amount of taxes, penalties and interest due; or

(b) File a complaint in the Oregon Tax Court contesting the validity of the warrant.

(3) If the amount due is not paid or an appeal to the Oregon Tax Court is not made within 30 days from the date of mailing of the notice, the department may petition the Oregon Tax Court to enter a judgment in the amount indicated in the warrant plus interest.

(4) Upon a showing by the department, by affidavit or otherwise, that the department has complied with the provisions governing the issuance of a warrant and the provisions of this section, the Oregon Tax Court shall enter a judgment against the person subject to the warrant in the amount indicated in the warrant plus interest.

(5) Appeals from judgments issued under subsection (4) of this section shall be made in the manner provided for appeal of a judgment of the Oregon Tax Court. [1989 c.423 §2; 1995 c.53 §1; 1995 c.650 §109]

305.182 Filing of warrants for unpaid taxes; release, cancellation and satisfaction. (1) The Department of Revenue may file warrants issued against any taxpayer for

unpaid taxes in the Office of the Secretary of State as provided in this section.

(2) Certification of warrants for unpaid taxes by the Director of the Department of Revenue, or the representative of the director, entitles the warrants to be filed and no other certification or acknowledgment is necessary.

(3) If a warrant described in subsection (1) of this section is presented to the Secretary of State for filing, the Secretary of State shall cause the warrant to be marked, held and indexed in accordance with the provisions of ORS 79.0519 as if the warrant were a financing statement within the meaning of ORS chapter 79.

(4) If a certificate of release, cancellation or satisfaction of any warrant is presented to the Secretary of State for filing, the Secretary of State shall:

(a) Cause a certificate of release to be marked, held and indexed as if the certificate were a termination statement within the meaning of ORS 79.0512.

(b) Cause a certificate of cancellation or satisfaction to be held, marked and indexed as if the certificate were a release of collateral within the meaning of ORS 79.0512. [Formerly 314.432; 2001 c.445 §172]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

305.184 Certificate of outstanding warrants; fee. (1) Upon request of any person, the Secretary of State shall issue a certificate showing whether there is on file in the Office of the Secretary of State, on the date and hour stated therein, any warrant described in ORS 305.182 (1), or certificate or notice affecting any warrant naming a particular person, and if a notice or certificate is on file, giving the date and hour of its filing. All financing statements and statements of assignment, if any, filed pursuant to ORS chapter 79 for a particular debtor whose name is identical to the particular person named in the warrant shall be shown on this certificate. The uniform fee for such a certificate for a particular person shall be prescribed by the Secretary of State by rule. If the request for the certificate is in writing and not in the standard form prescribed by the Secretary of State, an additional fee shall be prescribed. Upon request, the Secretary of State shall furnish a copy of any warrant or notice or certificate affecting a warrant for a fee per page, the fee to be as prescribed by the Secretary of State by rule. No fee prescribed under this subsection shall exceed $5.

(2) Notwithstanding the provisions of ORS 79.0525 or subsection (1) of this section, relating to the time and manner of the payment of fees to the Secretary of State, the fee for filing and indexing each warrant described in ORS 305.182 (1) shall be charged and collected in the same manner as provided in ORS 205.395 for payment by a state agency of fees due to the county clerk for recording warrants. [Formerly 314.434; 2001 c.445 §173]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

305.190 Subpoenaing and examining witnesses, books and papers; application to tax court for disobeyance of subpoena. (1) Subject to ORS 305.390 and 305.392, the Director of the Department of Revenue, in conformity to the resolutions or rules of the Department of Revenue, may subpoena and examine witnesses, administer oaths and order the production of any books or papers in the hands of any person, company or corporation, whenever necessary in the prosecution of any inquiries deemed necessary or proper.

(2) If any person disobeys any subpoena of the director, or refuses to testify when required by the director, the department may apply to the Oregon Tax Court for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to appear before the court in the county in which the person resides or has a place of business on such date as the court shall designate in its order and show cause why the person should not comply with the demand of the department. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Upon failure of such person to show cause for noncompliance, the court shall make an order requiring the person to comply with the demand of the department within such time as the court shall direct. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

(3) ORS 305.420 (5) applies to the issuance of a subpoena under this section. [Formerly 306.190; 1977 c.884 §4; 1981 c.139 §7; 1993 c.353 §5; 2003 c.46 §3]

305.192 Disclosure of books and papers relating to appraisal or assessment of industrial property. (1) Notwithstanding ORS 192.410 to 192.505 or any other law or rule, any books or papers produced by an owner or any other person with respect to an in-

dustrial property, pursuant to an order issued under ORS 305.190 (1) in connection with the appraisal or assessment of industrial property, shall be exempt from disclosure by the Department of Revenue. No subpoena or judicial order shall be issued compelling the department or any of its officers or employees to disclose those books or papers.

(2) Notwithstanding subsection (1) of this section, the department may disclose, subject to any order entered by the court limiting further disclosure, any books or papers, or any part or all of the information contained therein, in a judicial proceeding involving the value of that industrial property with respect to which the books and papers were produced or any other similar industrial property.

(3) Before the department discloses information under subsection (2) of this section, it shall notify the owner of the property to which the information relates. The owner shall have 30 days to seek an order from the tax court prohibiting or limiting the department's disclosure of the information. In determining whether to allow disclosure of the information, the court shall consider the need for disclosure and the possible harm to the owner from that disclosure. The decision of the tax court is reviewable by the Supreme Court in the same manner as any other decision of the tax court. [1991 c.903 §3; 1995 c.650 §83]

305.193 Disclosure of tax information to designated persons; rules. (1) Notwithstanding any law restricting the disclosure of taxpayer particulars or other tax information, the Department of Revenue may adopt rules permitting the disclosure of particulars or other tax information to a person designated by a taxpayer, either expressly or by implication, to receive the information. The department may consider a person designated by implication if the person reveals to the department knowledge of tax information that is:

(a) Related to the tax matter that is the subject of the inquiry or communication;

(b) Of a nature that is generally known only to the taxpayer; and

(c) Of a nature that a taxpayer ordinarily would not share with another person except for the purpose of empowering that person to receive information regarding the tax matters of the taxpayer.

(2) Rules adopted under this section may be limited in application to specific tax programs or specific classes of taxpayers.

(3) This section does not apply to any particulars or other tax information collected for purposes of administering the provisions of ORS chapter 657.

(4) As used in this section, "particulars" has the meaning given that term in ORS 314.835. [2003 c.541 §3]

305.195 Written interrogatories; contents; time and manner of service; answer; objection; order for answer; demand for information by taxpayer; order for information. (1) The Department of Revenue may serve upon any taxpayer written interrogatories to be answered by the taxpayer served or, if the taxpayer served is a corporation, partnership or association, by any officer or agent, who shall furnish such information as is available to the taxpayer. Interrogatories may be served by the department whenever it deems it necessary for the purpose of determining the tax liability of any taxpayer having income from business activity which is taxable both within and without the state. The request for the interrogatories shall explain the nature of the department's inquiry, the use to be made of the information, and the rights of appeal provided under subsection (4) of this section. The use of interrogatories shall be available at all times prior to a final order or determination by the department in the matter being investigated.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them. All objections made to written interrogatories must be signed by the attorney for the party making the objection, or by the party if the party has no attorney. The taxpayer upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories.

(3) If any taxpayer refuses or fails to answer an interrogatory within the time required, the department may apply to the Oregon Tax Court for an order requiring answer of the interrogatory served. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the taxpayer against whom it is directed to appear before the court on such date as the court shall designate in its order and show cause why the taxpayer should not answer the interrogatory of the department. The order shall require appearance in the county in which the person resides or has a place of business, or if there is no residence or place of business, at the court at Salem, Oregon, or in any event at such place as is agreeable to the parties and the court. The order shall be served upon the

person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Upon failure of such person to show cause for noncompliance, the court shall make an order requiring the person to comply with the demand of the department within such time as the court shall direct. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

(4) If, after the taxpayer has been served with the department's interrogatories, the taxpayer has reason to believe that the taxpayer has not been fully informed by the department as to the nature of the department's inquiry or the use by the department of the information supplied, the taxpayer may, within 30 days after service upon the taxpayer, serve upon the department a demand for full information as to such inquiry and use. The department shall answer the demand within 30 days of receipt. If no answer is made by the department, or if answer is made and the answer is deemed unsatisfactory by the taxpayer, the taxpayer may within 30 days of the department's answer, or 60 days of the demand if no answer has been made, apply to the Oregon Tax Court for an order requiring answer of the department by filing a petition in the manner provided by law for filing a personal income tax appeal to the court. The department shall answer and, after hearing, the court shall make such disposition of the matter as it deems necessary to achieve justice. [1977 c.866 §8]

Note: 305.195 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

305.200 Witness fees and mileage. Witnesses testifying before the Department of Revenue at its request and on its behalf shall be allowed the fees and mileage provided for witnesses in ORS 44.415 (2). The fees and mileage shall be paid by warrant upon the State Treasurer upon the certificate of the Director of the Department of Revenue. However, any county or state officer shall receive the actual necessary traveling expenses of the county or state officer only. No tender of witness fees or mileage in advance shall be necessary. [Formerly 306.200; 1969 c.520 §27; 1989 c.980 §11]

305.210 [Formerly 306.210; repealed by 1981 c.705 §8]

305.215 Conflicting claims for credit for dependent; notice procedure; appeal; evidence as public record. (1) Where there are conflicting claims to a personal exemption credit for a dependent allowed under the personal income tax laws, the Department of Revenue shall notify by certified mail each person claiming the same dependent, and shall set a time and place convenient to each claim insofar as it is practicable, for a joint determination of the conflicting claims. Each person so notified who appears shall bring the information from his or her income tax returns or reports which support his or her claim, together with all records, data or other evidence providing the necessary supporting material to the information shown on the income tax return. All such material shall be available for inspection by the other claimant, notwithstanding any provision of ORS 314.835, 314.840 or 314.991. If either claimant shall fail or refuse to appear or bring such information in part or in whole, the department shall make its determination on the basis of all the information and evidence supplied. The provisions of this chapter relating to the administration of the personal income tax laws shall apply to the determination.

(2) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.560 by either claimant, each claimant shall make available to the court information from his or her income tax returns or reports supporting that person's claim, together with all evidence or supporting data furnished to or subpoenaed by the Department of Revenue, as well as such other information as may be presented to the court in the manner otherwise provided for in the hearing of cases in the Oregon Tax Court. If either party claimant shall fail or refuse to appear or bring such information in part or in whole, 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 any provision of ORS 314.835, 314.840 or 314.991. [1979 c.690 §11; 1985 c.345 §4; 1987 c.293 §61]

305.217 When deduction for amounts paid as wages or remuneration permitted. No deduction shall be allowed under ORS chapter 316, 317 or 318 to an individual or entity for amounts paid as wages or as remuneration for personal services if that individual or entity fails to report the payments as required by ORS 314.360 or 316.202 on the date prescribed therefor (determined with regard to any extension of time for filing) unless it is shown that the failure to report is due to reasonable cause and not done with the intent to evade payment of the

tax imposed by ORS chapter 316 or to assist another in evading the payment of such tax. [1987 c.843 §2]

305.220 Interest on deficiency, delinquency or refunds; adjustments in rates; rules; computation. (1) Unless specifically provided otherwise by statute or by rule of the Director of the Department of Revenue adopted pursuant to subsection (3) of this section, every deficiency or delinquency arising under any law administered by the Department of Revenue shall bear simple interest at the rate of five-sixths of one percent per month or fraction thereof.

(2) Unless specifically provided otherwise by statute or by rule of the director adopted pursuant to subsection (3) of this section, every refund arising under any law administered by the department shall, subject to subsections (3) and (5) of this section and ORS 305.222, bear simple interest at the rate of five-sixths of one percent per month, or fraction thereof.

(3)(a) If the director determines that the rates of interest for deficiencies, delinquencies and refunds established in subsections (1) and (2) of this section are at least one percentage point more or less than the prevailing rates of interest established by the Internal Revenue Service for underpayments arising under the federal tax laws to which one percentage point has been added, the director may adopt, by rule, adjusted interest rates. The director shall not adopt adjusted interest rates more than once in a calendar year. Notice of intent to adopt adjusted interest rates shall be given in the manner provided in ORS 183.335, not less than three months before the proposed effective date of the adjusted rates.

(b) In establishing the adjusted interest rates to be adopted under this subsection:

(A) The director shall take into consideration the current interest rates established by the Internal Revenue Service for underpayments arising under the federal tax laws.

(B) To any interest amount determined by taking into consideration the current interest rates established by the Internal Revenue Service for underpayments under subparagraph (A) of this paragraph, which interest amount shall be expressed at a rate per month or fraction thereof, there shall be added one-twelfth of one percent.

(4) If the director adopts an adjusted interest rate for deficiencies and delinquencies, the director shall adopt an adjusted interest rate for refunds that is equal to the adjusted interest rate for deficiencies and delinquencies.

(5) Any change in the rate of interest applicable to deficiencies, delinquencies or refunds resulting from the adoption of adjusted interest rates by the director under this section shall apply to deficiencies, delinquencies and refunds outstanding on the effective date of the rule, or arising on or after that date, but only with respect to interest periods beginning on or after that date.

(6) If the rate of interest on a deficiency, a delinquency or a refund is governed by this section, and if a fraction of a month is involved in making the computation of interest on the deficiency, delinquency or refund, then for the fractional month, the simple interest otherwise provided shall be computed on a daily basis. [1982 s.s.1 c.16 §2; 1987 c.647 §5; 2001 c.114 §§2,4]

305.222 Determination of interest rate. For purposes of determining the interest rate established under ORS 305.220:

(1) In the case of a refund of tax ordered by the Oregon Tax Court or the Oregon Supreme Court and arising under any law administered by the Department of Revenue, if the refund is not paid by the department within 60 days after the date of the order, the interest rate provided under ORS 305.220 shall be one-third of one percent greater than that so provided under ORS 305.220, but only with respect to interest periods that begin 61 days after the date the order is entered.

(2)(a) In the case of a notice of assessment pursuant to any law administered by the department, if the deficiency is not paid within 60 days after the date of the notice of assessment, the interest rate provided under ORS 305.220 shall be one-third of one percent greater than that so provided under ORS 305.220, but only for interest periods that begin 61 days after the date of notice of assessment.

(b) In the case of an assessment under ORS 305.265 (12), if the delinquency is not paid within 60 days after the date of the assessment, the interest rate provided under ORS 305.220 shall be one-third of one percent greater than that so provided under ORS 305.220. The increased rate shall apply only for interest periods that begin 61 days after the date of notice of the delinquency.

(3) If the deficiency assessment is appealed to the Oregon Tax Court without prior payment of tax, then notwithstanding subsection (2) of this section, the increased rate of interest shall commence only for interest periods that begin 61 days after the date that the order of the Oregon Tax Court or the Oregon Supreme Court affirming the deficiency is entered. [1987 c.647 §7; 1993 c.726 §2; 1995 c.650 §110; 1997 c.325 §§3,4]

305.225 Request of assistance by law enforcement agency; disclosure of tax records. (1) Notwithstanding ORS 314.835, if

the Department of Revenue determines that assistance of a law enforcement agency is necessary to insure compliance with any of the laws of this state administered by it, the department may request such assistance. In connection with assistance requested under this section only, the Department of Revenue may disclose a tax return, report or claim, or information in its files regarding a tax return, report or claim permitted or required to be filed with the department under any law administered by the department to the Oregon State Police, district attorney, grand jury or judicial authority for the investigation or the prosecution of violations of the criminal laws of this state relating to perjury, theft or forgery if those violations occur in connection with the filing of such a return, report or claim, or of the tax laws of this state. Disclosure under this section shall be solely for the purpose of investigation or prosecution of violations involving the filing of a false or fraudulent return, report or claim, wherein the validity of the return, report or claim, or information contained therein, is at issue. Returns, reports or claims, or information contained therein shall not be disclosed if the purpose for which the information is sought is as evidence of a crime unrelated to the validity of the return, report or claim, or the information contained therein, supplied to the department or if the information is requested by a law enforcement agency in connection with any other investigation or prosecution.

(2) Each person given access to the confidential tax information authorized to be disclosed under this section shall first execute and file with the department the certificate required by ORS 314.840 (3) and shall cause a similar certificate to be executed and filed with the department by any associate or subordinate who is assigned to use the information for the purposes stated in this section. [1985 c.761 §26]

305.227 [1985 c.85 §2; repealed by 1993 c.593 §10]

305.228 Penalty for second dishonored payment of taxes; waiver. (1) The Department of Revenue shall assess a penalty against any person who has previously tendered a dishonored check, draft, order or electronic funds transfer for the payment of any amount collected by the department and who subsequently makes and tenders to the department any check, draft, order or electronic funds transfer for the payment of any tax or any other amount collected by the department, including amounts assigned for collection under ORS 293.250, that is dishonored by the drawee for the following reasons:

(a) Lack of funds;

(b) Lack of credit;

(c) Because the maker has no account with the drawee; or

(d) Because the maker has ordered payment stopped on the check, draft, order or electronic funds transfer.

(2) The amount of the penalty assessed under subsection (1) of this section shall be equal to the greater of $25 or three times the amount of the dishonored check, draft, order or electronic funds transfer. The amount of the penalty shall not be greater than $500.

(3) The penalty imposed under this section is in addition to any other penalty imposed by law. Any person against whom a penalty is assessed under this section may appeal to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after the order of the tax court becomes final, the department may record the order and collect the amount assessed in the manner as income tax deficiencies are recorded and collected under ORS 314.430.

(4) The department may waive all or any part of the penalty assessed under this section on a showing that there was a reasonable basis for tendering the check, draft, order or electronic funds transfer.

(5) As used in this section, "electronic funds transfer" has the meaning given that term in ORS 293.525. [1985 c.85 §3; 1995 c.650 §111; 1999 c.61 §1]

305.229 When penalties not imposed; rules. Notwithstanding any other provision of the tax laws of this state that are administered by the Department of Revenue, the department may adopt rules setting forth circumstances or conditions under which a penalty that otherwise would be imposed under those tax laws is not imposed. [2003 c.317 §5]

(Representation of Taxpayer)

305.230 Qualifications of persons representing taxpayer; procedure for designating representative. (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is

exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2002, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) Any person who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(f) In a small claims procedure, a taxpayer may be represented by any of the persons described in paragraphs (a) to (e) of this subsection or by any other person permitted by the tax court.

(2) No person shall be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of subsections (1)(f) and (3) of this section. [1969 c.97 §1; 1973 c.681 §3; 1979 c.596 §1; 1985 c.761 §40; 1985 c.802 §35; 1987 c.468 §6; 1989 c.414 §3; 1991 c.5 §19; 1995 c.79 §106; 1995 c.556 §30; 1995 c.650 §12; 1997 c.839 §41; 1999 c.90 §28; 1999 c.224 §4; 1999 c.322 §36; 2001 c.300 §59; 2001 c.660 §23; 2003 c.46 §4; 2003 c.77 §1; 2003 c.704 §14a]

305.240 [1969 c.520 §14; repealed by 1979 c.596 §2]

305.242 Representation before department or magistrate of designated partnership tax matters; designated tax partner. (1) When the treatment of partnership items on a partner's return is consistent with the treatment of that item on the partnership return and results in a notice of deficiency, the partners may designate a tax matters partner to represent each of them before the Department of Revenue in any conference or before a tax court magistrate in any proceeding with respect to the administration of any tax on or measured by net income.

(2) The designation of a tax matters partner shall be made in writing and filed with the department or magistrate within 30 days after the date of the notice of deficiency. The tax matters partner must be:

(a) A general partner in the partnership at some time during the taxable year; or

(b) A general partner in the partnership at the time the designation is made.

(3) If a notice explaining the partnership adjustments is mailed by the department to the tax matters partner with respect to any partnership taxable year, the tax matters partner shall supply the department or, if applicable, the magistrate with the name, address, profits interest and taxpayer identification number of each person who was a partner in the partnership at any time during the taxable year, unless that information was provided in the partnership return for that year.

(4) A timely request for a conference filed with the department or appeal filed with the tax court by the tax matters partner shall be considered as a request or an appeal by all of the partners represented by the tax matters partner, and all issues regarding treatment of partnership items shall be resolved in a single conference.

(5) A partner who elects to be represented by a tax matters partner shall be bound by all things done by the tax matters partner and may not thereafter claim that any act or proceeding was legally defective because the partner was not represented by an attorney. [1989 c.414 §1; 1995 c.650 §13]

Note: 305.242 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

305.245 Representation before tax court magistrate by officer or employee of county or department. Notwithstanding ORS 8.690, 9.160, 9.320, ORS chapter 180, ORS 203.145 or other law, in any conference or proceeding before a tax court magistrate with respect to the administration of any tax, a county or the Department of Revenue may be represented by any officer or authorized employee of the county or department. [1985 c.761 §39; 1995 c.650 §14]

305.250 [1969 c.520 §12; repealed by 1975 c.705 §12]

305.260 Representation before department or magistrate by former department personnel prohibited. No former officer, clerk or employee of the Department of Revenue shall represent any taxpayer in any claim or controversy pending in the Department of Revenue or in the magistrate division of the tax court during the employment of the former officer, clerk or employee therein, nor shall the former officer, clerk or employee in any manner or by any means, aid in the prosecution of any such claim, within two years next after the former officer, clerk or employee has ceased to be such officer, clerk or employee. [1973 c.402 §25(1); 1995 c.650 §15]

(Tax Deficiencies; Notice; Appeals)

305.263 Order requiring filing report or return; show cause; contempt; appeal. (1) If a person fails to file a report or return within 60 days of the time prescribed by any tax law administered by the Department of Revenue, the department may petition the Oregon Tax Court for an order requiring the person to file the report or return or to show cause why the person is not required to file the report or return.

(2) Within 10 days after the filing of the petition, the tax court shall enter an order directing the person to file the report or return or to appear and show cause why no report or return is required to be filed. The petition and order shall be served upon the person in the manner provided by law for service of a complaint filed in the tax court. Not later than 20 days after service, the person shall:

(a) File the requested report or return with the department;

(b) Request from the court an order granting reasonable time within which to file the requested report or return with the department; or

(c) File with the court an answer to the petition showing cause why such report or return is not required to be filed.

(3)(a) If an answer is filed, the court shall set the matter for hearing within 20 days from the filing of the answer, and shall determine the matter in an expeditious manner, consistent with the rights of the parties.

(b) If the person fails to answer within the time prescribed, or if the person fails to obey any order entered by the tax court under this section, such failure is punishable as contempt of court.

(4) An appeal may be taken to the Supreme Court as provided in ORS 305.445, from an order of the tax court made and entered after a hearing and determination under subsection (3) of this section.

(5) Costs shall be awarded to the prevailing party. [1985 c.266 §3]

305.265 Deficiency notice; payment of deficiency; assessment; appeal; interest. (1) Except as provided in ORS 305.305, the provisions of this section apply to all reports or returns of tax or tax liability including claims under ORS 310.630 to 310.706 filed with the Department of Revenue under the revenue and tax laws administered by it, except those filed under ORS chapter 320.

(2) As soon as practicable after a report or return is filed, the department shall examine or audit it, if required by law or the department deems such examination or audit practicable. If the department discovers from an examination or an audit of a report or return or otherwise that a deficiency exists, it shall compute the tax and give notice to the person filing the return of the deficiency and of the department's intention to assess the deficiency, plus interest and any appropriate penalty. Except as provided in subsection (3) of this section, the notice shall:

(a) State the reason for each adjustment;

(b) Give a reference to the statute, regulation or department ruling upon which the adjustment is based; and

(c) Be certified by the department that the adjustments are made in good faith and not for the purpose of extending the period of assessment.

(3) When the notice of deficiency described in subsection (2) of this section results from the correction of a mathematical or clerical error and states what would have been the correct tax but for the mathematical or clerical error, such notice need state only the reason for each adjustment to the report or return.

(4) With respect to any tax return filed under ORS chapter 314, 316, 317 or 318, deficiencies shall include but not be limited to the assertion of additional tax arising from:

(a) The failure to report properly items or amounts of income subject to or which are the measure of the tax;

(b) The deduction of items or amounts not permitted by law;

(c) Mathematical errors in the return or the amount of tax shown due in the records of the department; or

(d) Improper credits or offsets against the tax claimed in the return.

(5)(a) The notice of deficiency shall be accompanied by a statement explaining the person's right to make written objections, the person's right to request a conference and the procedure for requesting a conference. The statement, and an accompanying form, shall also explain that conference determinations are routinely transmitted via regular mail and that a person desiring to have conference determinations transmitted by certified mail may do so by indicating on the form the person's preference for certified mail and by returning the form with the person's written objections as described in paragraph (b) of this subsection.

(b) Within 30 days from the date of the notice of deficiency, the person given notice shall pay the deficiency with interest computed to the date of payment and any penalty proposed. Or within that time the person shall advise the department in writing of objections to the deficiency, and may request a conference with the department, which shall be held prior to the expiration of the one-year period set forth in subsection (7) of this section.

(6) If a request for a conference is made, the department shall notify the person of a time and place for conference and appoint a conference officer to meet with the person for an informal discussion of the matter. After the conference, the conference officer shall send the determination of the issues to the person. The determination letter shall be sent by regular mail, or by certified mail if the person given notice has indicated a preference for transmission of the determination by certified mail. The department shall assess any deficiency in the manner set forth in subsection (7) of this section. If no conference is requested and written objections are received, the department shall make a determination of the issues considering such objections, and shall assess any deficiency in the manner provided in subsection (7) of this section. The failure to request or have a conference shall not affect the rights of appeal otherwise provided by law.

(7) If neither payment nor written objection to the deficiency is received by the department within 30 days after the notice of deficiency has been mailed, the department shall assess the deficiency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within one year from the date of the notice of deficiency unless an extension of time is agreed upon as described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

(8) If, prior to the expiration of any period of time prescribed in subsection (7) of this section for giving of notice of assessment, the department and the person consent in writing to the deficiency being assessed after the expiration of such prescribed period, such deficiency may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(9) The failure to hold a requested conference within the one-year period prescribed in subsection (5) of this section shall not invalidate any assessment of deficiency made within the one-year period pursuant to subsection (7) of this section or within any extension of time made pursuant to subsection (8) of this section, but shall invalidate any assessment of interest or penalties attributable to the deficiency. After an assessment has been made, the department and the person assessed may still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day period under ORS 305.280 (2) shall run from the date of the conference officer's written determination of the issues.

(10)(a) In the case of a failure to file a report or return on the date prescribed therefor (determined with regard to any extension for filing), the department shall determine the tax according to the best of its information and belief, assess the tax plus appropriate penalty and interest, and give written notice of the failure to file the report or return and of the determination and assessment to the person required to make the filing. The amount of tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be lawfully claimed upon the return.

(b) Notwithstanding subsection (14) of this section and ORS 305.280, and only to the extent allowed by rules adopted by the department, the department may accept the filing of a report or return submitted by a person who has been assessed a tax under paragraph (a) of this subsection.

(c) The department may reject a report or return:

(A) That is not verified as required by ORS 305.810;

(B) That the department determines is not true and correct as to every material matter as required by ORS 305.815; or

(C) If the department may impose a penalty under ORS 316.992 (1) with respect to the report or return.

(d) If the department rejects a report or return of a person assessed a tax under paragraph (a) of this subsection, the department shall issue a notice of rejection to the person. The person may appeal the rejection to the magistrate division of the Oregon Tax Court only if:

(A) The report or return was filed within 90 days of the date the department's assessment under paragraph (a) of this subsection was issued; and

(B) The appeal is filed within 90 days of the date shown on the notice of rejection.

(e) If the person assessed under paragraph (a) of this subsection submits a report or return to the department and appeals the assessment to the tax court, the department may request a stay of action from the court pending review of the report or return. If the department:

(A) Accepts the filing of the report or return, the appeal shall be dismissed as moot.

(B) Rejects the report or return, the stay of action on the appeal shall be lifted.

(f) If the department accepts the filing of a report or return, the department may reduce the assessment issued under paragraph (a) of this subsection. A report or return filed under this subsection that is accepted by the department, whether or not the assessment has been reduced, shall be considered a report or return described in subsection (1) of this section and shall be subject to the provisions of this section, including but not limited to examination and adjustment pursuant to subsection (2) of this section.

(g) The department may refund payments made with respect to a report or return filed and accepted pursuant to this subsection. If the report or return is filed within three years of the due date for filing the report or return, excluding extensions, the refund shall be made as provided by ORS 305.270 and 314.415. If the report or return is not filed within three years of the due date for filing the report or return, excluding extensions, the refund shall be limited to payments received within the two-year period ending on the date the report or return is received by the department and payments received after the date the report or return is received by the department. Interest shall be paid at the rate established under ORS 305.220 for each month or fraction of a month from the date the report or return is received by the department to the time the refund is made.

(11) Mailing of notice to the person at the person's last-known address shall constitute the giving of notice as prescribed in this section.

(12) If a return is filed with the department accompanied by payment of less than the amount of tax shown on or from the information on the return as due, the difference between the tax and the amount submitted is considered as assessed on the due date of the report or return (determined with regard to any extension of time granted for the filing of the return) or the date the report or return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or from the information on the return as due shall be reduced by the amount of any part of the tax that is paid on or before the due date prescribed for payment of the tax, and by any credits against the tax that are claimed on the return. If the amount required to be shown as tax on a return is less than the amount shown as tax on the return, this subsection shall be applied by substituting the lesser amount.

(13) Every deficiency shall bear interest at the rate established under ORS 305.220 for each month or fraction of a month computed from the due date of the return to date of payment. If the return was falsely prepared and filed with intent to evade the tax, a penalty equal to 100 percent of the deficiency shall be assessed and collected. All payments received shall be credited first to penalty, then to interest accrued, and then to tax due.

(14) If the deficiency is paid in full before a notice of assessment is issued, the department is not required to send a notice of assessment, and the tax shall be considered as assessed as of the date which is 30 days from the date of the notice of deficiency or the date the deficiency is paid, whichever is the later. A partial payment of the deficiency shall constitute only a credit to the account of the person assessed. Assessments and billings of taxes shall be final after the expiration of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under ORS 305.280 (3) following payment of the tax.

(15) Appeal may be taken to the tax court from any notice of assessment. The provisions of this chapter with respect to appeals to the tax court apply to any deficiency, penalty or interest assessed. [1977 c.870 §3; 1981 c.724 §3; 1982 s.s.1 c.16 §5; 1985 c.266 §4; 1987 c.512 §2; 1989 c.414 §4; 1993 c.726 §4; 1995 c.650 §27; 1995 c.780 §3; 1997 c.99 §§26,27; 1999 c.224 §1; 1999 c.249 §1; 1999 c.532 §1; 2001 c.76 §5; 2001 c.660 §21]

305.267 Extension of time to issue notice of deficiency or assessment. (1) As a part of its application for an order for the enforcement of a subpoena under ORS

305.190 or for an answer to interrogatories under ORS 305.195, the Department of Revenue may request the Oregon Tax Court for an order extending the time within which the department may issue a notice of deficiency or assessment under ORS 305.265.

(2) The tax court or the Supreme Court upon appeal, shall extend the time for a period ending 90 days after:

(a) Delivery to the department of the documents and information ordered produced under the subpoena; or

(b) Delivery to the department of the answers ordered to be made to the department's interrogatories. [1985 c.266 §2]

305.270 Refund of excess tax paid; claim procedure. (1) If the amount of the tax shown as due on a report or return originally filed with the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318 or 321, or collected pursuant to ORS 305.620, or as corrected by the department, is less than the amount theretofore paid, or if a person files a claim for refund of any tax paid to the department under such laws within the period specified in subsection (2) of this section, any excess tax paid shall be refunded by the department with interest as provided in this section and ORS 314.415.

(2) The claim shall be made on a form prescribed by the department, except that an amended report or return showing a refund due and filed within the time allowed by this subsection for the filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the period specified in ORS 314.415 (1)(b) for taxes imposed under ORS chapters 310, 314, 316, 317 and 318, or collected pursuant to ORS 305.620 (except where any applicable ordinance specifies another period), within the period specified in ORS 118.100 (2) for taxes imposed under ORS chapter 118 and within two years of the payment of any tax under ORS chapter 308, 308A or 321.

(3) Upon receipt of a claim for refund, or original report or return claiming a refund, the department shall either refund the amount requested or send to the claimant a notice of any proposed adjustment to the refund claim, stating the basis upon which the adjustment is made. A proposed adjustment may either increase or decrease the amount of the refund claim or result in the finding of a deficiency. If the proposed adjustment results in a determination by the department that some amount is refundable, the department may send the claimant the adjusted amount with the notice.

(4)(a) The notice of proposed adjustment shall be accompanied by a statement explaining the claimant's right to make written objections to the refund adjustment, the claimant's right to request a conference and the procedure for requesting a conference. The statement, and an accompanying form, shall also explain that conference determinations are routinely transmitted via regular mail and that a claimant desiring to have conference determinations transmitted by certified mail may do so by indicating on the form the claimant's preference for certified mail and by returning the form with the claimant's written objections as described in paragraph (b) of this subsection.

(b) The claimant may, within 30 days of the date of the notice of proposed adjustment, advise the department in writing of objections to the refund adjustment and may request a conference with the department, which shall be held within one year of the date of the notice. The department shall notify the claimant of a time and place for the conference, and appoint a conference officer to meet with the claimant for an informal discussion of the claim. After the conference, the conference officer shall send a determination of the matter to the claimant. The determination letter shall be sent by regular mail, or by certified mail if the claimant has indicated a preference for transmission of the determination by certified mail. The department shall issue either a notice of refund denial or payment of any amount found to be refundable, together with any applicable interest provided by this section. If the conference officer determines that a deficiency exists, the department shall issue a notice of assessment.

(5) If no conference is requested, and the adjustments have not resulted in the finding of a deficiency, the following shall apply:

(a) If written objections have been made by the claimant, the department shall consider the objections, determine any issues raised and send the claimant a notice of refund denial or payment of any amount found to be refundable, together with any interest provided by this section.

(b) If no written objections are made, the notice of any proposed adjustment shall be final after the period for requesting a conference or filing written objections has expired.

(6) If no conference is requested, and the notice of proposed adjustment has asserted a deficiency, the department shall consider any objections made by the person denied the refund, make a determination of any issues raised, pay any refunds found due, with applicable interest, or assess any deficiency and mail a notice thereof within one year from the date of the notice of deficiency, unless

an extension of time is agreed upon as described in subsection (7) of this section.

(7) If, prior to the expiration of any period of time prescribed in subsection (6) of this section for giving of notice of assessment, the department and the person consent in writing to the deficiency being assessed after the expiration of such prescribed period, such deficiency may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(8) If the department refunds the amount requested as provided in subsection (3) of this section, without examination or audit of the refund claim, the department shall give notice of this to the claimant at the time of making the refund. Thereafter, the department shall have one year in which to examine or audit the refund claim, and send the notice of proposed adjustment provided for in subsection (3) of this section, in addition to any time permitted in ORS 314.410 or 314.415.

(9) The failure to hold a requested conference within the one-year period prescribed in subsection (4) of this section shall not invalidate any assessment of deficiency made within the one-year period pursuant to subsection (8) of this section or within any extension of time made pursuant to subsection (7) of this section, but shall invalidate any assessment of interest or penalties attributable to the deficiency. After an assessment has been made, the department and the person assessed may still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day period under ORS 305.280 (2) shall run from the date of the conference officer's written determination of the issues.

(10) The claimant may appeal any notice of proposed adjustment, refund denial or notice of assessment in the manner provided in ORS 305.404 to 305.560. The failure to file written objections or to request or have a conference shall not affect the rights of appeal so provided. All notices and determinations shall set forth rights of appeal. [1977 c.870 §4; 1979 c.691 §1; 1985 c.61 §1; 1985 c.266 §5; 1987 c.512 §3; 1989 c.626 §2; 1991 c.67 §75; 1995 c.650 §28; 1997 c.99 §§29,30; 1999 c.224 §2; 1999 c.314 §89]

305.271 Refund transfer or assignment prohibited; exception. Except as provided in ORS 305.690 to 305.753 (relating to charitable checkoffs), no refund, claim of refund or right to a refund of taxes paid under the laws of this state shall be transferable or assignable by the taxpayer unless authorized by rule of the Department of Revenue. [1997 c.84 §5]

305.275 Persons who may appeal due to acts or omissions. (1) Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

(A) The Department of Revenue in its administration of the revenue and tax laws of this state;

(B) A county board of property tax appeals other than an order of the board;

(C) A county assessor or other county official, including but not limited to the denial of a claim for exemption, the denial of special assessment under a special assessment statute, or the denial of a claim for cancellation of assessment; or

(D) A tax collector.

(b) The act, omission, order or determination must affect the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property. As used in this paragraph, an interest that obligates the person to pay taxes includes a contract, lease or other intervening instrumentality.

(c) There is no other statutory right of appeal for the grievance.

(2) Except as otherwise provided by law, any person having a statutory right of appeal under the revenue and tax laws of the state may appeal to the tax court as provided in ORS 305.404 to 305.560.

(3) Subject to ORS 305.403, if a taxpayer may appeal to the board of property tax appeals under ORS 309.100, then no appeal shall be allowed under this section. The appeal under this section is from an order of the board as a result of the appeal filed under ORS 309.100 or from an order of the board that certain corrections, additions to or changes in the roll be made.

(4) A county assessor who is aggrieved by an order of the county board of property tax appeals may appeal from the order as provided in this section, ORS 305.280 and 305.560. [1977 c.870 §5; 1985 c.85 §10; 1987 c.512 §4; 1991 c.459 §12; 1993 c.270 §7; 1995 c.79 §107; 1995 c.650 §7; 1997 c.541 §§52,52a,53,53a; 1999 c.314 §62; 1999 c.340 §2]

305.280 Time for filing appeals; denial of appeal. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred, or the order or de-

termination has been made. An appeal under ORS 308.505 to 308.665 shall be filed within the time prescribed under ORS 308.595. An appeal from a supervisory order or other order or determination of the Department of Revenue shall be filed within 90 days after the date a copy of the order or determination or notice of the order or determination has been served upon the appealing party by mail as provided in ORS 306.805.

(2) An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.

(3) Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.

(4) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter 321, an appeal to the tax court under ORS chapter 321 or from an order of a county board of property tax appeals shall be filed within 30 days after the date of the notice of the determination made by the department or date of mailing of the order, date of publication of notice of the order or date of mailing of the notice of the order to the taxpayer, whichever is applicable.

(5) If the tax court denies an appeal made pursuant to this section on the grounds that it does not meet the requirements of this section or ORS 305.275 or 305.560, the tax court shall issue a written decision rejecting the petition and shall set forth in the decision the reasons the tax court considered the appeal to be defective. [1977 c.870 §6; 1979 c.687 §1; 1985 c.61 §2; 1991 c.67 §76; 1993 c.270 §8; 1995 c.650 §8; 1997 c.99 §§32,33; 1997 c.541 §§55,56; 1999 c.249 §2; 1999 c.314 §90; 1999 c.340 §3; 2003 c.804 §63a]

305.283 [1993 c.270 §11; repealed by 1995 c.650 §114]

305.285 Correction of tax and assessment rolls for subsequent tax years during pendency of appeal. Whenever any property tax matter is appealed to the Department of Revenue, Oregon Tax Court or Supreme Court, and during the pendency of the appeal, no appeal is filed for a subsequent year or years, the taxpayer may, on or before December 15 of the year in which a final determination is made by the last body or tribunal to pass on the matter or within six months of such final determination, whichever is later, request the department to order the officer in charge of the rolls for the intervening years to correct all tax and assessment rolls for those years with respect to the property affected by such final determination. The department may require a hearing and the submission of evidence necessary to determine the correction, if any, that should be made for each intervening year in view of the holding in such final determination. Notwithstanding any time limit in ORS 305.288, 306.115 or 311.205, the department shall order such correction as it deems necessary. [1977 c.870 §7; 1983 c.605 §2; 1993 c.18 §64]

Note: Chapter 655, Oregon Laws 2003, becomes operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. Section 47a, chapter 655, Oregon Laws 2003, was editorially numbered subsection (7) of 305.288. Because of that, existing references in the Oregon Revised Statutes to 305.288 will become references to 305.288 (1) to (6). The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

305.285. Whenever any property tax matter is appealed to the Department of Revenue, Oregon Tax Court or Supreme Court, and during the pendency of the appeal, no appeal is filed for a subsequent year or years, the taxpayer may, on or before December 15 of the year in which a final determination is made by the last body or tribunal to pass on the matter or within six months of such final determination, whichever is later, request the department to order the officer in charge of the rolls for the intervening years to correct all tax and assessment rolls for those years with respect to the property affected by such final determination. The department may require a hearing and the submission of evidence necessary to determine the correction, if any, that should be made for each intervening year in view of the holding in such final determination. Notwithstanding any time limit in ORS 305.288 (1) to (6), 306.115 or 311.205, the department shall order such correction as it deems necessary.

305.288 Valuation changes for residential property substantial value error and for good and sufficient cause. (1) The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist:

(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling (or is vacant) and was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.

(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

(2) If the tax court finds that the conditions needed to order a change or correction under subsection (1) of this section exist, the court may order a change or correction in the maximum assessed value of the property in addition to the change or correction in the real market value of the property.

(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.

(4) Before ordering a change or correction to the assessment or tax roll under subsection (3) of this section, the tax court may determine whether any of the conditions exist in a particular case. If the tax court determines that one of the conditions specified does exist, the tax court shall hold a hearing to determine whether to order a change or correction to the roll.

(5) For purposes of this section:

(a) "Current tax year" has the meaning given the term under ORS 306.115.

(b) "Good and sufficient cause":

(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.

(6) The remedy provided under this section is in addition to all other remedies provided by law. [Formerly 306.116; 1999 c.767 §1]

Note: Section 47a, chapter 655, Oregon Laws 2003, compiled as 305.288 (7), becomes operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text of 305.288 that is operative on and after May 1, 2005, is set forth for the user's convenience.

305.288. (1) The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist:

(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling (or is vacant) and was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.

(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

(2) If the tax court finds that the conditions needed to order a change or correction under subsection (1) of this section exist, the court may order a change or correction in the maximum assessed value of the property in addition to the change or correction in the real market value of the property.

(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.

(4) Before ordering a change or correction to the assessment or tax roll under subsection (3) of this section, the tax court may determine whether any of the conditions exist in a particular case. If the tax court determines that one of the conditions specified does exist, the tax court shall hold a hearing to determine whether to order a change or correction to the roll.

(5) For purposes of this section:

(a) "Current tax year" has the meaning given the term under ORS 306.115.

(b) "Good and sufficient cause":

(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.

(6) The remedy provided under this section is in addition to all other remedies provided by law.

(7) As used in subsections (1) to (6) of this section, "manufactured structure" has the meaning given that term in ORS 446.561.

305.290 Extension of time for making assessment due to bankruptcy. If the Department of Revenue is prohibited from making an assessment in a case under title 11 of the United States Code, the period for making the assessment shall not expire until one year after the prohibition is terminated. [1985 c.761 §12]

305.295 Cancellation of tax, penalty or interest. (1) Notwithstanding ORS 305.265 (14), the Department of Revenue may in its discretion, cancel any tax, penalty or interest or any portion thereof, for which an assessment has become final, if any of the following conditions exist:

(a) The assessment is based upon an asserted tax deficiency calculated upon income that the state is expressly prohibited from taxing under the Oregon Constitution or the laws of the United States.

(b) The assessment is based upon an asserted tax deficiency arising from an error made by the department when reviewing the return during processing, and the information necessary to correct the error was properly reported in the return as filed as determined by the department.

(c) The assessment is against an employer for withholding tax, with respect to any full calendar quarter during which the employer had no payroll and had permanently ceased doing business. An employer shall not be considered to have ceased doing business if the employer has changed its name and the business activity continues under the same beneficial ownership.

(d) Pursuant to rules adopted by the department, the department determines that:

(A) Reasonable doubt exists as to the taxpayer's liability for the assessment;

(B) The taxpayer has presented documentation that the department considers sufficient to support canceling the tax, penalty or interest, or any portion thereof; and

(C) The taxpayer has complied with all applicable reporting and filing requirements for all tax years for which the department maintains records.

(2) When taxes are canceled, in whole or in part, under subsection (1) of this section, the department shall make an order canceling the tax, penalties and interest. The order shall be filed in the records of the department. Upon making the order, the department also shall cause to be canceled or released any lien of record in the counties which may have been filed and entered therein.

(3) Before the department may cancel an assessment under subsection (1) of this section, the taxpayer to whom the assessment is issued shall provide any information the department deems necessary to verify the existence of one of the conditions under which the assessment may be canceled.

(4) Notwithstanding ORS 314.415, the department may refund any payments made with respect to an assessment described in subsection (1) of this section. Interest shall be paid at the rate established under ORS 305.220, for each month or fraction of a month during a period beginning on the date the taxpayer requests the refund.

(5) This section applies to any unpaid assessment described in subsection (1) of this section whether issued before or after September 27, 1987, and to any assessment for which payment is made on or after September 27, 1987.

(6) A taxpayer may appeal denial of a request for cancellation of assessment or refund to the Director of the Department of Revenue. The decision of the director is final and may not be appealed. [1987 c.758 §16; 1997 c.100 §1]

305.305 Procedure where deficiency based on federal or other state audit report; effect of appeal; interest suspension. (1) As used in this section, "appeal" means an appeal to the Internal Revenue Service or any federal court or an appeal to another state's taxing authority or any state court having jurisdiction over the other state's tax matters that are the subject of the appeal.

(2) If a deficiency is based wholly or in part upon an Internal Revenue Service revenue agent's report made upon any audit or adjustment of the person's federal income tax return or upon an audit report of another state's taxing authority, the following procedures shall apply:

(a) If the person has filed a timely appeal from the deficiency asserted by the service or other state taxing authority, the person may file proof of the appeal with the Department of Revenue. If proof of the appeal is received before the tax is assessed, the deficiency shall be assessed without penalty for failure to pay the tax at the time the tax became due.

(b) If the department assesses the deficiency before receipt of proof of the filing of a timely appeal, the person may file the proof with the department. If the proof is filed after the tax has been assessed with a penalty for failure to pay the tax at the time the tax became due, the penalty shall not be waived.

(3) Notwithstanding any other provision of law, filing of proof of a timely appeal under subsection (2) of this section shall extend the time for filing a complaint or petition with the tax court in accordance with this subsection. The person shall notify the department in writing within 30 days after the appeal is finally resolved. The department shall review the issues raised by the appeal and shall make a determination of the effect upon the person's state income or excise tax liabilities. The department shall then issue a refund, notice of denial of refund or notice of assessment, as appropriate, to the person. If the person disagrees with the department's action, the person may file a complaint or petition with the tax court within 90 days after the date of the department's action as provided under ORS 305.404 to 305.560. Notwithstanding ORS 314.835 or any other law relating to confidentiality, the department may notify the magistrate division of the tax court if proof of a timely appeal is filed with the department or if the department determines that an appeal has been finally resolved.

(4) Except as provided in ORS 314.440 (2), when the department receives proof of a timely appeal, the department shall suspend action to collect the deficiency until the issues are resolved.

(5) If interest imposed by the federal government on a federal deficiency or partnership settlement agreement has been suspended under section 6601(c) of the Internal Revenue Code, interest imposed on a corresponding deficiency determined under ORS 305.265 and this section shall also be suspended. The suspension of interest imposed under ORS 305.265 shall be effective as of the date the federal interest is suspended and for the duration for which the federal interest is suspended.

(6) Except as provided in ORS 314.415 (5), the provisions of this section shall constitute the exclusive remedy of a person whose notice of deficiency is based wholly or in part upon a federal revenue agent's report or the audit report of another state's taxing authority. [1989 c.414 §6; 1995 c.650 §29; 1997 c.325 §7; 1999 c.74 §2; 1999 c.90 §28a; 2001 c.660 §17]

305.350 [1977 c.790 §1; repealed by 1985 c.105 §1]

305.355 [1977 c.790 §2; repealed by 1985 c.105 §1]

305.360 [1977 c.790 §3; repealed by 1985 c.105 §1]

305.365 [1977 c.790 §4; repealed by 1985 c.105 §1]

305.375 Disposition of penalties; payment of refunds. The amount of any penalty collected under this chapter and ORS chapter 314 or 316 shall be paid over to the State Treasurer in the manner provided for income taxes in ORS 316.502. Any penalty amount required to be refunded may be paid out of the working balance retained under ORS 316.502 (2) or may be paid in the manner provided in ORS 305.760. [1987 c.843 §5]

(License Lists)

305.380 Definitions for ORS 305.385. As used in ORS 305.385:

(1) "Agency" means any department, board, commission, division or authority of the State of Oregon, or any political subdivision of this state which imposes a local tax administered by the Department of Revenue under ORS 305.620.

(2) "License" means any written authority required by law or ordinance as a prerequisite to the conduct of a business, trade or profession.

(3) "Provider" means any person who contracts to supply goods, services or real estate space to an agency.

(4) "Tax" means a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620. [1987 c.843 §6; 1997 c.99 §35; 1997 c.170 §16]

305.385 Agencies to supply licensee and contractor lists; contents; effect of department determination on taxpayer status of licensee or contractor; rules. (1) Upon request of the Department of Revenue, an agency issuing or renewing a license to conduct a business, trade or profession shall annually, on or before March 1, supply the department with a list of specified licenses issued or renewed by the agency during the preceding calendar year.

(2) Upon request of the department, an agency shall annually, on or before March 1, supply the department with a list of specified persons contracting with the agency to provide goods, services or real estate space to the agency during the preceding calendar year.

(3) The lists required by subsections (1) and (2) of this section shall contain the name, address, Social Security or federal employer identification number of each licensee or provider or such other information as the department may by rule require.

(4)(a) If the department determines that any licensee or provider has neglected or refused to file any return or to pay any tax and that such person has not filed in good faith a petition before the department contesting the tax, and the department has been unable to obtain payment of the tax through other methods of collection, the Director of the Department of Revenue may, notwithstanding ORS 118.525, 314.835 or 314.840 or any similar provision of law, notify the agency and the person in writing.

(b) Upon receipt of such notice, the agency shall refuse to reissue, renew or extend any license, contract or agreement until the agency receives a certificate issued by the department that the person is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(c) Upon the written request of the director and after a hearing and notice to the licensee as required under any applicable provision of law, the agency shall suspend the person's license if the agency finds that the returns and taxes have not been filed or paid and that the licensee has not filed in good faith a petition before the department contesting the tax and the department has been unable to obtain payment of the tax through other methods of collection. For the purpose of the agency's findings, the written representation to that effect by the department to the agency shall constitute prima facie evidence of the person's failure to file returns or pay the tax. The department shall

have the right to intervene in any license suspension proceeding.

(d) Any license suspended under this subsection shall not be reissued or renewed until the agency receives a certificate issued by the department that the licensee is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(5) The department may enter into an installment payment agreement with a licensee or provider with respect to any unpaid tax, penalty and interest. The agreement shall provide for interest on the outstanding amount at the rate prescribed by ORS 305.220. The department may issue a provisional certificate of good standing pursuant to subsection (4)(b) and (d) of this section which shall remain in effect so long as the licensee or provider fully complies with the terms of the installment agreement. Failure by the licensee or provider to fully comply with the terms of the installment agreement shall render the agreement and the provisional certificate of good standing null and void, unless the department determines that the failure was due to reasonable cause. If the department determines that the failure was not due to reasonable cause, the total amount of the tax, penalty and interest shall be immediately due and payable, and the department shall notify any affected agency that the licensee or provider is not in good standing. The agency shall then take appropriate action under subsection (4)(b) and (d) of this section.

(6) No contract or other agreement for the purpose of providing goods, services or real estate space to any agency shall be entered into, renewed or extended with any person, unless the person certifies in writing, under penalty of perjury, that the person is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).

(7) The certification under subsection (6) of this section shall be required for each contract and renewal or extension of a contract or may be provided on an annual basis. A certification shall not be required for a contract if the consideration for the goods, services or real estate space provided under the contract is no more than $1,000.

(8)(a) The requirements of the certification under subsection (6) of this section shall be subject to the rules adopted by the department in accordance with this section.

(b) The department may by rule exempt certain contracts from the requirements of subsection (6) of this section. [1987 c.843 §7; 1989 c.656 §1; 1997 c.99 §36]

SUBPOENAS RELATING TO INDUSTRIAL PROPERTY

305.390 Subpoenas of records containing information on industrial plant for use to determine value of different industrial plant. A subpoena for the production of records may be issued under ORS 305.190 or 305.420 to the owner of an industrial plant, as defined in ORS 308.408, for purposes of a proceeding involving the determination of the value of a different industrial plant for ad valorem property taxation, only under the following conditions:

(1) The information to be produced is to be used to determine the value of a specific industrial plant;

(2) The information to be produced is not available to the person or agency issuing the subpoena from any public source; and

(3) The information to be produced is likely to improve the accuracy or reliability of the determination of value. [1993 c.353 §4]

305.392 Process for limiting scope of third-party subpoena. (1) This section applies to subpoenas issued under ORS 305.190 or 305.420 (5) to owners of industrial plants, as defined in ORS 308.408, for the production of books, papers, correspondence or any other documents to be used in a judicial proceeding that involves the determination of the value of a different industrial plant, for purposes of ad valorem property taxation. The purpose of this section is to provide a process by which the parties may limit the scope of a subpoena for the production of documents, if possible.

(2) Before any person or the Department of Revenue may issue a subpoena to which this section applies, the person or department shall give written notice to the person or agency to be subpoenaed that a subpoena will be issued no sooner than 60 days after the date the notice is received. The notice shall state the general nature of the documents desired to be produced and the purpose for which they will be used. The notice shall state that the person or agency to be subpoenaed may request an informal meeting with the person or department giving notice to identify the nature and form of documents the person or agency has and to verify the need for the documents desired to be produced.

(3) If the person or agency receiving a notice given under subsection (2) of this section requests an informal meeting as provided in the notice, the person or department giving notice shall meet with the person or agency before issuing the subpoena. If the parties can agree that only specific documents need to be produced, the subpoena

may then be issued and shall be limited to those documents.

(4) If the person or agency receiving a notice under subsection (2) of this section does not request a meeting, or if the parties cannot agree on the specific documents to be produced, the person or department giving notice may issue the subpoena on or after the date specified in the notice.

(5) A person or agency given notice under subsection (2) of this section may not seek relief from compliance with a subpoena or for protection of documents to be produced until a subpoena has been issued. [1993 c.353 §7; 1995 c.650 §84]

305.394 When industrial plant owner may choose not to produce information sought by subpoena. (1) If the owner of an industrial plant that is located outside this state is given notice under ORS 305.392, or is served with a subpoena for purposes of appraisal of an industrial plant located within this state, the owner may choose not to produce any documents related to the income or expenses of the industrial plant that are identified in the notice or the subpoena, if that information is described in ORS 308.411 (8) as exempt from disclosure for an owner electing under ORS 308.411 (2).

(2) As used in this section, "industrial plant" has the meaning given in ORS 308.408. [1993 c.353 §9]

305.396 Protection of confidentiality of industrial property information obtained by subpoena. (1) When the Department of Revenue or any person has obtained information concerning industrial property by subpoena issued under ORS 305.190 or 305.420, and the provider of the information has designated the information as confidential, the confidentiality of the information shall be protected as provided in this section.

(2) If the department or any person in possession of information described in subsection (1) of this section intends to use that information in a judicial proceeding, the court shall close the proceedings to anyone other than representatives of the parties to the proceeding at any time the confidential information is presented as evidence. The court shall limit the disclosure of the information to representatives of the parties to the proceeding as provided in ORS 305.398. The court also shall seal those parts of the record of the proceeding that contain confidential information. This subsection shall apply to proceedings on appeal from the court proceeding. [1993 c.353 §10; 1995 c.650 §85]

305.398 Disclosure and use of industrial property confidential information obtained by third-party subpoena. (1) When the Department of Revenue or any person has obtained information concerning industrial property by subpoena issued under ORS 305.190 or 305.420, for use in a judicial proceeding concerning the value of a different industrial property, and the provider of the information has designated the information as confidential, access to that information shall be limited by an order of the judicial body conducting the proceeding. The order shall specify the allowable uses of the confidential information and establish the conditions under which disclosure may be made to those individuals described in this section.

(2) The confidential information may be disclosed to the following individuals only:

(a) Counsel for the Department of Revenue.

(b) Counsel of record for any party participating in the proceeding in which the information is to be used.

(c) Employees of the Department of Revenue who are assigned to perform an appraisal using the confidential information.

(d) Those experts or consultants for any party participating in the proceeding who are not, have not previously been and are not anticipated to become directors, officers, employees or business associates of the party, and who have been retained to provide technical advice or testimony in the proceeding.

(3) Before disclosure of information described in this section, each individual to whom disclosure of confidential information will be made shall execute a written acknowledgment of the confidential nature of the information and consent to be bound by the terms of the order of confidentiality, subject to judicial penalties for contempt. Such an acknowledgment shall be executed by any person to whom access to confidential information is actually given.

(4) A written record shall be maintained by the Department of Revenue and any party to whom disclosure is made of the specific material disclosed and the identity of those individuals to whom access has been given, including the name and title of the individuals and the date each was approved to be given access.

(5) The documents, and any copies of them, shall be marked "confidential" or in some way identified to be subject to limited access. Any copies of the original documents shall be reproduced in a way that makes them readily identifiable.

(6) At the conclusion of the proceeding, all documents subject to the provisions of this section shall be returned to the person or agency that originally produced them. Any copies, abstracts or summaries of the information shall be destroyed, and their de-

struction shall be verified by the party or agency that made the copies. [1993 c.353 §11; 1995 c.650 §86]

305.400 Payment of costs of subpoena compliance; determination of costs. (1) Any agency or person issuing a subpoena under ORS 305.190 or 305.420 for information concerning industrial property, shall pay the reasonable costs of compliance with the subpoena incurred by the party responding to the subpoena.

(2) Reasonable costs include the cost of locating records, preparing copies of records, costs of postage, freight or delivery, the cost of materials used to organize or contain records and the cost of management review of material to be produced to determine compliance with the subpoena.

(3) Reasonable costs do not include the cost of duplicating records for the use of the person producing the records or legal fees or management costs incurred in resisting compliance with a subpoena. [1993 c.353 §12]

APPEALS OF INDUSTRIAL PROPERTY OR PLANTS

305.403 Election to appeal value of principal or secondary industrial property to tax court; dismissal of appeal to board of property tax appeals. (1) In the case of a taxpayer dissatisfied with the assessed or specially assessed value of a principal or secondary industrial property, the taxpayer may elect to proceed directly to the tax court.

(2) Election shall be made by filing a complaint with the tax court in the manner as other complaints are filed under ORS 305.560 within the time otherwise prescribed for filing an appeal to the board of property tax appeals. An election under this subsection may not be revoked and the taxpayer shall have no further right of appeal to the county board of property tax appeals.

(3) The complaint shall be entitled in the name of the person filing the complaint as plaintiff and the Department of Revenue or the county assessor, whichever did the appraisal, as defendant. Service of the complaint upon the department shall be accomplished by the clerk of the tax court filing the certified copy of the complaint with the Director of the Department of Revenue. Service on the county assessor shall be accomplished by certified mail and an affidavit showing the service shall be filed with the clerk of the tax court.

(4) Upon an appeal directly to the tax court under this section, the presiding magistrate shall cause notice of the appeal to be given to the county board of property tax appeals, and any appeal filed with the board involving the issue of assessed value or specially assessed value for the same property for the same tax year shall be dismissed.

(5) As used in this section, "principal industrial property" and "secondary industrial property" have the meanings given the terms under ORS 306.126 and include those properties appraised by the department for ad valorem property tax purposes. [1995 c.650 §82; 1997 c.541 §58]

OREGON TAX COURT

(General)

305.404 Oregon Tax Court; definitions; usage. Unless the context requires otherwise, as used in ORS 305.404 to 305.560 and other revenue and tax laws, "tax court" or "Oregon Tax Court" means the Oregon Tax Court created under ORS 305.405. In an appropriate case, "tax court" may include either the regular division or the magistrate division of the Oregon Tax Court, or both, or the judge or judges of the tax court or its magistrates or a combination. In a few instances, "tax court" may include the tax court clerk or other employees of the regular or magistrate division of the tax court. [1995 c.650 §104]

305.405 Oregon Tax Court; creation; jurisdiction. As part of the judicial branch of state government, there is created a court of justice to be known as the Oregon Tax Court. The tax court, in cases within its jurisdiction pursuant to ORS 305.410:

(1) Is a court of record and of general jurisdiction, not limited, special or inferior jurisdiction.

(2) Has the same powers as a circuit court.

(3) Has and may exercise all ordinary and extraordinary legal, equitable and provisional remedies available in the circuit courts, as well as such additional remedies as may be assigned to it. [1961 c.533 §1; 1965 c.6 §1]

305.410 Authority of court in tax cases within its jurisdiction; concurrent jurisdiction; exclusive jurisdiction in certain cases. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section, and except to the extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

(a) ORS chapter 577 relating to Oregon Beef Council contributions.

(b) ORS 576.051 to 576.455 relating to commodity commission assessments.

(c) ORS chapter 477 relating to fire protection assessments.

(d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 744, 746, 748 and 750 relating to insurance company fees and taxes.

(e) ORS chapter 473 relating to liquor taxes.

(f) ORS chapter 583 relating to milk marketing, production or distribution fees.

(g) ORS chapter 825 relating to motor carrier taxes.

(h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes.

(i) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title 39 relating to boat licenses.

(j) ORS chapter 578 relating to Oregon Wheat Commission assessments.

(k) ORS chapter 462 relating to racing taxes.

(L) ORS chapter 657 relating to unemployment insurance taxes.

(m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.

(n) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure of real and personal property tax liens.

(2) The tax court and the circuit courts shall have concurrent jurisdiction to try actions or suits to determine:

(a) The priority of property tax liens in relation to other liens.

(b) The validity of any deed, conveyance, transfer or assignment of real or personal property under ORS 95.060 and 95.070 (1983 Replacement Part) or 95.200 to 95.310 where the Department of Revenue has or claims a lien or other interest in the property.

(3) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact concerning the authorized uses of the proceeds of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(4) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or any other court, any matter within the jurisdiction of the tax court. [1961 c.533 §12; 1965 c.6 §2; 1967 c.359 §688; 1969 c.48 §1; 1971 c.567 §14; 1975 c.365 §1; 1977 c.407 §1; 1985 c.149 §5; 1985 c.664 §18; 2003 c.195 §18; 2003 c.604 §100]

305.415 Service of papers and process. Except as otherwise provided in ORS 305.404 to 305.560, the mailing by registered or certified mail of any pleading, decision, order, notice or process, other than a subpoena, in respect to proceedings before the court shall be sufficient service thereof. [1961 c.533 §25]

305.418 When mailed complaint considered to be filed. Any complaint required by law to be filed with the Oregon Tax Court which is:

(1) Transmitted through the United States mail, shall be deemed filed (a) on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or (b) on the date it was mailed if there is also mailed to the tax court a declaration of mailing, signed by the appealing party or the attorney of the appealing party and verified by oath or affirmation, subject to penalties for false swearing, in substantially the following form:

DECLARATION OF MAILING

I hereby declare under the penalties for false swearing contained in ORS chapter 162 that on the _____ day of _____, 2__, I deposited a complaint entitled _____, and dated _____, in a sealed envelope, with postage prepaid, in the United States Post Office at _____, Oregon (or other state of mailing), addressed to the Oregon Tax Court, 520 Justice Building, 1162 Court Street, Salem, Oregon 97310 (or current address).

(Signature of appealing party or the attorney of the appealing party)

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(2) Lost in transmission through the United States mail, shall be deemed filed on the date it was mailed if the appealing party:

(a) Can establish by competent evidence satisfactory to the tax court that the complaint was deposited on or before the date due for filing in the United States mail and addressed correctly to the court; and

(b) Files with the court a duplicate of the lost complaint, with certified copy as required by ORS 305.560, within 30 days after written notification is given by the court of its failure to receive such complaint, but in no event later than 90 days after the date the complaint was otherwise required to be filed under ORS 305.560. [1975 c.381 §2; 1979 c.689 §3; 1993 c.612 §3]

305.419 Tax, penalty and interest payable before appeal; how determined; waiver; refund. (1) Except as provided in subsection (3) of this section, in any appeal

from an order, act, omission or determination of the Department of Revenue involving a deficiency of taxes imposed upon or measured by net income, the tax assessed, and all penalties and interest due, shall be paid to the department on or before the filing of a complaint with the regular division of the Oregon Tax Court under ORS 305.560 or before a complaint specially designated for hearing in the regular division under ORS 305.501 is heard. The complaint shall be filed as a claim for refund.

(2) Penalty and interest due under subsection (1) of this section are the amounts stated in the order, notice of assessment, notice of refund denial or proposed adjustment under ORS 305.270 by the department from which the appeal is taken.

(3) Where payment of the tax, penalties and interest would be an undue hardship, plaintiff may file an affidavit alleging undue hardship with the complaint. If the tax court finds undue hardship, the tax court judge may stay all or any part of the payment of tax, penalty and interest required under subsection (1) of this section. If the tax court judge finds no undue hardship, the tax court judge may grant the plaintiff up to 30 days from the date of determination to pay the taxes, penalties and interest. Failure by the plaintiff to pay the taxes, penalties and interest or to establish undue hardship will be cause for dismissing the complaint.

(4) If, in any appeal to the Oregon Tax Court for which payment of tax, penalty and interest assessed is required before filing of a complaint, the tax court orders that all or any part of the amount paid be refunded by the department, the amount so ordered to be refunded shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed from the date of payment to the department. [1982 s.s.1 c.29 §§2, 3; 1985 c.407 §1; 1995 c.650 §17; 1997 c.872 §19]

305.420 Issuance of subpoenas; administration of oaths; depositions. (1) The judge, a magistrate or the clerk of the tax court, on the request of any party to the proceeding, or the attorney of the party, shall issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of any returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry at any designated place of hearing in the manner prescribed by law in civil actions in courts of this state.

(2) Any employee of the court designated in writing for the purpose by the judge may administer oaths.

(3) Any party to the proceeding may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state. To that end, the party may compel the attendance of witnesses and the production of returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry.

(4) Subpoenas in a small claims procedure shall be issued only at the discretion of the court. The court may not issue a subpoena that requires the witness to attend for examination at a place outside the county in which the witness resides or is served, unless the residence or place of service of the witness is within 100 miles of the place of examination.

(5) Subject to ORS 305.390 and 305.392, subpoenas in a proceeding involving the determination of the value of an industrial plant, as defined in ORS 308.408, for purposes of ad valorem property taxation, may be issued as provided in subsection (1) of this section. However, upon petition of the person subpoenaed, the court shall make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed. [1961 c.533 §17; 1963 c.304 §1; 1981 c.139 §5; 1993 c.353 §6; 1995 c.650 §18; 2003 c.46 §5]

305.422 Waiver of penalty for failure to timely file property return. If a penalty under ORS 308.295 or 308.296 for the failure to timely file a real, combined or personal property return as required by ORS 308.290 is the subject of an appeal to the tax court, the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause. [2001 c.303 §5]

Note: 305.422 was added to and made a part of 305.404 to 305.560 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

305.425 Proceedings to be without jury and de novo; issues reviewable; rules of procedure. (1) All proceedings before the judge of the tax court shall be original, independent proceedings and shall be tried without a jury and de novo.

(2) If a statute provides for an appeal to or a review by the court of an order, act, omission or determination of the Department of Revenue, a board of property tax appeals or of any other administrative agency, the proceeding shall be an original proceeding in the nature of a suit in equity to set aside such order or determination or correct the act or omission. The time within which the statute provides that the proceeding shall be

brought is a period of limitations and is not jurisdictional.

(3) All hearings and proceedings before the tax court judge shall be in accordance with the rules of practice and procedure promulgated by the court, which shall conform, as far as practical to the rules of equity practice and procedure in this state. [1961 c.533 §16; 1965 c.6 §3; 1967 c.78 §9; 1973 c.484 §7; 1977 c.870 §29; 1981 s.s. c.1 §23; 1995 c.650 §19; 1997 c.541 §60]

305.427 Burden of proof in tax court proceedings. In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. [1965 c.6 §5; 1995 c.650 §20]

305.430 Hearings to be open to public; report of proceedings; exception; confidential information. (1) Except as provided in subsections (2) and (3) of this section, hearings before the judge or a magistrate of the tax court shall be open to the public. All proceedings in the regular division of the tax court shall be reported unless waived by the parties with the consent of the court. The expense of reporting shall be paid by the state from the appropriation for the court. Proceedings before the magistrate division shall not be reported.

(2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420 (5), and is introduced into evidence in any hearing before the tax court, the court first shall make such order or orders as are necessary to protect the confidentiality of the information.

(3) In any proceeding before a magistrate or before the tax court judge in which confidential business records, tax returns or documents containing trade secrets are to be introduced into evidence, upon motion of a party to the proceeding, the magistrate or judge may make such protective orders as may be necessary to protect the confidentiality of such records or the information contained therein. In determining whether such protective orders should be issued, the court shall weigh the harm suffered by the disclosing party against any benefit received by the public as a result of the disclosure. Complaints, pleadings and other filings containing confidential business record information, tax return information or trade secret information shall be subject to the provisions of this subsection.

(4) In a matter involving a request for a protective order under subsections (2) and (3) of this section, the decision of the judge or a magistrate of the tax court shall be a final order for purposes of appeal to the Supreme Court. The parties may appeal the issue of the protective order to the Supreme Court at any time after the protective order was granted or denied. Upon appeal to the Supreme Court, the judge or a magistrate of the tax court may stay the case on the merits until a resolution of the protective order issue is determined by the Supreme Court. [1961 c.533 §19; 1981 c.139 §9; 1981 c.727 §2; 1989 c.760 §1; 1995 c.650 §21]

305.435 [1961 c.533 §20; 1963 c.280 §1; 1965 c.6 §6; 1977 c.870 §30; 1991 c.459 §16; 1997 c.541 §62; repealed by 1995 c.650 §114]

305.437 Damages for frivolous or groundless appeal or appeal to delay. (1) Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless, damages in an amount not to exceed $5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment. Damages so awarded shall be paid within 10 days after the judgment becomes final. If the damages remain unpaid, the department may collect the amount awarded in the same manner as income taxes are collected under ORS 314.430.

(2) As used in this section, a taxpayer's position is "frivolous" if there was no objectively reasonable basis for asserting the position. [1987 c.843 §4; 1995 c.650 §6a]

305.440 Finality of unappealed decision of tax court; effect of appeal to Supreme Court. (1) The decision of the court shall be binding upon all parties until changed, if at all, by the decision of the Supreme Court upon appeal. If no appeal is taken to the Supreme Court, the decision of the court shall constitute a final determination of the matter. If an appeal is taken, the decision of the court shall become final in the same manner as the decision or judgment of the circuit court becomes final when appeal therefrom is taken to the Supreme Court.

(2) Upon the final determination of any ad valorem tax matter, all officers having charge of the rolls on which the assessments involved in such proceeding appears shall correct the same in accordance with such determination, and taxes shall be refunded as provided in ORS 311.806 or additional taxes collected by the proper officers. In the case of an appeal as to properties assessed or taxed under ORS 308.505 to 308.665 or 308.805 to 308.820, a certified copy of the judgment of the court shall be sufficient warrant for the apportionment, levying and collecting of taxes against the property constituting the subject matter of the appeal and upon the valuation determined by the court.

If any reapportionment as between counties is made by the court on appeal, corresponding adjustments shall be made by the tax collectors of the counties affected. [1961 c.533 §21; 1971 c.567 §15; 1977 c.870 §31; 1983 c.696 §9; 1985 c.85 §11; 1997 c.154 §26; 2003 c.576 §412]

305.445 Appeals to Supreme Court; reviewing authority and action on appeal. The sole and exclusive remedy for review of any decision or order of the judge of the tax court shall be by appeal to the Supreme Court. Jurisdiction hereby is vested in the Supreme Court to hear and determine all appeals from final decisions and final orders of the judge of the tax court. The scope of the review of either a decision or order of the tax court judge shall be limited to errors or questions of law or lack of substantial evidence in the record to support the tax court's decision or order. Such appeals, and the review of final decisions and final orders of the tax court, shall be in accordance with the procedure in actions at law on appeal from a circuit court, but without regard to the sum involved. Upon such appeal and review, the Supreme Court shall have power to affirm, modify or reverse the order or decision of the tax court appealed from, with or without remanding the case for further hearing, as justice may require. [1961 c.533 §22; 1995 c.650 §25]

305.447 Recovery by taxpayer of certain costs and expenses upon appeal to Supreme Court. If, in an appeal under ORS 305.445 involving taxes upon or measured by net income in which an individual taxpayer is a party, the court grants the refund claimed by the taxpayer or denies the additional assessment of taxes claimed by the Department of Revenue to be due from the taxpayer, the court may allow the taxpayer:

(1) Reasonable attorney fees for the appeal under ORS 305.445 and for any prior proceeding in the matter before the tax court; and

(2) Reasonable expenses as determined by the court in addition to costs and disbursements. Expenses include accountant fees and fees for other experts incurred by the taxpayer in preparing for and conducting the appeal under this section and any prior proceeding in the matter before the tax court. [1971 c.265 §3; 1977 c.870 §31a; 1995 c.650 §26; 1997 c.99 §§37,38]

305.450 Publication of tax court decisions. The tax court shall cause a copy of each of its written decisions to be delivered to the State Court Administrator. The administrator, after consultation with the judge of the tax court, shall determine whether a decision is of general public interest. The decisions determined to be of general public interest shall be published and distributed as provided in ORS 2.150. Bound volumes of reports of decisions constitute the official reports of the tax court. [1961 c.533 §23; 1963 c.250 §1; 1967 c.96 §1; 1967 c.398 §2; subsection (4) enacted as 1967 c.398 §9 (3); 1975 c.37 §2; 1977 c.145 §1; 1979 c.876 §3; 1982 s.s.1 c.7 §2]

305.452 Election and term of judge; vacancy; recommendation of appointees to fill vacancy. (1) The judge of the tax court shall be elected by the electors of the state for a term of six years, in the manner provided in ORS chapter 249.

(2) In the event of a vacancy in the office of judge, the vacancy shall be filled by an appointment made by the Governor. The Governor may request the governors of the Oregon State Bar to submit to the Governor the names of five or more eligible persons deemed by them to be particularly experienced in the field of tax law, as an aid to the Governor in making the appointment. [1961 c.533 §§2,3(2); 1979 c.190 §412]

305.455 Qualifications of judge; inapplicability of disqualification-for-prejudice provision. (1) The judge of the tax court shall be a citizen of the United States and of this state, and shall have been admitted to practice in the Supreme Court of Oregon and have been engaged in this state for at least three years preceding the election or appointment of the judge of the tax court, either in active practice, governmental or private, as an attorney and counselor at law or in the discharge of the duties of a judicial or quasi-judicial office.

(2) Notwithstanding the provision of any other law, the provisions of ORS 14.250 relating to the disqualification of a judge for prejudice shall not be applicable to any judge serving regularly or temporarily as a judge of the tax court. [1961 c.533 §3(1),(8); 2003 c.518 §10]

305.460 Salary, expenses, disability and retirement of judge and magistrates. (1) The judge of the tax court shall receive such salary as is provided by law. The presiding magistrate and magistrates of the tax court shall receive such salary as is fixed under the personnel plan established by the Chief Justice of the Supreme Court pursuant to ORS 1.008. The judge and magistrates shall receive no other allowances for services except as authorized by this section.

(2) When the judge or a magistrate of the tax court holds court or performs any other official function away from the state capital, hotel bills and traveling expenses necessarily incurred by the judge or magistrate in the performance of that duty shall be paid by the state. Such expenses are to be paid upon the certificate of the judge or magistrate to the truth of an itemized statement of the expenses. The certificate of expenses is a sufficient voucher upon which the claim shall be

paid as provided in ORS 293.295 to 293.462. The Oregon Department of Administrative Services shall draw a warrant upon the State Treasurer for the amount thereof in favor of the tax court judge or magistrate.

(3) The judge of the Oregon Tax Court shall be subject to the provisions of ORS 1.310 and 238.505 relating to disability and retirement to the same extent and in the same manner as a judge of a circuit court. A tax court magistrate shall be subject to the provisions of law relating to retirement for disability and retirement applicable to a state officer or employee. [1961 c.533 §§4,5; 1977 c.896 §9; 1983 c.740 §85; 1991 c.815 §10; 1995 c.650 §4]

305.465 [1961 c.533 §6; repealed by 1975 c.706 §10]

305.470 Presiding judge; functions. Whenever more than one judge is serving as a judge of the tax court, the judge elected or appointed under ORS 305.452 shall be the presiding judge. The presiding judge shall assign causes, matters and proceedings and apportion the business of the tax court. [1961 c.533 §7; 1981 s.s. c.1 §24]

305.475 Offices of tax court; location of hearings. The principal office of the tax court shall be in the state capital, but the court may hold hearings in any county seat designated under ORS 1.085 (2). The county court or board of county commissioners, upon request of the judge of the tax court, shall provide the court with suitable rooms at the county seat when hearings are held in the county seat. [1961 c.533 §9; 1969 c.706 §64d; 1983 c.763 §8]

305.480 State Court Administrator as administrator and clerk; other personnel; expenses; limitation on activities of personnel. (1) The State Court Administrator shall act as court administrator for the tax court. Other necessary employees of the court shall be appointed and otherwise governed by applicable provisions of the personnel plan for employees of the courts of this state who are state employees.

(2) The judge and employees of the court shall be reimbursed for all actual and necessary expenses as provided by law.

(3) No employee of the court shall act as attorney, counselor or accountant in the matter of any tax imposed or levied by this state or any of its political subdivisions.

(4) Subject to the applicable provisions of a personnel plan established by the Chief Justice of the Supreme Court of Oregon, the judge of the tax court shall appoint a person to serve as tax court clerk. The tax court clerk shall:

(a) Keep the seal of the tax court and affix it in all cases required by law.

(b) Record the proceedings of the court.

(c) Keep the records, files, books and papers pertaining to the tax court.

(d) File all papers delivered to the officer for that purpose in any suit or proceeding therein, or before the judge.

(e) Attend the tax court and administer oaths.

(f) Under the direction of the judge of the tax court enter its orders and judgments.

(g) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the tax court, or any paper pertaining thereto, and filed with the officer.

(h) In the performance of duties pertaining to the tax court, conform to the direction of the tax court judge.

(5) The State Court Administrator may delegate powers of the State Court Administrator under this section to employees of the State Court Administrator. [1961 c.533 §11; 1981 c.727 §1; 1995 c.273 §5; 1995 c.650 §3]

305.485 Records. (1) The records of the tax court shall include a register, journal and fee book.

(2) The register is a book wherein the clerk shall enter, by its title, every suit or proceeding commenced in, or transferred or appealed to, the tax court, according to the date of its commencement, transfer or appeal. Thereafter, until the entry of judgment, the clerk shall note therein, according to the date thereof, the filing or return of any paper or process, or the making of any order, rule or other direction in or concerning such suit or proceeding.

(3) The journal is a book wherein the clerk shall enter the proceedings of the court.

(4) The fee book is a book wherein the clerk shall enter, under the title of every cause, against the party to whom the service is rendered, the clerk's fees earned, and whether received or not received.

(5) The files of the court are all papers or process filed with or by the clerk of the court, in any suit or proceeding therein, or before the judge.

(6) Separate records shall be kept for the magistrate division.

(7) ORS 7.095, authorizing the use of electronic data processing techniques, is applicable to the records required by this section. [1961 c.533 §10; 1995 c.273 §26; 1995 c.650 §5; 1997 c.325 §§9,10]

305.490 Filing fees; recovery of certain costs and disbursements; additional recovery for certain taxpayers; disposition of receipts. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall

pay a filing fee for each complaint or petition as follows:

(a) If a small claims procedure is elected, $10.

(b) For a complaint or petition in the magistrate division, $25.

(c) For a complaint or petition in the regular division, $50.

(d) If a complaint or petition is specially designated under ORS 305.501 for hearing in the regular division, a fee of $50.

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

(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance taxes, the court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

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

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

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

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

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

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

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

(5) All fees and other moneys received or collected by the clerk by virtue of the office of the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund as miscellaneous receipts. [1961 c.533 §15(1), (3); 1965 c.6 §7; 1971 c.265 §1; 1977 c.870 §32; 1993 c.612 §1; 1995 c.650 §6; 1997 c.99 §§40,41; 1999 c.21 §10; 2001 c.287 §1]

305.492 Fees and expenses of witnesses. Any witness subpoenaed or whose deposition is taken shall receive the fees and mileage provided for witnesses in ORS 44.415 (2). Witnesses for the state or its political subdivisions shall be paid from moneys appropriated therefor. Payment of fees and mileage to other witnesses shall be made by the party at whose instance the witness appears or the deposition is taken. [Formerly 305.495]

305.493 Fees for transcripts or copies of records. The tax court may fix a fee, not in excess of the fees charged and collected by the clerks of the circuit court, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof. [Formerly 305.500]

305.494 When shareholder may represent corporation in tax court proceedings. Notwithstanding ORS 9.320, any shareholder of an S corporation as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2002, may represent the corporation in any proceeding before the Oregon Tax Court in the same manner as if the shareholder were a partner and the S corporation were a partnership. [Formerly 305.510; 1997 c.839 §42; 1999 c.90 §29; 2001 c.660 §24; 2003 c.77 §2]

305.495 [1961 c.533 §18; 1989 c.980 §12; renumbered 305.492 in 1995]

(Magistrate Division)

305.498 Magistrates; appointment; qualifications; oaths; duties; dismissal; appointment of presiding magistrate. (1) The magistrate division is established in the Oregon Tax Court. The judge of the tax court shall appoint one or more individuals to sit as magistrates of the magistrate divi-

sion at locations within the state as the judge shall determine.

(2) An individual who is appointed as a tax court magistrate shall be a citizen of the United States and a resident of this state and competent to perform the duties of the office.

(3) A full-time, part-time or temporary magistrate shall perform such duties as the judge of the tax court or presiding magistrate may direct.

(4)(a) Before entering on the duties of office, each individual employed as a tax court magistrate shall take and subscribe to an oath or affirmation that the individual:

(A) Will support the Constitutions of the United States and of this state and faithfully and honestly discharge the duties of the office.

(B) Does not hold, and while the individual is a magistrate will not hold, a position under any political party.

(b) The oath or affirmation shall be filed in the office of the Secretary of State.

(5) An individual while a magistrate shall hold no other office or position of profit, and shall pursue no other calling or vocation that is inconsistent with the expeditious, proper and impartial performance of the duties of a magistrate.

(6) The judge of the tax court may appoint one of the magistrates as presiding magistrate.

(7) A tax court magistrate and other officers and employees of the magistrate division of the tax court appointed under a personnel plan established by the Chief Justice of the Supreme Court of Oregon are state officers or employees in the exempt service and not subject to ORS chapter 240. However, an officer or employee shall have the right to be dismissed only for just cause after hearing and appeal. [1995 c.650 §2]

305.500 [1961 c.533 §§15(2),24; 1963 c.423 §3; renumbered 305.493 in 1995]

305.501 Appeals to tax court to be heard by magistrate division; exception; mediation; conduct of hearings; decisions; appeal de novo to tax court judge. (1) Except as provided in subsection (2) of this section, an appeal to the tax court shall be heard by a tax court magistrate unless specially designated by the tax court judge for hearing in the regular division. In any matter arising under the ad valorem tax laws and involving a county or county assessor that is designated for hearing in the regular division, the Department of Revenue shall be substituted for the county as a party.

(2) A party to the appeal may request mediation, or the tax court on its own motion may assign the matter to mediation. If the mediation does not result in an agreed settlement within 60 days after the date of the assignment, the appeal shall be assigned to a magistrate for hearing.

(3) The tax court, with the assistance of the State Court Administrator, shall establish procedures for magistrate division hearings, mediation and small claims procedures.

(4)(a) Subject to the rules of practice and procedure established by the tax court, a magistrate is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. A hearing may be conducted in person or by telephone. Magistrates may confer with each other in order to reach a decision on any matter.

(b) All written magistrate decisions shall be mailed to the parties to the appeal and to the Department of Revenue within five days after the date of entry of the written decision.

(5)(a) Any party dissatisfied with a written decision of a magistrate may appeal the decision to the judge of the tax court by filing a complaint in the regular division of the tax court within 60 days after the date of entry of the written decision.

(b) If a decision of a magistrate involves any matter arising under the ad valorem tax laws and a county was a party to the proceeding before the magistrate, the Department of Revenue may file a notice of appeal whether or not the department had intervened in the proceeding before the magistrate. In such cases, the department shall appear before the tax court judge in any proceeding on appeal.

(c) If a decision of a magistrate involves any matter arising under the ad valorem tax laws and a party other than a county appeals the decision to the tax court judge, the Department of Revenue shall be the defendant.

(d) Appeal to the judge of the tax court is the sole and exclusive remedy for review of a written decision of a magistrate.

(6) Appeal of a final decision of a magistrate before the judge of the tax court shall be as provided in ORS 305.425 (1) and 305.570.

(7) If no appeal is taken to the tax court judge within 60 days, the decision of the magistrate shall become final. The tax court shall enter a judgment enforcing all final decisions of the magistrate, which judgment shall be binding upon all parties. Upon the final determination of any ad valorem tax matter, either in a proceeding before the magistrate division or in a small claims procedure, ORS 305.440 (2) shall be applicable. [1995 c.650 §11; 1997 c.872 §20; 1999 c.340 §1]

305.505 Magistrate division records; statistical reports. (1) The records of the tax court magistrate division shall include information as to the dates cases are filed and the dates decisions are issued.

(2) At the time of preparation biennially of consolidated budgets for submission to the Legislative Assembly under ORS 8.125, for petitions or appeals filed after September 1, 1997, the State Court Administrator shall prepare and submit to the Legislative Assembly general statistical information as to the amount of time required by the tax court magistrate division to reach its decisions. [1995 c.650 §5a]

305.510 [1973 c.681 §2; 1985 c.802 §36; 1995 c.556 §31; renumbered 305.494 in 1995]

(Small Claims Procedure)

305.514 Small claims procedure; election; appraisal of property in lieu of hearing. (1) A plaintiff may elect to file a small claims procedure in the following classes of cases:

(a) A proceeding for refund or to set aside additional taxes assessed or taxes assessed when no return was filed in any case involving taxes imposed under ORS chapters 314, 316, 317 and 318, with respect to any year for which the amount in controversy does not exceed $5,000, exclusive of interest and penalties.

(b) A proceeding by a taxpayer in any property tax case in which a taxpayer has the right to appeal and that involves only the question of the assessed or specially assessed value of real or personal property, where a board of property tax appeals (by order of the board), an assessor or a tax collector has determined that the assessed or specially assessed value of:

(A) A parcel of land is not in excess of $250,000;

(B) The improvement on a parcel of land is not in excess of $250,000;

(C) Both a parcel of land and the improvement are not in excess of $250,000; or

(D) Personal property is not in excess of $250,000.

(c) A proceeding for the refund or the revision of taxes imposed by ORS chapter 118 where the amount in controversy does not exceed $5,000, exclusive of interest and penalties.

(d) A proceeding for the elderly rental assistance authorized under ORS 310.635 without limitation to the amount in controversy.

(e) A proceeding for refund or the revision of taxes imposed by ORS chapter 323 where the amount in controversy does not exceed $5,000, exclusive of interest and penalties.

(f) A proceeding for refund or to set aside additional taxes assessed or taxes assessed when no return was filed in any case involving taxes administered by a state agency or department under ORS 305.620 with respect to any year in which the amount in controversy does not exceed $5,000, exclusive of interest and penalties.

(g) A proceeding for refund or to set aside interest or penalties assessed in connection with any tax administered by the Department of Revenue, where the amount in controversy does not exceed $5,000. This paragraph does not apply to the denial of a request for the discretionary waiver of interest or penalties.

(2) Under a small claims procedure, the hearing shall not be recorded and the parties shall have no right to appeal the determination of the magistrate.

(3)(a) If the plaintiff elects a small claims procedure in a property tax case involving only the question of the assessed or specially assessed value of real property, the plaintiff may elect, in lieu of a hearing in the magistrate division, to have the property appraised as provided in this subsection.

(b) The election by the taxpayer may be included in the petition, or may be made by a separate petition in a form and filed as prescribed by the rules of the tax court. The clerk of the court shall give notice of the election by the taxpayer to the applicable county assessor.

(c) If the taxpayer elects as provided under this paragraph to have the real property appraised, there shall be no hearing in the magistrate division and the magistrate shall appoint an independent fee appraiser to appraise the property. The appraisal by the appointed appraiser shall be in writing and signed by the appraiser. For the purpose of the proceeding, the appraisal shall constitute the real market or specially assessed value of the property and shall be incorporated in the determination of the magistrate of the property's assessed or specially assessed value.

(d) The taxpayer shall pay to the appraiser appointed under paragraph (c) of this subsection a reasonable fee for the appraisal services rendered by the appraiser. [1995 c.650 §3a; 1997 c.99 §43; 1997 c.170 §17; 1997 c.541 §64; 2003 c.621 §77; 2003 c.804 §64]

305.515 [1961 c.533 §26; 1965 c.6 §8; 1967 c.78 §11; 1969 c.355 §1; 1971 c.567 §16; 1973 c.752 §11; 1975 c.705 §3; 1977 c.870 §33; 1977 c.892 §55; 1983 c.673 §19; 1985 c.407 §2; 1985 c.759 §39; 1985 c.816 §41; 1989 c.760 §2; 1991 c.459 §18; 1991 c.790 §18; 1993 c.270 §13; 1993 c.612 §2; 1997 c.99 §45; 1997 c.170 §19; repealed by 1995 c.650 §114]

305.520 [1961 c.533 §34; 1995 c.79 §109; repealed by 1995 c.650 §114]

305.525 Notice to taxpayer of right to appeal. At the same time that a notice of assessment, letter of refund denial or determination or an order of the board of property tax appeals is given to any taxpayer, the Department of Revenue or board of property tax appeals, as the case may be, shall in writing also notify the taxpayer of the right of the taxpayer to appeal to the tax court under ORS 305.404 to 305.560. [1961 c.533 §29; 1977 c.870 §54; 1995 c.650 §64; 1997 c.541 §§66,67]

305.530 [1961 c.533 §27; 1967 c.78 §10; 1971 c.567 §17; 1975 c.762 §18; 1977 c.870 §14; repealed by 1995 c.650 §114]

305.535 [1961 c.533 §28; 1969 c.355 §2; 1977 c.870 §15; 1977 c.892 §57; 1981 c.804 §85; 1983 s.s. c.5 §2; 1991 c.459 §20; 1993 c.270 §14; repealed by 1995 c.650 §114]

305.540 [1961 c.533 §30; 1971 c.351 §1; repealed by 1995 c.650 §114]

305.543 [1983 c.673 §21; 1991 c.459 §21; 1997 c.541 §69; repealed by 1995 c.650 §114]

305.545 [1961 c.533 §32; repealed by 1995 c.650 §114]

305.550 [1961 c.533 §31; 1971 c.351 §2; repealed by 1995 c.650 §114]

305.555 [1961 c.533 §33; 1993 c.270 §15; repealed by 1995 c.650 §114]

(Appeals Procedure; Effect of Pendency of Appeal)

305.560 Appeals procedure generally; procedure where taxpayer is not appellant; intervention. (1)(a) Except for an order, or portion thereof, denying the discretionary waiver of penalty or interest by the Department of Revenue, an appeal under ORS 305.275 may be taken by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court at its principal office at Salem, Oregon, within the time required under ORS 305.280.

(b) The clerk of the tax court shall serve certified copies of all complaints and petitions on the Department of Revenue. Service upon the department shall be accomplished by the clerk of the tax court filing the certified copy of the complaint with the Director of the Department of Revenue. Except as otherwise provided by law, other service shall be accomplished as provided in the rules of practice and procedure promulgated by the tax court.

(c)(A) The complaint shall be entitled in the name of the person filing the same as plaintiff and the Department of Revenue, county, taxpayer or other person or entity as defendant. If the complaint relates to value of property for ad valorem property tax purposes and the county has made the appraisal, the complaint shall be entitled in the name of the person filing the same as plaintiff and the county assessor as defendant.

(B) If any, a copy of the order of the department or board of property tax appeals shall be attached to the original complaint.

(2) The complaint shall state the nature of the plaintiff's interest, the facts showing how the plaintiff is aggrieved and directly affected by the order, act, omission or determination and the grounds upon which the plaintiff contends the order, act, omission or determination should be reversed or modified. A responsive pleading shall be required of the defendant.

(3) In any case in which the taxpayer is not the appealing party, a copy of the complaint shall be served upon the taxpayer by the appealing party by certified mail within the period for filing an appeal, and an affidavit showing such service shall be filed with the clerk of the tax court. A copy of the order of the department, if any, shall be attached to the complaint. The taxpayer shall have the right to appear and be heard.

(4)(a) At any time in the course of any appeal before the tax court, the department may intervene as a matter of right. A copy of any order or judgment issued by the tax court in any case in which the department is an intervenor shall be served upon the department in the manner provided in subsection (1)(b) of this section.

(b) The tax court, in its discretion, may permit other interested persons to intervene by filing a complaint in such manner and under such conditions as the court may deem appropriate. [1977 c.870 §10; 1989 c.760 §3; 1991 c.459 §23; 1993 c.270 §16; 1995 c.650 §10; 1997 c.541 §71]

305.565 Stay of collection of taxes, interest and penalties pending appeal; exception; bond. (1) Except as provided in subsection (2) of this section, proceedings for the collection of any taxes, interest or penalties resulting from an assessment of additional taxes imposed by ORS chapter 118, 310, 314, 316, 317, 318, 321 or this chapter shall be stayed by the taking or pendency of any appeal to the tax court.

(2) Notwithstanding subsection (1) of this section, the Department of Revenue may proceed to collect any taxes, interest or penalties described in subsection (1) of this section if the department determines that collection will be jeopardized if collection is delayed or that the taxpayer has taken a frivolous position in the appeal. For purposes of this subsection:

(a) Collection of taxes, interest or penalties will be jeopardized if the taxpayer designs quickly to depart from the state or to remove the taxpayer's property from the state, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax.

(b) A taxpayer's position in an appeal is frivolous if that position is of the kind described in ORS 316.992 (5).

(3) No proceeding for the apportionment, levy or collection of taxes on any property shall be stayed by the taking or pendency of any appeal to the tax court, or from an order of the county board of property tax appeals or the Oregon Tax Court, unless the assessor or tax collector either as a party to the suit or an intervenor, requests a stay and it appears to the satisfaction of the court that a substantial public interest requires the issuance of a stay.

(4) The tax court may, as a condition of a stay, require the posting of a bond sufficient to guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed. [1977 c.870 §11; 1982 s.s.1 c.29 §4; 1985 c.761 §9; 1991 c.567 §4; 1993 c.270 §18; 1995 c.650 §23; 1997 c.99 §§47,48; 1997 c.325 §13; 1997 c.541 §73]

305.570 Standing to appeal to regular division of tax court; perfection of appeal. (1)(a) Any person, including a county assessor or county tax collector aggrieved by and affected by a written decision of a tax court magistrate issued under ORS 305.501, or any person seeking a remedy in the tax court provided by statute, other than as provided in ORS 305.275 (1), may appeal to the regular division of the Oregon Tax Court, and appeal shall be perfected in the manner provided in ORS 305.404 to 305.560.

(b) Except for an appeal brought by a county assessor or county tax collector, the order being appealed under this subsection must affect the person or the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property. As used in this paragraph, an interest that obligates the person to pay taxes includes a contract, lease or other intervening instrumentality.

(2) A taxpayer or political subdivision affected by a determination of the Department of Revenue authorized under ORS 305.620 may appeal to the tax court as provided in ORS 305.620. [1977 c.870 §13; 1983 c.605 §3; 1983 c.749 §3; 1991 c.459 §29; 1993 c.18 §65; 1995 c.650 §24; 1997 c.541 §75; 1997 c.826 §§4,5; 1999 c.21 §11; 1999 c.340 §4]

305.575 Authority of tax court to determine deficiency. In an appeal to the Oregon Tax Court from an assessment made under ORS 305.265, the tax court has jurisdiction to determine the correct amount of deficiency, even if the amount so determined is greater or less than the amount of the assessment determined by the Department of Revenue, and even if determined upon grounds other or different from those asserted by the department, provided that claim for such additional tax on other or different grounds is asserted by the department before or at the hearing or any rehearing of the case before the tax court. In the event such other or different grounds are asserted by the department, the opposing party shall be allowed additional time, not less than 10 days, within which to amend or otherwise plead thereto, which additional time, however, may be waived by stipulation of the parties. The order of the tax court shall be sufficient for the collection by the department of the entire amount found by the court to be owing and due. [1977 c.870 §21; 1995 c.650 §30]

(Constitutional Limits Upon Property Taxes; Effects; Determination)

305.580 Exclusive remedies for certain determinations; priority of petitions. (1) The provisions of ORS 305.583, 305.585, 305.587 and 305.589 shall provide the exclusive remedy for determination of questions concerning:

(a) The effect of the limits of section 11b, Article XI of the Oregon Constitution on taxes, fees, charges and assessments of units of government.

(b) The authorized uses of the proceeds of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(2) A petition filed with the regular division of the Oregon Tax Court pursuant to ORS 305.583, 305.585, 305.587 or 305.589 shall have priority over all other cases pending before the regular division and shall be heard and decided as soon after coming to issue as is reasonably possible. [1991 c.459 §25; 1999 c.340 §8; 2003 c.195 §19]

305.583 Interested taxpayer petitions for certain determinations; petition contents; manner and time for filing; classification notice requirements; bond proceed use notice requirements. (1) An interested taxpayer may petition the regular division of the Oregon Tax Court to determine a question described in ORS 305.580. For purposes of this section and a question described in ORS 305.580 (1)(a), "interested taxpayer" means a person that is subject to the tax, fee, charge or assessment in question. For purposes of this section and a question described in ORS 305.580 (1)(b), "interested taxpayer" means a person that is subject to a tax, fee, charge or assessment that is pledged to secure or available for payment of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(2) The petition shall be filed and perfected in the following manner only:

(a) The petitioner shall file an original and two certified copies of a petition with the clerk of the tax court at its principal office in Salem, Oregon. The petition shall name as respondent the government unit that imposes the tax, fee, charge or assessment, that issues the bonded indebtedness or, in the case of an urban renewal agency, that receives the taxes. The filing in the tax court shall constitute the perfection of the petition. The clerk of the tax court shall serve the government unit by mailing a certified copy of the petition to the recording officer or chief administrative officer of the local government unit or to the Attorney General if the tax, fee, charge or assessment in question is imposed by the State of Oregon. The clerk also shall serve a copy of any petition naming a local government unit as respondent upon the Oregon Department of Justice.

(b) The petition shall state the facts and grounds upon which the petitioner contends that the tax, fee, charge or assessment is affected by section 11 or 11b, Article XI of the Oregon Constitution, or that a use of the proceeds of bonded indebtedness is not authorized. The case shall proceed thereafter in the manner provided for appeals concerning ad valorem property tax assessments. ORS 305.405 to 305.494 shall apply to such actions.

(3)(a) Except as provided in subsections (4) to (7) of this section, in the case of a question regarding the effect of the limits of section 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment that is imposed under a resolution or ordinance approved by the governing body of a local government unit, the petition shall be filed within 60 days after the action of the governing body approving the ordinance or resolution, adopting a new ordinance or resolution or changing an existing ordinance or resolution under which the tax, fee, charge or assessment is imposed, if the resolution or ordinance includes a classification of the tax, fee, charge or assessment as subject to or not subject to section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the tax, fee, charge or assessment, the petition shall be filed within 60 days after the later of:

(A) The last date, but no later than November 15, that the tax statements were mailed for the tax year in which the tax, fee, charge or assessment was imposed; or

(B) The date of imposition of the tax, fee, charge or assessment on the petitioner.

(b) If the local government unit adopts an ordinance or resolution classifying all or any of the taxes, fees, charges or assessments it imposes as subject to or not subject to section 11 or 11b, Article XI of the Oregon Constitution, as described in ORS 310.145, the petition shall be filed within 60 days after the governing body adopts the ordinance or resolution.

(4) In the case of a question concerning any tax, fee, charge or assessment that is characterized by the local government unit as an assessment for local improvements, the petition shall be filed within 60 days after the local government unit gives notice of its intention to characterize the charge as an assessment for local improvements. Notice may be given to affected property owners by the local government unit either when a local improvement district is formed, in a notice of intent to assess given by the local government unit or by other individual notice prior to assessment. Notice shall be given no later than the date the assessment is imposed. Notice given as provided under this subsection is in lieu of the notice required under subsection (8) of this section.

(5) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness approved by the governing body of a local government unit, the petition shall be filed within 60 days after the date the issuance of the bonded indebtedness was approved by the governing body of the local government unit if the resolution or ordinance of the governing body authorizing issuance of the bonded indebtedness includes a classification of the bonded indebtedness as subject to or not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the bonded indebtedness, the petition shall be filed within 60 days after the date specified in subsection (3)(a) of this section.

(6) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that was approved by the electors of the local government unit at an election held on or after September 29, 1991, the petition shall be filed within 60 days after the date of the election at which the question of issuing the bonded indebtedness was approved by the electors of the local government unit.

(7) In the case of a question concerning the effect of section 11 or 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment imposed by the state, the petition shall be filed within 60 days after the first imposition of the tax, fee, charge or assessment by a state agency. For purposes of this subsection, a tax, fee, charge or assessment shall be considered imposed when it is due as provided by statute or when the

state agency notifies a person that the tax, fee, charge or assessment is due.

(8) A local government unit:

(a) Shall give notice of its adoption of an ordinance or resolution classifying any of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(b) May give notice of its adoption of an ordinance or resolution specifying the authorized uses of the proceeds of bonded indebtedness by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(9) A notice described in subsection (8) of this section shall:

(a) Appear in the general news section of the newspaper, not in the classified advertisements;

(b) Measure at least three inches square;

(c) Be printed in a type size at least equal to 8-point type; and

(d) State that the local government unit has adopted a resolution or ordinance:

(A) Classifying one or more of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the classification of the taxes, fees, charges or assessments may be sought within 60 days of the date of the resolution or ordinance; or

(B) Specifying the authorized uses of the proceeds of bonded indebtedness, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the specification of authorized uses may be sought within 60 days of the date of the resolution or ordinance.

(10) An ordinance or resolution that results in a mere change in the amount of a tax, fee, charge or assessment and does not result in a change in the characteristics or attributes of the tax, fee, charge or assessment, or contain a change in purpose to which the revenue is applied, may not be considered a change that may result in a proceeding commenced under subsection (3) of this section.

(11) In the case of a question concerning the authorized uses of the proceeds of bonded indebtedness, if the governing body has not published the notice described in subsection (8)(b) of this section, the petition shall be filed within 180 days after the questioned use of the proceeds is made. [1991 c.459 §26; 1993 c.18 §66; 1993 c.270 §19; 1995 c.79 §110; 1995 c.650 §73; 1997 c.541 §§78,78a,79,79a; 1999 c.340 §9; 2003 c.195 §20]

305.585 Local government petitions concerning taxes of another local government under 1990 Measure 5; manner and time for filing. (1) A local government unit may petition the regular division of the Oregon Tax Court to determine whether the limits of section 11b, Article XI of the Oregon Constitution apply to a tax, fee, charge or assessment of another local government unit if the boundaries of both units include common territory and if the petitioning local government unit will lose or has lost revenue because of the tax, fee, charge or assessment that is the subject of the petition.

(2) The petitioner shall file an original and two certified copies of a petition with the clerk of the tax court at its principal office in Salem, Oregon. The petition shall name the local government unit that imposes the tax, fee, charge or assessment as respondent. Such filing in the tax court shall constitute the perfection of the petition. The clerk of the tax court shall serve the respondent local government unit by mailing a certified copy of the petition to the recording officer or chief administrative officer of the local government unit. The clerk also shall serve a copy of the petition upon the Oregon Department of Justice.

(3) The petition shall state the facts and grounds upon which the petitioner contends that the tax, fee, charge or assessment at issue is not subject to the limits of section 11b, Article XI of the Oregon Constitution. The case shall proceed thereafter in the manner provided for appeals concerning ad valorem property tax assessments. ORS 305.405 to 305.494 shall apply to such actions.

(4) The petition shall be filed not later than 30 days after the date the respondent local government unit filed its certificate required under ORS 310.060 with the county assessor. [1991 c.459 §26a; 1995 c.79 §111; 1995 c.650 §74; 1999 c.340 §10]

305.586 Legislative findings; policy on remedies for misspent bond proceeds. (1) The Legislative Assembly finds that, when general obligation bonds are issued by a government unit to finance the cost of capital construction or improvements, subjecting

the taxes imposed to pay the principal and interest on that bonded indebtedness to the limits of section 11b (1), Article XI of the Oregon Constitution, reduces the credit quality of the bonds, injures bondholders and increases the cost of borrowing for all local governments in Oregon. The Legislative Assembly also finds that it is in the best interests of the State of Oregon and local governments in Oregon to ensure that, if a local government body expends proceeds from such bonds for other than capital construction or improvements, the holders of the bonds, who are innocent with regard to such expenditure, will not suffer impairment of their security and interest in the bonds as a result.

(2) It is the policy of the State of Oregon and a matter of statewide concern that, notwithstanding ORS 305.587 (1) and 305.589 (8), if in a proceeding commenced under ORS 305.583 or 305.589, the Oregon Tax Court finds that the proceeds of general obligation bonds issued for capital construction or improvements under section 11b (3)(b), Article XI of the Oregon Constitution, have been expended for purposes other than capital construction or improvements, the court shall endeavor, to the fullest extent practicable and consistent with equitable principles, to fashion a remedy that does not impair the security or value of the bonds to the bondholders and does not prejudice the ability of the local government body to satisfy its obligations under the bonds.

(3) In addition, the court shall fashion any remedy in a manner that takes into account the financial capacity and practical alternatives available to the local government body, and shall ensure that the remedy is proportional to, and restricted to correcting the amount of, any unlawful expenditure of bond proceeds. To the fullest extent possible, the court shall avoid any remedy that either invalidates, in whole or in part, the bonds or taxes levied or to be levied for payment of the bonds, or that makes any amount of the bonds for which the proceeds lawfully were expended subject to the limits of section 11b (1), Article XI of the Oregon Constitution. [1997 c.171 §5]

305.587 Tax court findings; orders; refunds; bond measure construction; other relief. (1) If, in a proceeding commenced under ORS 305.583, the regular division of the Oregon Tax Court finds that a challenged tax, fee, charge or assessment is subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, the tax court may:

(a) Order the government unit to make refunds to petitioners of any part of the challenged tax, fee, charge or assessment imposed on or after the date that is 90 days before the date the petition was filed and that was collected in excess of the limits of section 11 or 11b, Article XI of the Oregon Constitution. The tax court may not order refunds if the government unit previously had obtained a judgment of the tax court or the Oregon Supreme Court under ORS 305.589, that the tax, fee, charge or assessment in question was not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution.

(b) Order such other relief as it considers appropriate, including cancellation of taxes imposed but not collected, but such relief shall have prospective effect only. In cases involving local government units, a copy of the tax court's order shall be served upon the assessor of the county or counties in which the local government unit is located at the same time the order is served upon the parties.

(2) If the tax court orders a unit of government to make refunds of any tax, fee, charge or assessment that was imposed and collected in excess of the limits of section 11 or 11b, Article XI of the Oregon Constitution, the government unit shall do so out of the resources of the government unit. No refund so ordered shall be paid from the unsegregated tax collections account. The assessor shall not be required to recompute the amount of tax due from any property or property owner with respect to the tax, fee, charge or assessment that is the subject of the order for any tax year for which a tax statement has been delivered under ORS 311.250.

(3) If, in a proceeding commenced under ORS 305.585, the tax court finds that a tax, fee, charge or assessment is not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, the tax court may order such relief as it considers appropriate, but such relief shall have prospective effect only. In cases involving local government units, a copy of the tax court's order shall be served upon the assessor of the county or counties in which the local government unit is located at the same time the order is served upon the parties. The assessor shall not be required to recompute the amount of tax due from any property or property owner with respect to the tax, fee, charge or assessment that is the subject of the order for any tax year for which a tax statement has been delivered under ORS 311.250.

(4) For purposes of this section, taxes, fees, charges or assessments are deemed imposed when the statement or bill for the taxes, fees, charges or assessments is mailed.

(5) In the case of a question concerning the authorized uses of the proceeds of bonded indebtedness, the tax court shall construe

the provisions of the measure authorizing the bonded indebtedness and the use of the proceeds liberally to allow the government unit to provide the facilities or services approved by the voters.

(6) If, in a proceeding commenced under ORS 305.583, the regular division of the tax court finds that a use of the proceeds of bonded indebtedness is not authorized by the applicable law, the tax court may prohibit the expenditure or proceed in accordance with ORS 305.586. [1991 c.459 §26b; 1993 c.270 §20; 1997 c.541 §84; 1999 c.340 §11; 2003 c.195 §21]

305.589 Judicial declarations; petition by local government; notice; intervention; appeal; remedies; costs. (1) A local government unit or an association of local government units acting for the common benefit of and on behalf of consenting members may petition the regular division of the Oregon Tax Court for a judicial declaration of the court concerning a question described in ORS 305.580.

(2) Notice of the commencement of a proceeding under this section shall be given by the petitioner or petitioners by publication of notice directed to all electors, taxpayers and other interested persons, without naming such electors, taxpayers or other interested persons individually. The notice shall be published at least once a week for three successive weeks in a newspaper of general circulation within the boundaries of the local government unit and each of the consenting members of the association of local government units, if any, or if no such newspaper is published therein, then in a contiguous county.

(3) The petitioner or petitioners may elect to give further notice to affected electors, taxpayers and other interested persons, or the court may order such further notice as the court considers practicable.

(4) The action authorized by this section shall be a special proceeding in the nature of an ex parte proceeding in the absence of the intervention of a respondent in opposition to the petition.

(5) Jurisdiction of the local government unit and of consenting members of an association of local government units shall be obtained by filing of the petition. Jurisdiction over the electors, taxpayers and other interested persons shall be complete 10 days after the date of completing publication of the notice provided for in subsection (2) of this section, or giving of any further notice as provided for in subsection (3) of this section. Jurisdiction of any other party shall be obtained by appearance of any interested person who seeks and is granted leave to intervene in the proceeding.

(6)(a) Any elector, taxpayer or interested person or local government unit that may be affected by the tax, fee, charge or assessment that is the subject of the petition may intervene as a petitioner or respondent by filing the appropriate appearance.

(b) Any elector, taxpayer or interested person or local government unit that may be affected by the use of the proceeds of the bonded indebtedness or a person that is subject to a tax, fee, charge or assessment that is pledged to secure or available for payment of the bonded indebtedness that is the subject of the petition may intervene as a petitioner or respondent by filing the appropriate appearance.

(7) Any party to a proceeding commenced under this section, including a consenting member of an association of local government units that was a party to the proceeding, may appeal from the judgment rendered by the tax court to the Oregon Supreme Court in the manner provided for appeals from other decisions of the tax court under ORS 305.445.

(8)(a) If, in a proceeding commenced under this section, the court finds that a tax, fee, charge or assessment is subject to the limits of section 11b, Article XI of the Oregon Constitution, the court may order such relief as it considers appropriate, but such relief shall be prospective only.

(b) If, in a proceeding commenced under this section, the court finds that a use of the proceeds of bonded indebtedness is not authorized, the tax court may prohibit the expenditure or proceed in accordance with ORS 305.586.

(9) Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the court.

(10) As used in this section:

(a) "Local government unit" means any unit of local government, including a city, county, incorporated town or village, school district, any other special district, or any other municipal or quasi-municipal corporation, intergovernmental authority created pursuant to ORS 190.010, a district as defined in ORS 198.010, 198.180, 198.210 and 198.330 or an urban renewal agency established under ORS 457.035.

(b) "Consenting member" means a member of an association of local government units who affirmatively consents, through filing of a consenting certificate with the tax court, to the commencement of a proceeding under this section.

(c) "Association of local government units" means an association, or any other lawful organization, composed of member local government units organized for the mu-

tual benefit of such local government units. [1991 c.459 §27; 1993 c.270 §21; 1999 c.340 §12; 2003 c.195 §22; 2003 c.576 §250]

305.591 Court determination that 1990 Measure 5 tax limit is inapplicable; collection of tax; appeal; stay denied. (1) If a court of competent jurisdiction determines that all or any part of section 11b, Article XI of the Oregon Constitution does not apply to a tax on property, the court may order the assessor, tax collector or other appropriate public official to impose or collect that tax without regard to that portion of section 11b, Article XI of the Oregon Constitution the court determines to be inapplicable.

(2) When so ordered by a court, the assessor, tax collector or other public official shall take all necessary action to impose or collect the tax in compliance with the order of the court.

(3) Appeal of a decision of a court that all or any part of section 11b, Article XI of the Oregon Constitution does not apply to any tax shall not operate to stay any order of the court directing a public official to collect the tax without regard to the provisions of all or part of section 11b, Article XI of the Oregon Constitution. [1991 c.459 §28]

INTERGOVERNMENTAL TAX RELATIONS

(Federal and Other States)

305.605 Application of tax laws within federal areas in state. Where not inconsistent with the Constitution and laws of the United States, notwithstanding any provision of any other statute of this state, the laws of this state relating to the imposition and collection of taxes shall apply with respect to any property located, any sale, use or transaction occurring, any income arising, or any person residing within any federal area situated within the exterior boundaries of this state. [Formerly 306.240]

305.610 Reciprocal recognition of tax liability; actions in other states for Oregon taxes. (1) The courts of Oregon shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this state. The officials of such other state may bring action in the courts of this state for the collection of such taxes. The certificate of the Secretary of State of such other state that such officials have the authority to collect the taxes sought to be collected by such action shall be conclusive proof of that authority.

(2) The Attorney General of Oregon, and collection agencies when employed as provided by ORS 825.508, are empowered to bring action in the courts of other states to collect taxes legally due the State of Oregon.

(3) As used in this section, "taxes" includes:

(a) Tax assessments lawfully made whether they are based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise.

(b) Penalties lawfully imposed pursuant to a taxing statute.

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(4) The Oregon Tax Court shall not have jurisdiction over actions brought pursuant to this section. [Formerly 306.250; subsection (4) enacted as 1961 c.533 §54; 1967 c.178 §4]

305.612 Reciprocal offset of tax refunds in payment of liquidated tax obligations; rules. (1) The Director of the Department of Revenue may enter into an intergovernmental agreement with the United States Financial Management Service and the Internal Revenue Service for the purpose of engaging in the reciprocal offset of federal tax refunds in payment of liquidated state tax obligations and the offset of state tax refunds in payment of liquidated federal tax obligations.

(2) The director may pay a fee charged by the federal government for the processing of an offset request. The fee may be deducted from amounts remitted to the state by the federal government pursuant to an intergovernmental agreement.

(3) The Department of Revenue may by rule establish a fee to be charged to the federal government for the provision of state offset services.

(4) All moneys received by the department in payment of charges made pursuant to subsection (3) of this section shall be deposited in a department miscellaneous receipts account established under ORS 279.833. [2001 c.28 §3]

Note: The amendments to 305.612 by section 254, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

305.612. (1) The Director of the Department of Revenue may enter into an intergovernmental agreement with the United States Financial Management Service and the Internal Revenue Service for the purpose of engaging in the reciprocal offset of federal tax refunds in payment of liquidated state tax obligations and the offset of state tax refunds in payment of liquidated federal tax obligations.

(2) The director may pay a fee charged by the federal government for the processing of an offset request.

The fee may be deducted from amounts remitted to the state by the federal government pursuant to an intergovernmental agreement.

(3) The Department of Revenue may by rule establish a fee to be charged to the federal government for the provision of state offset services.

(4) All moneys received by the department in payment of charges made pursuant to subsection (3) of this section shall be deposited in a department miscellaneous receipts account established under ORS 279A.290.

305.615 Apportionment of moneys received from United States in lieu of property taxes. The Department of Revenue shall apportion annually to the state and counties any moneys received by the state from the United States, or any agency thereof, as payments in lieu of ad valorem property taxes. Such moneys shall be apportioned in the same amounts and to the same governmental divisions as the taxes in lieu of which the payments are made would be apportioned if they were levied. [Formerly 306.180]

(Local)

305.620 Collection and distribution of local taxes on income and sales; costs; court review of determinations and orders; appeals. (1) Any state agency or department may enter into agreements with any political subdivision of this state for the collection, enforcement, administration and distribution of local taxes of the political subdivision imposed upon or measured by gross or net income, wages or net earnings from self-employment or local general sales and use taxes.

(2) The department or agency shall prescribe the rules by which the agreements entered into under subsection (1) of this section are administered.

(3) The department or agency shall prescribe the rules by which the taxes described by subsection (1) of this section are administered, collected, enforced and distributed.

(4) A political subdivision may appear as an intervenor at any conference held by the Department of Revenue or conference, hearing or proceeding held by another department or agency in connection with a local tax administered by the department or agency. The political subdivision may be represented by its own counsel. The department or agency shall adopt rules governing the procedures to be followed by the political subdivision in making an appearance.

(5) Costs incurred by the department or agency in the administration, enforcement, collection and distribution of taxes under the agreements entered into under subsection (1) of this section shall be first deducted from the taxes collected before distribution is made to the political subdivision which is a party to the agreement.

(6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the Department of Revenue or orders of another department or agency relating to the collection, enforcement, administration and distribution of local taxes under agreements entered into under subsection (1) of this section.

(7) A proceeding for refund or to set aside additional taxes or taxes assessed when no return was filed may be initiated before the state agency or department or as provided in ORS 305.514 (1)(f).

(8) An appeal from a determination or an order may be taken by the taxpayer or by the political subdivision whose taxes are in issue, by filing an original and two certified copies of a complaint with the clerk of the Oregon Tax Court at its principal office at the state capital, Salem, Oregon, within 60 days after the notice of the determination of the Department of Revenue or the order of the department or agency is sent to the taxpayer or the political subdivision. The filing of the complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service of the taxpayer's complaint shall be accomplished by the clerk of the tax court by filing a certified copy of the complaint with the administrative head of the department or agency and a certified copy with the political subdivision. Service of the political subdivision's complaint shall be accomplished by the clerk of the tax court by filing a certified copy of the complaint with the administrative head of the department or agency and mailing a certified copy of the complaint to the taxpayer. The complaint of a taxpayer shall be entitled in the name of the person filing as plaintiff and the department or agency as defendant. The complaint of a political subdivision shall be entitled in the name of the political subdivision as plaintiff and the taxpayer and the department or agency as defendants. A copy of the order of the department or agency shall be attached to the original complaint. All procedures shall be in accordance with ORS 305.405 to 305.494. [1967 c.550 §§12,13,14,15; 1969 c.574 §5; 1971 c.261 §1; 1971 c.600 §3; 1973 c.98 §1; 1983 c.749 §4; 1985 c.407 §3; 1995 c.79 §112; 1995 c.650 §62; 1997 c.325 §15; 1999 c.21 §12; 2003 c.621 §78]

305.625 State and political subdivisions are employers for purpose of withholding city or county income tax. If the ordinances of any city or county in this state provide for the collection of an income tax, in whole or in part, by imposing on employers generally the duty of withholding sums from the compensation of individuals employed within the boundaries of the city or county and making returns of such sums to the authorities of such cities or counties, then the State of Oregon or any political

subdivision is considered to be an employer as to its employees who come within the jurisdictional limits of the ordinance of the city or county. [1969 c.574 §1]

305.630 Compliance with city or county income tax ordinance required. The head of each branch, department or agency of the government of the State of Oregon or a political subdivision (whether executive, legislative or judicial) shall comply with requirements of such city or county ordinance in the case of employees of such branch, department or agency who are subject to such tax and whose regular place of employment is within the city or county, pursuant to an agreement made under ORS 305.620. [1969 c.574 §2]

305.635 Rate of withholding to be designated by city or county; forms. The city or county shall designate clearly the rate of withholding to be used by the State of Oregon or political subdivision and shall provide forms acceptable to the state or political subdivision to be used in reporting and remitting taxes withheld pursuant to the agreement. [1969 c.574 §3]

305.640 Discrimination among employers prohibited. Nothing in ORS 305.620 to 305.640 consents to the application of any law that has the effect of imposing more burdensome requirements on the State of Oregon or a political subdivision than it imposes on other employers, or that has the effect of subjecting the State of Oregon or a political subdivision, or any of its officers or employees, to any penalty or liability by reason of ORS 305.620 to 305.640. [1969 c.574 §4]

MULTISTATE TAX COMPACT

305.655 Multistate Tax Compact. The Multistate Tax Compact is hereby enacted into law and entered into on behalf of this state with all other jurisdictions legally joining therein in a form substantially as follows:

ARTICLE I
PURPOSES

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II
DEFINITIONS

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any governmental unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of

Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III
ELEMENTS OF INCOME TAX LAWS

1. Taxpayer option, state and local taxes. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

2. Taxpayer option, short form. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

3. Coverage. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV
DIVISION OF INCOME

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing

district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental of royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(d) Gain or loss from the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than 50 percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this state in accordance with the sales factor of the partnership for its first full tax year immediately preceding its tax year during which the partnership interest was sold.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor

plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V
ELEMENTS OF SALES AND USE TAX LAWS

1. Tax credit. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

2. Exemption certificates, vendors may rely. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI
THE COMMISSION

1. Organization and management. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The Attorney General of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such Attorneys General, designees or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its Executive Committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The commission shall appoint an Executive Director who shall serve at its pleasure, and it shall fix his duties and compensation. The Executive Director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the Executive Director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(L) The commission annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

2. Committees. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an Executive Committee of seven members, including the Chairman, Vice Chairman, Treasurer and four other members elected annually by the commission. The Executive Committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

3. Powers. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

4. Finance. (a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII
UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII
INTERSTATE AUDITS

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this Article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX
ARBITRATION

1. Whenever the commission finds a need for settling disputes concerning apportionment and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple tax-

ation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X
ENTRY INTO FORCE AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the with-

drawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI
EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[1967 c.242 §1; 1989 c.625 §75]

305.660 Director of department to represent state; alternate. The Director of the Department of Revenue shall constitute the member of the Multistate Tax Commission who shall represent Oregon on such multistate commission. If, at any time and for any reason, the director is unable to carry out any duty or activity required of a member of the Multistate Tax Commission, the director shall be represented by an alternate appointed by the director. The director shall at all times maintain on file with the Multistate Tax Commission written notification of the designation and identity of the alternate. [1967 c.242 §3; 1969 c.520 §28]

305.665 Appointment of consultants from political subdivisions imposing taxes having multistate impact. The Governor of Oregon shall appoint one person from the City of Portland, and from time to time one person from any other municipality or political subdivision imposing any tax defined in Article II of the Multistate Tax Compact, to consult regularly with the Director of the Department of Revenue of Oregon, or the alternate of the director, in accordance with Article VI, section 1 (b) of the compact. [1967 c.242 §4]

305.670 [1967 c.242 §5; repealed by 1979 c.691 §7]

305.675 Application of compact provisions relating to interstate audits. Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to this state. [1967 c.242 §6]

305.676 Mediation and arbitration laws not applicable to Multistate Tax Commission processes. Any alternative dispute resolution process undertaken under the authority of the Multistate Tax Commission need not comply with and is not subject to ORS chapter 36. [1999 c.224 §6]

305.685 Multistate Tax Commission Revolving Account. (1) There is created in the General Fund of the State Treasury the Multistate Tax Commission Revolving Account. Notwithstanding any other law, all moneys received by the Department of Revenue as a result of audits performed by the Multistate Tax Commission shall be deposited in the Multistate Tax Commission Revolving Account and are continuously appropriated. As of June 30 of each year, all moneys in excess of $150,000 in this account shall be forwarded to the State Treasurer for deposit as miscellaneous revenues of the General Fund of the State of Oregon.

(2) The Department of Revenue may transfer $5,000 from the funds appropriated in section 1 of chapter 187, Oregon Laws 1975, to the Multistate Tax Commission Revolving Account. Such funds are continuously appropriated for reimbursement to the Multistate Tax Commission for out-of-state corporation audits made for the State of Oregon. [1975 c.187 §4; 1993 c.726 §5; 2001 c.28 §1]

CHARITABLE CHECKOFF PROGRAM

305.690 Definitions for ORS 305.690 to 305.753. As used in ORS 305.690 to 305.753, unless the context otherwise requires:

(1) "Biennial years" means the two income tax years of individual taxpayers that begin in the two calendar years immediately following the calendar year in which a list is certified under ORS 305.715.

(2) "Commission" means the Oregon Charitable Checkoff Commission.

(3) "Department" means the Department of Revenue.

(4) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 2002. [1989 c.987 §2; 1993 c.726 §6; 1995 c.556 §32; 1997 c.839 §43; 1999 c.90 §30; 2001 c.660 §25; 2003 c.77 §3]

305.695 Oregon Charitable Checkoff Commission; qualifications; term; compensation and expenses. (1) There is created the Oregon Charitable Checkoff Commission, consisting of five voting members appointed by the Governor and as nonvoting members, one Representative appointed by the Speaker of the House of Representatives and one Senator appointed by the President of the Senate. One appointment of a voting member shall be based on recommendation of the Speaker of the House of Representatives and one appointment shall be made based on recommendation of the President of the Senate.

(2) The term of office of each voting member is four years, but a member serves at the pleasure of the Governor. The term of office of a nonvoting member is two years. Before the expiration of the term of a voting member, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment. If there is a vacancy in the voting membership for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. The Speaker and President, respectively, shall make any appointment to fill a vacancy in the nonvoting membership.

(3) Individuals appointed members of the commission shall be citizens of Oregon well qualified by experience to make policy and recommendations in areas of concern to the commission and otherwise to perform the duties of the office. Members of the commission shall be diversified in their charitable interests. At the time of appointment, the voting members shall not have any direct or indirect financial interest in any checkoff proposal currently in law or under consideration by the commission. If a conflict arises after a member's appointment, the member shall declare the conflict and abstain from deliberations and voting on the proposal.

(4) A voting member of the commission is entitled to compensation and expenses as provided in ORS 292.495. The nonvoting legislative members shall be entitled to compensation and expenses under ORS 171.072. [1989 c.987 §3]

305.700 Officers; meetings; quorum; director as nonvoting member. (1) The Oregon Charitable Checkoff Commission shall select from its members a chairperson, a vice chairperson and other officers as necessary. The chairperson or vice chairperson shall serve until the expiration of the term of the chairperson or vice chairperson as a member of the commission, or until the chairperson or vice chairperson resigns or is removed in accordance with subsection (5) of this section.

(2) The commission shall meet at least once in every even-numbered calendar year at a place, day and hour determined by the commission. The commission also may meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission. Regular and special meetings of the commission may be convened upon notice in the manner required by ORS 192.640.

(3) A majority of the members of the commission constitute a quorum for the transaction of business.

(4) In addition to the seven members of the commission, the Director of the Department of Revenue shall be a nonvoting, ex officio member. The director shall not be entitled to compensation and expenses as provided under ORS 292.495.

(5) If the chairperson or vice chairperson resigns or is removed from office, a new chairperson or vice chairperson shall be elected by the commission. Until a new chairperson is elected, the vice chairperson shall act as chairperson.

(6) The commission by a three-fifths vote of the members may declare the office of chairperson or vice chairperson vacant if the chairperson or vice chairperson is unavailable or otherwise unable to perform the duties of the office satisfactorily. [1989 c.987 §§5,7]

305.705 Duties of chairperson. (1) The chairperson shall be the chief executive officer of the Oregon Charitable Checkoff Commission. The chairperson shall be responsible for the expenditure of all commission funds and shall sign all vouchers for obligations incurred or for expenditures authorized by the commission.

(2) The chairperson, on behalf of the commission, shall execute all agreements,

contracts or other documents entered into or approved by the commission.

(3) Subject to any applicable provisions of the State Personnel Relations Law and the approval of the commission, the chairperson may employ or remove executive, technical and expert assistants and other employees as needed and fix their compensation. However, executive, technical and expert assistants shall be in the unclassified service for purposes of the State Personnel Relations Law.

(4) The vice chairperson shall perform the duties assigned by the chairperson and, in accordance with the rules of the commission, shall perform the duties and have the powers of the chairperson when the chairperson is temporarily unable to perform the duties of the chairperson. [1989 c.987 §6]

305.710 Notice of availability of space in tax return for checkoffs; determination of entities eligible for checkoff. (1) The Department of Revenue shall notify the Oregon Charitable Checkoff Commission of the number of lines available for the material described in ORS 305.745 (2) without adding a page to the various individual tax forms for full-year residents, nonresidents and part-year residents. The commission shall limit the number of entities to be listed on the form to conform to the department's notice unless it determines that the number of eligible entities justifies adding a page to the form.

(2) Any new entity added to the list must, in the judgment of the commission, have a high probability of meeting the requirement in ORS 305.720 (5). [1989 c.987 §7a]

305.715 Determination of eligibility; certification of entities to be listed on tax return. The Oregon Charitable Checkoff Commission shall:

(1) Determine if a charitable or governmental entity is qualified under ORS 305.720, for the biennial years, for listing on the Oregon individual income tax return to receive contributions by means of checkoff, as described under and subject to ORS 305.710 and 305.745.

(2) Certify in 1990, and certify in each even-numbered calendar year thereafter, to the Department of Revenue a list of charitable and governmental entities to be listed on the Oregon individual income tax return to receive contributions by means of checkoff for the biennial years indicated in the certification, as described under and subject to ORS 305.710 and 305.745. [1989 c.987 §8]

305.720 Qualification for entity for contributions by checkoff. Subject to ORS 305.710 and 305.745, an entity qualifies for listing on the Oregon individual income tax return to receive contributions by means of checkoff if:

(1) The entity supports private charitable causes or engages in public activities that are consistent with policies and programs of the state and:

(a) Checkoff resources are used to augment existing programs or provide new funding to related activities of proven value. Checkoff funds are not to be used to meet the administrative expenses of the entity;

(b) Programs funded by checkoff resources must result in substantial and direct benefits to the human and natural resources of the state that the Oregon Charitable Checkoff Commission determines are unlikely to occur under existing public and private programs; and

(c) After checkoff resources are received by the entity, the entity shows a pattern over several years of increasing its total revenues from other than checkoff sources or reaches the level where no more than 50 percent of its revenues are from checkoff sources.

(2) The entity is qualified to receive contributions that are tax deductible under the following:

(a) Section 170 of the Internal Revenue Code (relating to contributions and gifts to charitable and governmental entities).

(b) Section 501(k) of the Internal Revenue Code (relating to contributions to certain organizations providing child care).

(c) Section 7871 of the Internal Revenue Code (relating to contributions to Indian tribal governments).

(d) Any other federal law allowing a deduction from federal individual income tax for charitable contributions to an entity classified by rule of the Department of Revenue as being an entity belonging to the general class described in paragraphs (a) to (c) of this subsection.

(3) The entity makes application for listing within the time and in the manner prescribed by ORS 305.725.

(4) The entity files a financial report, and other information, with the commission as described under ORS 305.730.

(5) The entity received $50,000 or more in checkoff contributions in at least one of the two tax years immediately preceding the tax year for which it is to be listed on the Oregon income tax return. This subsection does not apply if the entity has not been included on the Oregon personal income tax return for each of the two tax years immediately preceding the tax year for which determination for purposes of this subsection is being made. [1989 c.987 §9]

305.725 Application of entity. (1) Each entity desiring to receive contributions by means of checkoff on the Oregon individual income tax return shall make initial application to the Oregon Charitable Checkoff Commission not later than July 1 of each even-numbered calendar year. The application shall contain or be accompanied by:

(a) The name of the entity.

(b) The address of the principal place of business of the entity and the name of the person, officer or employee to whom the moneys contributed by means of checkoff are to be remitted pursuant to ORS 305.747.

(c) The names and personal addresses of the principals of the entity.

(d) The name and personal address of a person who is a principal in the solicitation activities for the entity.

(e) Evidence satisfactory to the commission that contributions to the entity qualify for tax deduction under section 170 of the Internal Revenue Code or other law listed under ORS 305.720 (2) or, in the case of an application for instruction listing, ORS 305.727. This evidence may, but need not, take the form of an Internal Revenue Service ruling, a listing of the entity on the list published by the Internal Revenue Service listing organizations qualified to receive tax deductible contributions or an answer to an inquiry as to the status of the entity addressed to the Commissioner of Internal Revenue.

(f) If applicable, evidence that ORS 128.610 to 128.750 has been complied with.

(g) A financial report, and other information, as described in ORS 305.730.

(2) If, at any time, there is a change of person, officer or employee to whom contributions received by means of checkoff are to be remitted under ORS 305.747, the governing body of the entity shall give notice to the Department of Revenue. The notice shall contain the name of the entity and the name of the new person, officer or employee to whom contributions shall be remitted. [1989 c.987 §10; 1991 c.532 §24; 1999 c.1032 §3]

305.727 Instruction listing; qualifications. (1) In addition to the opportunity to apply to the Oregon Charitable Checkoff Commission for listing on the Oregon individual tax return forms under ORS 305.725, an entity may apply to the commission for listing in the Department of Revenue instructions and eligibility for tax return checkoff contribution as provided in this section.

(2) In order to qualify for instruction listing, the entity must apply to the commission in the manner in which an entity applies for listing on the individual tax forms under ORS 305.725.

(3) In order to qualify for instruction listing, the entity must meet the qualifications described in ORS 305.720, collect 10,000 or more signatures from electors of this state attesting that the electors support the entity qualifying for instruction listing and be:

(a) The Oregon Veterans' Home;

(b) A nonprofit organization described in section 501(c)(3) of the Internal Revenue Code with a gross income of at least $1 million for the year prior to application; or

(c) The central office for a group of affiliated nonprofit organizations with a collective gross income of at least $1 million in the year prior to the year of application.

(4) The commission shall review applications and approve those that meet the qualifications of ORS 305.720 and this section. An entity that is approved by the commission shall thereafter qualify for instruction listing for six years and thereafter must reapply under this section for continued listing in additional six-year periods.

(5) The commission shall certify those entities that the commission has approved in the interim since the last preceding certification to the Department of Revenue for listing in the instructions to the forms described in ORS 305.710.

(6) The department shall include in the instructions to the forms described in ORS 305.710 a list of entities that have been certified by the commission under this section as of the date the instructions for the forms must be prepared.

(7) The department shall cause a line to be included on the Oregon individual tax return forms following the listing of the entities described in ORS 305.715 (2). The line may be used by a taxpayer to designate an entity that has qualified for instruction listing under this section as the recipient of a checkoff contribution by the taxpayer. The space for designation shall also provide for checkoff boxes in the amount of $1, $5, $10 or other dollar amounts.

(8) Amounts contributed by charitable checkoff to an instruction-listed entity shall be subject to and distributed as provided in ORS 305.747. [1999 c.1032 §2; 2001 c.677 §1]

305.730 Financial report of entity. (1) Each entity desiring to be listed on the Oregon individual income tax return in order to receive contributions by means of checkoff for the biennial years shall file a financial report with the Oregon Charitable Checkoff Commission no later than July 1 of 1990, or July 1 of each even-numbered year thereafter.

(2) The financial report shall contain, in detail:

(a) The amount of funds received from contributions made by means of checkoff.

(b) The disposition of the funds received from contributions made by means of checkoff.

(3) If required by the commission by rule, the entity shall also file with the commission its budget, financial statements or other documents or information needed by the commission to determine the use of funds received through checkoff.

(4) All information required by this section shall be as of the close of each fiscal year of the two fiscal years of the entity that ended during the 12-month period ending prior to July 1 of the even-numbered calendar year. [1989 c.987 §11]

305.735 Effect of qualification; notice if entity not qualified. (1) Upon determination, pursuant to initial application, that an entity qualifies for listing on the Oregon individual income tax return to receive contributions by means of checkoff, the Oregon Charitable Checkoff Commission, subject to ORS 305.710, shall cause the name of the entity to be included on the list.

(2) If the commission determines that the entity is not qualified to be listed, the commission shall give notice in the manner provided under ORS 183.415, as applicable, and ORS 305.740 (3) shall apply. [1989 c.987 §12]

305.740 Standards for continuing eligibility. (1) Prior to the end of 1990 and prior to the end of each even-numbered calendar year thereafter, and subject to subsection (2) of this section, the Oregon Charitable Checkoff Commission shall examine the list of entities included on the Oregon personal income tax return for the tax year beginning in the calendar year immediately preceding and shall determine if each entity listed is qualified under ORS 305.710 and 305.720 to be listed on the return to receive contributions by means of checkoff for the ensuing biennial years.

(2)(a) The Department of Revenue shall determine for each tax year if each entity listed for checkoff on the return for the preceding tax year meets the criteria under ORS 305.720 (5) and shall notify the commission, if and when appropriate. In determining the amount received in contributions from checkoffs for an entity for a particular tax year:

(A) For purposes of meeting the $50,000 minimum contribution, the amount received in contributions from checkoffs in the amount shown in the department's financial statement for the fiscal year shall be counted.

(B) The amount of receipts shall not be reduced by the amount of administrative expense referred to in ORS 305.747.

(b) The determination of the department made under paragraph (a) of this subsection is final and may not be appealed. Notwithstanding subsection (1) of this section, an entity that has not met the criteria of ORS 305.720 (5) shall not be listed on the return for checkoff.

(3)(a) If the commission, for any reason other than that contributions by means of checkoff did not reach the amount required under ORS 305.720 (5), determines that an entity included on the list certified under ORS 305.715 (2) for the prior biennial years is not qualified to be included, or that an entity making application is not qualified to be included, or is not included because of determinations under ORS 305.710, on the list for the ensuing biennial years, the commission shall so order.

(b) The commission shall serve upon the entity, either by personal service or by certified mail, return receipt requested, the order issued under paragraph (a) of this subsection. The order shall comply with the applicable notice requirements of ORS 183.415.

(c) The entity or person or persons to whom the order is directed shall have 20 days from the date of personal service or mailing of the notice in which to make written application to the commission for a contested case hearing to be held in accordance with ORS 183.415 to 183.500 before the commission or the designee of the commission. In any hearing before the designee of the commission, the designee is authorized to issue the final order in the matter.

(d) Upon failure to request a contested case hearing within the time specified, the order shall become final.

(e) Appeal may be taken from a final order as specified under ORS 183.480 to 183.497.

(f) A final order issued by the commission, the designee of the commission, the Court of Appeals or the Oregon Supreme Court determining that an entity be included on the list certified under ORS 305.715 (2) may require only that the entity be included on the list next certified after the effective date of the final order. [1989 c.987 §13; 2001 c.114 §6]

305.745 Inclusion of eligible entities on tax return. (1) Upon receipt of the list certified by the Oregon Charitable Checkoff Commission under ORS 305.715 (2), the Department of Revenue shall cause the name

of each entity so listed to be included on the Oregon individual income tax return forms prepared for the biennial years as certified.

(2) Individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the department may designate that a contribution be made to one or more entities listed. Designation shall be made by marking the appropriate box which the department shall cause to be printed on the return form. For each entity, the space for designating the contribution shall provide for checkoff boxes in the amount of $1, $5, $10 or other dollar amount.

(3) Overpayments of tax that are insufficient, due to ORS 293.250 or otherwise, to satisfy the total amount of checkoffs designated on a tax return under subsection (2) of this section and under statute other than ORS 305.690 to 305.753 shall be allocated among the entities designated on a pro rata basis. [1989 c.987 §14]

305.747 Administrative expenses; crediting contributions to entities; rules. (1) Amounts equal to the amounts checked off under ORS 305.745 shall be remitted by the Department of Revenue to the State Treasurer who shall deposit the amounts in a suspense account established under ORS 293.445.

(2)(a) Of the amounts remitted and deposited under subsection (1) of this section or remitted and deposited under ORS 305.749 (1), a portion is continuously appropriated for use in reimbursing the General Fund for costs paid or incurred by the Oregon Charitable Checkoff Commission in administering the checkoff programs established under ORS 305.690 to 305.753. No more than one percent of the moneys generated by the checkoff programs per fiscal year ending June 30, 1990, or per any fiscal year thereafter, is appropriated under this paragraph.

(b) Of the amounts remitted and deposited under subsection (1) of this section, a portion is continuously appropriated for use in reimbursing the General Fund for costs paid or incurred by the department in administering the checkoff program established under ORS 305.690 to 305.753. The department shall adopt by rule a formula or other method of determining the cost of administering each checkoff program. Each program shall be charged the cost of administration not to exceed 10 percent of the amount received in checkoff contributions.

(c) Moneys appropriated under this subsection shall be transferred to the General Fund on a quarterly basis.

(3) The records of the department shall reflect the amount that the department has credited to each entity less administrative expenses. Subject to ORS 305.745 (3), the amount credited to each entity shall be equal to the amount checked off for that entity under ORS 305.745 less administrative expenses. The net amount of moneys credited to an entity shall be transferred by the department to the entity, as specified by law, on a periodic basis, or is continuously appropriated to the department for payment to the entity and the department shall pay and remit the net amount credited to the entity, without interest, to the entity on a periodic basis. The department shall adopt rules governing the transferring or remitting of checkoff moneys to the entities for which the amounts were checked off. The rules shall specify the time, no less often than quarterly, that the moneys are to be transferred or remitted to the entities by the department. [1989 c.987 §15; 1995 c.79 §114]

305.749 Payment to checkoff programs; rules; notice and effect of low contributions; form on tax return. Except ORS 305.690 to 305.753 and as otherwise specifically provided, the following are applicable to the various checkoff programs established under ORS 496.380 and ORS chapter 316:

(1) Subject to subsection (4) of this section, the dollar amounts of contributions made by taxpayer checkoff on Oregon tax returns shall be remitted by the Department of Revenue to the State Treasurer who shall deposit them to a suspense account established under ORS 293.445.

(2) Of the contributions so deposited, a portion is continuously appropriated for use to reimburse the General Fund for costs incurred in administering the various checkoff programs. No more than 10 percent of the moneys generated by each checkoff program per fiscal year ending June 30 may be appropriated under this subsection.

(3) The remainder of the contributions shall be credited by the department to each checkoff program in proportion to the total amounts checked off for the tax year, the proportions to be determined on the basis of tax returns processed as of the June 30 following the tax year. The amounts so credited to each of the checkoff programs are continuously appropriated to the department for payment to the checkoff designee, or shall be transferred by the department to the checkoff designee, as specified under the law governing the particular checkoff program. The department may adopt rules governing the crediting and payment or transfer of checkoff moneys. In addition to any other provision, if adopted, the rules shall specify the time that the contributions to a program so credited are to be paid or transferred by the department.

(4)(a) Space for designating the dollar amount of a contribution made to each checkoff program shall be printed on the Oregon tax return. The space shall provide for checkoff boxes for the program in the amounts of $1, $5, $10 or other dollar amount.

(b) Overpayments of tax that are insufficient, due to ORS 293.250 or otherwise, to satisfy the total amount of checkoffs designated on a tax return shall be allocated among the designees on a pro rata basis as provided under ORS 305.745 (3).

(5)(a) If, as of June 30 of the calendar year immediately following the calendar year in which a particular tax year begins, the department determines that the total amount checked off for that tax year for a checkoff program is $50,000 or less, the department shall notify a person administering the program or other appropriate person.

(b) If, as determined by the department under paragraph (a) of this subsection, the total amount checked off for a particular checkoff program is $50,000 or less for each year in a period of two consecutive tax years, a checkoff line and appropriate box for that program shall not be provided on the Oregon individual tax return for the tax year immediately following the later year of the two-year period nor for any tax year thereafter, except as otherwise provided by law.

(c) As used in this subsection, "total amount checked off" means the total amount checked off by taxpayers as reflected by tax returns for the tax year processed as of June 30 before any deduction for administrative costs as required under subsection (2) of this section has occurred but after any proration under subsection (4) of this section. [Formerly 305.835; 1993 c.797 §29; 1995 c.79 §116]

305.751 Rules. The Department of Revenue shall adopt such rules as are necessary for the operation of the Oregon Charitable Checkoff Commission and the administration of ORS 305.690 to 305.753. The commission may recommend that the department adopt rules under this section. [1993 c.726 §8]

305.753 State Treasurer may solicit donations to eligible entities; department rules; inapplicability of certain statutes to certain checkoffs. (1) The State Treasurer may solicit and accept from private and public sources and cause to be credited and paid to any entity gifts, grants and other donations, in money or otherwise, if the entity is currently listed or entitled to be listed on the Oregon tax return for checkoff.

(2) In accordance with ORS chapter 183, the Department of Revenue may adopt rules to carry out the purposes of ORS 305.690 to 305.753.

(3) Except ORS 305.749, ORS 305.690 to 305.753 do not apply to the Nongame Wildlife Fund established under ORS 496.385, the Alzheimer's Disease Research Fund established under section 3, chapter 902, Oregon Laws 1987, the subaccount created pursuant to section 36 (2), chapter 1084, Oregon Laws 1999, or its successor, or other checkoff program established by statute other than ORS 305.690 to 305.753. [1989 c.987 §16; 1993 c.209 §21; 1993 c.797 §26; 1995 c.54 §19; 1995 c.79 §117; 1999 c.1084 §39]

305.755 [Formerly 306.260; repealed by 1969 c.166 §8 and 1969 c.520 §49]

REFUNDS

305.760 Paying over funds to State Treasurer and writing checks for refunds. In lieu of the procedure provided in certain revenue laws for the retaining of a working balance by the Department of Revenue from which refunds may be made, the Department of Revenue may, in accordance with the requirement of the Secretary of State, pay over all funds received under any of the revenue laws to the State Treasurer and write refund checks upon the State Treasurer for refunds authorized by law. [Formerly 306.270]

305.762 Election for direct deposit of personal income tax refund. (1) At the election of the taxpayer, a refund of personal income tax shall be made by direct deposit into an account designated by the taxpayer at a bank or other financial institution.

(2) The election shall be made on a form prescribed by the Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other time and manner as the department may prescribe by rule. [2001 c.111 §2]

Note: Section 3, chapter 111, Oregon Laws 2001, provides:

Sec. 3. Section 2 of this 2001 Act [305.762] applies to refunds of personal income tax allowed for a tax year beginning on or after January 1, 2002. This section does not prohibit a direct deposit refund of personal income tax from a tax year beginning before January 1, 2002. [2001 c.111 §3]

305.765 Refund of taxes adjudged invalid. In a proceeding involving the validity of any law whereby taxes assessed or imposed have been collected and received by the state, acting through any department or agency thereof, and paid into the State Treasury, if the court of last resort holds the law or any part thereof invalid, and the time limit for any further proceeding to sustain the validity of the law, or the part thereof affected, has expired, and if there is no other statute authorizing refund thereof, all taxes collected and paid under the law or part

thereof invalidated, in or after the year in which the action attacking the validity of the same was instituted, shall be refunded and repaid in the manner provided in ORS 305.770 to 305.785. [Formerly 306.280; 2003 c.46 §6]

305.770 Report of taxpayers paying invalid tax; issuance and payment of warrants. The department or agency of the state charged with the duty of administering the law so invalidated, either wholly or in part, shall prepare a detailed report, listing by name, address and amount of payment each taxpayer who paid an invalid tax under the law. The Oregon Department of Administrative Services shall issue a warrant in favor of each taxpayer listed therein, in the amount so reported, and shall forward the warrant to the taxpayer at the address shown in the report. The State Treasurer shall pay the warrants from the General Fund in the usual manner when and as presented. Warrants refunding invalid taxes shall be payable to the taxpayers named in the report required by this section or to their heirs, administrators, executors or assigns. [Formerly 306.290; 1975 c.614 §8]

305.775 Interest on amount of refund in certain cases. If an appeal from or petition for certiorari to review a decision of the Supreme Court of Oregon, holding a tax law or any part thereof invalid, is taken to the Supreme Court of the United States and that court does not reverse or modify the decision of the Supreme Court of Oregon, the refund of the invalid taxes shall include interest on the amount paid at the rate of six percent from the date of the last decision of the Supreme Court of Oregon in the matter to the date of filing with the Secretary of State of the report and list of taxpayers entitled to the refunds as required by ORS 305.770. [Formerly 306.300]

305.780 Taxes due prior to year in which suit brought. Nothing contained in ORS 305.770 to 305.785 authorizes the refunding of any tax collected and paid under an invalidated tax law, or invalidated part thereof, where the tax as provided in such law became due and payable in any year prior to the year in which the suit or action seeking the invalidation of the law or part thereof was instituted. [Formerly 306.310]

305.785 Appropriation. There hereby is appropriated out of the moneys in the General Fund in the State Treasury, not otherwise appropriated, the amounts necessary to carry out ORS 305.770 to 305.785, not exceeding the amounts paid to and received by the State of Oregon, together with interest thereon as provided in ORS 305.775, under and by virtue of the law or laws, or parts thereof, declared to be invalid. [Formerly 306.320]

305.790 Manner of payment of certain costs and expenses. Payment of any attorney fees or reasonable expenses under ORS 305.447 or 305.490 shall be made by the Department of Revenue in the manner provided by law for the payment of income tax refunds. [1971 c.265 §5]

305.792 Surplus refund donations to education. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal income and corporate income or excise tax returns for the appropriate tax year, by which a taxpayer may indicate that a surplus refund payment or credit that the taxpayer may otherwise be entitled to under ORS 291.349 shall instead be used for funding education.

(2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made under ORS 291.349 to public elementary and secondary school education. The taxpayer may make the election by checking the appropriate checkoff box on the taxpayer's return indicating the taxpayer's intention to donate the surplus refund payment to public elementary and secondary education.

(b) Once made, the election is irrevocable for any surplus refund payments received until a subsequent return is filed for a later tax year, and on which the checkoff box is not checked.

(3)(a) A corporate excise or income taxpayer may elect to not claim a surplus refund credit that the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corresponding transfer of such moneys from the General Fund to the State School Fund for the support of public elementary and secondary school education. The taxpayer may make the election by checking the appropriate checkoff box on the taxpayer's return and by not using the surplus refund credit percentage to reduce the taxpayer's tax liability.

(b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be considered to have not made the election under this subsection.

(c) The election to not claim a credit under this subsection may not be revoked by filing an amended return.

(4) After the determination that surplus refund payments are to be made under ORS 291.349 (4) and (6), the department shall determine the total amount of such payments for which an election to donate to public elementary and secondary education has been made and shall certify this amount to the State Treasurer. Following the department's certification to the State Treasurer, an

election to donate that biennium's surplus refund payments under subsection (2) of this section is irrevocable.

(5) Following the determination to credit corporate income and excise taxes pursuant to ORS 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have not been claimed pursuant to an election made under subsection (3) of this section. The certification shall be made on or before December 31 of each year, until the tax year for which the credit would otherwise be claimed becomes a closed tax year. [1999 c.960 §2]

305.794 Appropriation to State School Fund. In addition to and not in lieu of any other appropriation, amounts certified by the Department of Revenue to the State Treasurer under ORS 305.792 are appropriated from the General Fund to the State School Fund for the purposes for which State School Fund moneys may be used. [1999 c.960 §3; 2001 c.114 §7]

MISCELLANEOUS PROVISIONS

305.805 Repeal of intangibles income tax law not to affect accrued taxes. The repeal of the Intangibles Income Tax Act of 1931, as amended, shall not affect the assessment and collection of any tax, penalty or interest accruing prior to January 1, 1939, under the Intangibles Income Tax Act of 1931, as amended, and such amounts shall be assessed and collected in accordance with the provisions of that Act notwithstanding its repeal. [Formerly 306.340]

305.810 Verification of return, statement or document filed under tax laws. Any return, statement or other document required to be filed under any provision of the laws administered by the Department of Revenue, in lieu of any oath otherwise required, shall:

(1) Contain or be verified by a written declaration that it is made under penalties for false swearing; or

(2) Be verified, by such other means as the department may prescribe by rule, that it is made under penalties for false swearing. [Formerly 306.410; 1997 c.84 §2]

305.815 False return, statement or document prohibited. No person shall willfully make and subscribe any return, statement or other document that contains or is verified by a declaration under ORS 305.810 that it is made under penalties for false swearing if the person does not believe the return, statement or other document is true and correct as to every material matter. [Formerly 306.420; 1997 c.84 §3]

305.820 Date when writing, remittance or electronic filing deemed received by tax officials. (1) Any writing or remittance required by law to be filed with or made to the Department of Revenue, county board of property tax appeals, county assessor or tax collector (designated in this section as the "addressee") which is:

(a) Transmitted through the United States mail or by private express carrier, shall be deemed filed or received on the date shown by the cancellation mark or other record of transmittal, or on the date it was mailed or deposited if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.

(b) Filed electronically pursuant to a rule of the department adopted under ORS 306.265 and 309.104 that authorizes the electronic filing and that meets the specifications and requirements of the rule, shall be deemed to be filed and received on the date actually received by the addressee, or on the date stated on the electronic acknowledgment of receipt that is sent by the addressee.

(c) Lost in transmission through the United States mail or private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmittal if the sender:

(A) Can establish by competent evidence satisfactory to the addressee that the writing or remittance was deposited on or before the date due for filing in the United States mail, or with a private express carrier, and addressed correctly to the addressee; and

(B) Files with the addressee a duplicate of the lost writing or remittance within 30 days after written notification is given by the addressee of its failure to receive such writing or remittance.

(2) Whenever any writing or remittance is required by law to be filed or made on a day which falls on a Saturday, or on a Sunday or any legal holiday, the time specified shall be extended to include the next business day.

(3) As used in this section:

(a) "Private express carrier" means a carrier described under ORS 293.660.

(b) "Writing or remittance" includes, but is not limited to, "report," "tax return," "claim for credit," "claim for refund," "statement," "notice of appeal," "petition for review," "notice of election," "documentary proof," a claim for exemption, a claim for deferral, a return of property, a claim for cancellation of an assessment, an application for a special assessment, and remittances. [Formerly 306.440; 1965 c.344 §27; 1993 c.44 §2; 1993 c.270 §23; 1997 c.154 §11; 1997 c.541 §87]

305.822 Prohibition on state or local tax on Internet access. (1) As used in this section:

(a) "Internet" means the combination of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols, to communicate information by wire or radio.

(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services offered over the Internet. "Internet access" does not include telecommunications services or cable services.

(c) "Tax" means a charge imposed by a governmental entity for the purpose of generating revenues for governmental purposes. "Tax" does not include a fee imposed for a specific privilege, service or benefit conferred to the payer of the charge.

(2) This state, and the municipal corporations and political subdivisions of this state, may not impose, assess, collect or attempt to collect a tax on Internet access or the use of Internet access if the tax was not in effect on October 6, 2001. [2001 c.741 §1]

Note: 305.822 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

305.823 Local government tax on telephone services prohibited. On or after January 1, 1982, no county, city, district or other political subdivision in this state shall levy or impose a tax on amounts paid for exchange access or other telephone services. [Formerly 307.215]

Note: 305.823 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

305.824 [2001 c.855 §1; 2003 c.818 §1; renumbered 320.300 in 2003]

305.830 Collection of fines, penalties and forfeitures; disbursement; cost of collection. (1) Amounts transferred to the Department of Revenue by justice and municipal courts under ORS 137.295 shall be deposited in a suspense account established under ORS 293.445 for the purpose of receiving criminal fines and assessments.

(2) In carrying out its duties under this section, the Department of Revenue shall have access to the records and dockets of those courts charged with the duty to transfer moneys to the department under ORS 137.295.

(3) The Department of Revenue may retain from the funds transferred under ORS 137.295 an amount not to exceed two percent annually for its actual costs of collection and disbursement of funds under this section, including the cost of all examinations, investigations and searches, and of all traveling and other expenses in connection therewith. The department shall deposit the net amount of moneys in the suspense account described in subsection (1) of this section into the Criminal Fine and Assessment Account for distribution as provided in ORS 137.300 and 137.302.

(4) All judicial, municipal and county officers shall cooperate with the Department of Revenue with respect to the collections, searches and investigations and shall furnish the Department of Revenue with any information contained in any of the records under their respective custodies relating thereto.

(5) The Department of State Police shall cooperate in the investigation of fines, penalties and forfeitures. [Formerly 178.080; 1983 c.763 §53; 1987 c.905 §19a; 2001 c.829 §6]

305.835 [1987 c.771 §§3b,3c; 1989 c.987 §17; renumbered 305.749 in 1989]

305.840 Forms furnished by county assessors; assessor not liable when taxpayer fails to receive mailed form. Whenever any provision of law provides for a form to be supplied, furnished, or provided by a county assessor, the requirement means that the county assessor shall make the form available to a taxpayer at the office of the county assessor. In such cases there is no requirement that the county assessor mail the form to the taxpayer unless the statute specifically provides for such mailing. Where a taxpayer requests the assessor to mail the form to the taxpayer, or when the assessor voluntarily mails the form, the assessor does not undertake the responsibility for actual receipt by the taxpayer of the form, and no estoppel applies against the assessor if the taxpayer does not receive the form. [1973 c.402 §15]

305.845 Remedies exclusive. The remedies provided in this chapter shall be exclusive and no person, county officer or board shall maintain any suit, action or special proceeding in any court of this state with respect to the assessment and taxation of property or the collection of any tax thereon on any grounds, including fraud, where it shall appear that such remedies were available. [1977 c.870 §12]

305.850 Use of collection agency. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Director of the Department of Revenue may engage the services of a collection agency to collect any taxes, interest and penalties resulting

from an assessment of taxes or additional taxes imposed by ORS chapter 118, 310, 314, 316, 317, 318, 320, 321 or 323 and any other tax laws administered by the Department of Revenue. The director may engage the services of a collection agency by entering into an agreement to pay reasonable charges on a contingent fee or other basis.

(2) The director shall cause to be collected, in the same manner as provided in subsection (1) of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected pursuant to this subsection shall be credited as provided in ORS 293.250.

(3) The director may assign to the collection agency, for collection purposes only, any of the taxes, penalties, interest and moneys due the state.

(4) The collection agency may bring such action or take such proceedings, including but not limited to attachment and garnishment proceedings, as may be necessary. [1981 c.705 §6; 1983 c.541 §5; 1985 c.816 §39; 1987 c.843 §19; 1997 c.99 §50; 2003 c.804 §65]

Note: 305.850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

TAXPAYER BILL OF RIGHTS

305.860 Statement of rights of taxpayers; distribution. (1) The Director of the Department of Revenue shall prepare a statement which sets forth in simple nontechnical terms:

(a) The rights of a taxpayer and the obligations of the Department of Revenue during an audit;

(b) The procedures by which a taxpayer may appeal any adverse decision of the department, including informal conferences and judicial appeals;

(c) The procedures for filing and processing refund claims and filing of taxpayer complaints; and

(d) The procedures which the department may use in enforcing the provisions of the laws of this state.

(2) The statement prepared in accordance with subsection (1) of this section shall be distributed by the Director of the Department of Revenue to all taxpayers upon request. The director shall inform taxpayers of their rights in a brief explanatory statement included in all billing or collection notices, all notices of assessment or deficiency and all notices of refund adjustment or denial sent to the taxpayer. [1989 c.625 §67; 1995 c.650 §112]

305.865 Taxpayer rights. Under any law administered by the Department of Revenue, an Oregon taxpayer shall have the rights set forth under ORS 305.880 to 305.895. [1989 c.625 §69; 2003 c.46 §7]

305.870 Personnel evaluation not based on amount of taxes collected. In its implementation of the personnel policies established under ORS chapter 240 or by administrative order, the Department of Revenue shall not use the dollar amounts of taxes collected as its primary evaluation criterion. [1989 c.625 §68]

305.875 Rights of taxpayer in meeting or communication with department. In any meeting or communication with the Department of Revenue, including but not limited to audits, conferences, interviews and any other meeting or communication between the taxpayer and the department, the taxpayer shall have the following rights, unless waived by the taxpayer:

(1) The right to an explanation, by an officer or employee of the department before or during the meeting of:

(a) The audit, conference or meeting process and the taxpayer's rights under such process; and

(b) The collection process and the taxpayer's rights under such process.

(2) The right to make an audio recording of any meeting relating to the determination or collection of any tax with the department representative, using the taxpayer's own equipment, and at the taxpayer's own expense.

(3) If the department makes an audio recording of the meeting, the taxpayer has the right to advance notice of the recording and a copy of the recording upon request. The taxpayer shall reimburse the department the reasonable cost of the copy.

(4) The right to consult with an attorney, certified public accountant, enrolled agent, or an other person permitted to represent a taxpayer at any meeting before the department, if the taxpayer clearly states to the department representative at any time during any meeting, that the taxpayer wishes to consult with the person. This subsection does not apply to a meeting initiated by an administrative subpoena.

(5) The right to be represented by anyone who is permitted to represent the taxpayer before the department, as provided under ORS 305.230 and 305.245.

(6) The right not to be present, if represented, at the meeting unless subpoenaed by the department pursuant to ORS 305.190, or other laws of this state. [1989 c.625 §70; 1995 c.650 §112a]

305.880 Waiver of interest or penalty when department misleads taxpayer. A taxpayer shall have the right to waiver of interest or penalties when an officer or employee of the Department of Revenue misleads the taxpayer in a manner described in ORS 305.145. [1989 c.625 §71]

305.885 Right of clear explanation. A taxpayer shall have the right to a clear explanation, in any initial notice or other initial communication of deficiency, delinquency or other writing that is communicating an underpayment of tax, of the basis for underpayment, interest and penalties. [1989 c.625 §72]

305.890 Right to enter into agreement to satisfy liability in installment payments. (1) A taxpayer shall have the right to enter into a written agreement with the Department of Revenue to satisfy liability for payment of any tax in installment payments if the Director of the Department of Revenue determines that the agreement will facilitate collection of such liability.

(2) Except as otherwise provided in this section, any agreement entered into by the director under this section shall remain in effect for the term of the agreement.

(3) The director may terminate any agreement entered into by the director under this section if:

(a) Any information that the taxpayer provided to the director prior to the date the agreement was entered into was inaccurate or incomplete; or

(b) The director believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(4) If the director makes a determination that the financial condition of the taxpayer with whom the director has entered into an agreement under this section has significantly changed, the director may alter, modify or terminate the agreement. Action may be taken by the director under this subsection only if:

(a) Notice of such determination is provided to the taxpayer within 30 days prior to the date of such action; and

(b) Such notice includes the reasons why the director believes a significant change in the financial condition of the taxpayer has occurred.

(5) The director may alter, modify or terminate an agreement entered into by the director under this section in the case of the failure of the taxpayer to:

(a) Pay any installment at the time such installment payment is due under such agreement;

(b) Pay any other tax liability at the time such liability is due; or

(c) Provide a financial condition update as requested by the director. [1989 c.625 §73; 2003 c.46 §8]

305.895 Action against property before issuance of warrant prohibited; prerequisites for warrant. (1) Except as provided in ORS 314.440 or other jeopardy assessment procedure, the Department of Revenue shall take no action against a taxpayer's real or personal property before issuing a warrant for the collection of the tax as provided in ORS 314.430, 320.080, 321.570 and 324.190.

(2) Prior to issuing a warrant for collection of any tax collected by the department, the department shall send the taxpayer a written notice and demand for payment. The notice shall:

(a) Be sent by mail, addressed to the taxpayer at the taxpayer's last-known address.

(b) Inform the taxpayer that if the tax or any portion of the tax is not paid within 30 days after the date of the notice and demand for payment, a warrant may be issued and recorded as provided in ORS 314.430, 320.080, 321.570 and 324.190.

(c) Describe in clear nontechnical terms the legal authority for the warrant.

(d) Contain the name, office mailing address and office telephone number of the person issuing the warrant and advise the taxpayer that questions or complaints concerning the warrant, other than liability for the underlying tax, may be directed to that person.

(e) Include alternatives available to the taxpayer which would prevent issuance of the warrant. [1989 c.625 §74]

305.900 Short title. ORS 305.860 to 305.900 shall be known and cited as "The Taxpayer Bill of Rights." [1989 c.625 §66]

PENALTIES

305.990 Criminal penalties. (1) Any person who willfully presents or furnishes to the Department of Revenue any statement required under ORS 305.160, which statement is false or fraudulent, is guilty of perjury and upon conviction shall be punished as provided by law therefor.

(2) Any person who gives testimony before the Director of the Department of Revenue which is false or fraudulent, is guilty of perjury and upon conviction shall be punished as provided by law therefor.

(3) Any public officer who neglects or refuses to perform any of the duties imposed on the public officer by law as to the assess-

ment, levying or collection of taxes shall be punished, upon conviction, by a fine not exceeding $500 or by imprisonment in the county jail not exceeding one year.

(4) Violation of ORS 305.815 is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment for not more than one year in the county jail, or both.

(5) Violation of ORS 305.260 is punishable, upon conviction, as a Class A misdemeanor, as provided in ORS chapter 161. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [Formerly 306.990; 1973 c.402 §6; subsection (5) enacted as 1973 c.402 §25(2); subsection (6) enacted as 1977 c.790 §5; 1985 c.105 §2]

305.992 Civil penalty for failure to file return for three consecutive years. (1) If any returns required to be filed under ORS chapter 118, 314, 316, 317, 318, 321 or 323 or under a local tax administered by the Department of Revenue under ORS 305.620 are not filed for three consecutive years by the due date (including extensions) of the return required for the third consecutive year, there shall be a penalty for each year of 100 percent of the tax liability determined after credits and prepayments for each such year.

(2) The penalty imposed under this section is in addition to any other penalty imposed by law. However, the total amount of penalties imposed for any taxable year under this section, ORS 305.265 (13), 314.400, 323.403 or 323.585 shall not exceed 100 percent of the tax liability. [1987 c.843 §3; 1997 c.99 §51; 1999 c.62 §22]