Enrolled
Senate Bill 232

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CHAPTER .....

AN ACT

Relating to taxation; creating new provisions; amending ORS 305.230, 310.800, 311.795, 311.796, 316.162 and 670.600 and sections 18, 19 and 20, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030); and prescribing an effective date.

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

SECTION 1. ORS 311.795 is amended to read:

311.795. (1) A county [*court*] **governing body** may cancel all delinquent taxes and the interest and penalties thereon accrued upon property donated to any incorporated city or town or any park and recreation district organized and operating under ORS chapter 266 for parks, playgrounds or a city hall. This section does not apply if the city, town or park and recreation district makes any payment to the owner, either directly or indirectly, for the property.

(2) A county [*court*] **governing body** may cancel all delinquent real property taxes and interest and penalties due thereon from any taxpayer where the total of the same is less than $5, when in the judgment of the county [*court*] **governing body** the cost of collecting the same will be greater than the amount to be collected.

(3) A county [*court*] **governing body** may cancel all delinquent personal property taxes and the interest and penalties thereon due from any taxpayer where the total of the same is less than $5 and in the judgment of the county [*court*] **governing body** the cost of collecting the same will be greater than the amount to be collected.

(4) Property taxes that are deferred under the senior or disabled person homestead deferral program established under ORS 311.666 to 311.701, special assessments for local improvements that are deferred under ORS 311.702 to 311.735 or property taxes that are deferred under the disaster area tax deferral program established under ORS 311.740 to 311.780 are not delinquent taxes for purposes of this section. A county governing body may not cancel any deferred taxes, deferred special assessments or interest or penalties that accrue with respect to deferred taxes or deferred special assessments described in this subsection.

SECTION 2. ORS 311.796 is amended to read:

311.796. **(1)** Prior to July 1, 2010, a county governing body may cancel all delinquent taxes and the interest and penalties thereon accrued upon property donated to this state or any municipal corporation or political subdivision of this state or private nonprofit corporation for the purposes of providing low income housing, social services or child care or, in the case of a nonprofit corporation, for the public purposes of the nonprofit corporation. This section does not apply if the state

or any municipal corporation or political subdivision of this state or private nonprofit corporation makes any payment to the owner, either directly or indirectly, for the property.

(2) Property taxes that are deferred under the senior or disabled person homestead deferral program established under ORS 311.666 to 311.701, special assessments for local improvements that are deferred under ORS 311.702 to 311.735 or property taxes that are deferred under the disaster area tax deferral program established under ORS 311.740 to 311.780 are not delinquent taxes for purposes of this section. A county governing body may not cancel any deferred taxes, deferred special assessments or interest or penalties that accrue with respect to deferred taxes or deferred special assessments described in this subsection.

SECTION 3. Section 4 of this 2003 Act is added to and made a part of ORS chapter 314.

SECTION 4. (1) As used in ORS chapters 314 to 318, "independent contractor" means an individual or business entity that performs labor or services for remuneration and that, in the performance of the labor or services, meets the following standards:

(a) The individual or business entity is free from direction and control over the means and manner of providing the labor or services, subject to the right of a person for whom the labor or services are provided to specify the desired results.

(b) Except as provided in subsection (2) of this section, the individual or business entity is customarily engaged in an independently established business. For purposes of this subsection, an individual or business entity is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

(A) The individual or business entity does not rely solely on one person or one entity to obtain customers or the individual or business entity performs all labor or services in the individual's or business entity's own name or business name and collects payment for the labor or services directly from the customer;

(B) The individual or business entity assumes the risk of loss related to the business or the performance of labor or services as shown by factors that include fixed-price contracts, commission-based earnings, responsibility to correct defective work, responsibility for extension of warranties, negotiated indemnification agreements or purchase of liability insurance, performance bonds or errors and omissions insurance;

(C) The individual or business entity performs contracted labor or services for two or more different persons within a 12-month period or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to perform similar labor or services;

(D) The individual or business entity makes a significant investment in the business, including but not limited to:

(i) Purchase of tools or equipment necessary to perform the labor or services;

(ii) Payment for the premises or facilities where the labor or services are performed; or

(iii) Payment for specialized training or licenses required to perform the labor or services; or

(E) The individual or business entity has the authority to hire persons to perform or to assist in performing the labor or services and to fire those persons.

(c) The individual or business entity is licensed under ORS chapter 701 if the individual or business entity performs labor or services for which licensure under ORS chapter 701 is required.

(d) The individual or business entity is personally responsible for obtaining other licenses or certificates necessary to perform the labor or services.

(2) Subsection (1)(b) of this section does not apply if the individual or business entity files a Schedule F as part of an income tax return and the individual or business entity performs farm labor or services that are reportable on Schedule C of an income tax return.

SECTION 5. ORS 670.600 is amended to read:

670.600. As used in various provisions of ORS chapters [*316,*] 448, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to

perform the labor or services as an "independent contractor" if the standards of this section are met:

(1) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(3) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(4) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(6) The individual or business entity providing labor or services is licensed under ORS chapter 701, if the individual or business entity provides labor or services for which licensure is required;

(7) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(d) Labor or services are performed only pursuant to written contracts;

(e) Labor or services are performed for two or more different persons within a period of one year; or

(f) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

SECTION 6. ORS 316.162 is amended to read:

316.162. As used in ORS 316.162 to 316.212:

(1) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under ORS 316.182, except that if no such certificate is in effect, the number of withholding exemptions claimed is considered to be zero.

(2) "Wages" means remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash, except that "wages" does not include remuneration paid:

(a) For active service in the Armed Forces of the United States as to which no withholding is required by the Internal Revenue Code.

(b) To an employee of a common carrier to the extent that 49 U.S.C. 14503 and 40116 prohibit the remuneration from withholding for state income taxes.

(c) For domestic service in a private home, a local college club or a local chapter of a college fraternity or sorority.

(d) For casual labor not in the course of the employer's trade or business.

(e) To an employee whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops if the total amount paid to such employee is less than $300 annually.

(f) To seamen who are exempt from garnishment, attachment or execution under title 46 of the United States Code.

(g) To persons temporarily employed as emergency forest fire fighters.

(h) To employees' trusts exempt from tax under provisions of the federal Internal Revenue Code.

(i) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of religious duties required by such order, which duties are not commercial in nature.

(j) For services performed by an independent contractor[*, as that term is defined in ORS 670.600*].

(k) When the remuneration is exempt from taxation under this chapter.

(3) "Employer" means:

(a) A person who is in such relation to another person that the person may control the work of that other person and direct the manner in which it is to be done; or

(b) An officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the acts required of employers by ORS 316.167, 316.182, 316.197, 316.202 and 316.207.

SECTION 7. Section 4 of this 2003 Act and the amendments to ORS 316.162 and 670.600 by sections 5 and 6 of this 2003 Act apply to income and corporate excise tax years and withholding tax reporting periods beginning on or after January 1, 2006.

SECTION 7a. (1) The Task Force on Independent Contractors is established for the purpose of studying issues related to the provisions of section 4 of this 2003 Act and reporting the results of that study to the Seventy-third Legislative Assembly.

(2) The task force shall consist of:

(a) Members who are appointed by the Governor, including a representative of:

(A) The Governor;

(B) Each appropriate state agency, as determined by the Governor;

(C) The Oregon State Bar;

(D) Organized labor; and

(E) Any other entity or organization that expresses an interest to participate in the task force and the participation of which is deemed by the Governor to be helpful to the purpose of the task force;

(b) One member of the Senate who is appointed by the President of the Senate; and

(c) One member of the House of Representatives who is appointed by the Speaker of the House of Representatives.

(3) The task force shall elect one of its members to serve as chairperson.

(4) A majority of the members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the members of the task force.

(6) Notwithstanding ORS 171.072, members of the task force who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the task force. Other members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(7) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to

confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

(8) The task force shall submit a report, including recommendations for legislation, to the interim committees related to business and labor, in the manner provided by ORS 192.245, no later than November 1, 2004.

SECTION 7b. Section 7a of this 2003 Act is repealed on December 31, 2004.

SECTION 8. ORS 310.800 is amended to read:

310.800. (1) As used in this section:

(a) "Authorized representative" means a senior citizen who is authorized by a tax-exempt entity to perform charitable or public service on behalf of a senior citizen who has entered into a contract under subsection (2) of this section.

(b) "Homestead" means an owner-occupied principal residence.

(c) "Senior citizen" means a person who is 60 years of age or older.

(d) "Tax-exempt entity" means an entity that is exempt from federal income taxes under section 501 (c) of the Internal Revenue Code, as amended and in effect on December 31, 2000.

(e) "Taxing unit" means any county, city or common or union high school district, community college service district or community college district within this state with authority to impose ad valorem property taxes.

(2) A tax-exempt entity may establish a property tax work-off program pursuant to which a senior citizen may contract to perform charitable or public service in consideration of payment of property taxes extended against the homestead of the senior citizen and billed to the senior citizen. For purposes of ORS chapters 316 and 656, and notwithstanding ORS 670.600**, section 4 of this 2003 Act** or other law, a senior citizen who enters into a contract under this subsection shall be considered an independent contractor and not a worker or employee with respect to the services performed pursuant to the contract. Nothing in this section precludes a taxing unit from being considered an employer, for purposes of unemployment compensation under ORS chapter 657, of a senior citizen who enters into a contract under this section.

(3) A taxing unit may enter into an agreement with a tax-exempt entity that has established a property tax work-off program. Pursuant to the agreement the taxing unit may accept, as volunteer and public service, the services of a senior citizen who has entered into a contract described in subsection (2) of this section or an authorized representative.

(4) A taxing unit may provide funds or make grants to any tax-exempt entity that has established a property tax work-off program for use to carry out the program.

SECTION 9. Section 18, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030), is amended to read:

Sec. 18. Section 2 [*of this 2003 Act*]**, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030),** applies to [*tax years beginning on or after July 1, 2004, and before June 30, 2007*] **taxes, interest and related penalties:**

(1) Due under ORS 311.405 or 311.480 on or after the effective date of this 2003 Act and before July 1, 2008; or

(2) Due pursuant to an order of a bankruptcy court issued before July 1, 2008.

SECTION 10. Section 19, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030), is amended to read:

Sec. 19. The amendments to ORS 311.345, 311.385, 311.390, 311.395, 311.480 and 457.440 by sections 6, 8, 10, 12, 14 and 16 [*of this 2003 Act*]**, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030),** apply to [*tax years beginning on or after July 1, 2004*] **taxes, interest and related penalties:**

(1) Due under ORS 311.405 or 311.480 on or after the effective date of this 2003 Act; or

(2) Due pursuant to an order of a bankruptcy court issued before July 1, 2008.

SECTION 11. Section 20, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030), is amended to read:

Sec. 20. The amendments to ORS 311.345, 311.385, 311.390, 311.395, 311.480 and 457.440 by sections 7, 9, 11, 13, 15 and 17 [*of this 2003 Act*]**, chapter 190, Oregon Laws 2003 (Enrolled House Bill 2030),** apply to [*tax years beginning on or after July 1, 2007*] **taxes, interest and related penalties:**

(1) Due under ORS 311.405 or 311.480 on or after July 1, 2008; or

(2) Due pursuant to an order of a bankruptcy court issued on or after July 1, 2008.

SECTION 12. (1) This section applies if:

(a) A correction of error or omission was made to the assessment and tax roll between January 1, 2001, and January 1, 2002;

(b) The correction relates to residential real property;

(c) The correction is attributable to a computer or programming error made in the implementation of section 11, Article XI of the Oregon Constitution, during the tax year beginning July 1, 1997; and

(d) The owner of the property has timely applied for relief under subsection (2) of this section.

(2)(a) In order to obtain relief described in subsection (3) of this section, a property owner shall apply to the county assessor of the county in which the property is located. The application must be on a form prescribed by the Department of Revenue and must contain the information prescribed by the department.

(b) An application must be filed under this subsection before July 1, 2004.

(3)(a) The assessor shall review applications submitted under subsection (2) of this section and shall approve an application that relates to a correction described in subsection (1) of this section.

(b) Upon approval of an application:

(A) All interest attributable to the correction shall be waived; and

(B) Any interest attributable to the correction that has been paid shall be refunded, along with interest payable at the rate prescribed in ORS 311.812, computed from the time the interest was paid to the date of refund.

SECTION 13. Section 12 of this 2003 Act is repealed December 31, 2006.

SECTION 14. ORS 305.230 is amended to read:

305.230. Notwithstanding ORS 9.320:

(1) Any person who is [*duly*] 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 the authorized employee of a taxpayer who 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.

(2) Any person who is [*duly*] 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.

(3) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2000, 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.

(4) 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.

(5) 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.

(6) In a small claims procedure, a taxpayer may be represented by any of the persons described in subsections (1) to (5) of this section or by any other person permitted by the tax court.

(7) 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.

(8) 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.

(9) 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 (6) and (8) of this section.

SECTION 14a. If House Bill 2424 becomes law, section 14 of this 2003 Act (amending ORS 305.230) is repealed and ORS 305.230, as amended by section 4, chapter 46, Oregon Laws 2003 (Enrolled House Bill 2424), is amended to read:

305.230. (1) Notwithstanding ORS 9.320:

(a) Any person who is [*duly*] 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 [*duly*] 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, 2000, 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.

SECTION 15. This 2003 Act takes effect on the 91st day after the date on which the regular session of the Seventy-second Legislative Assembly adjourns sine die.

Passed by Senate February 25, 2003

Repassed by Senate August 8, 2003

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Secretary of Senate

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President of Senate

Passed by House July 16, 2003

Repassed by House August 11, 2003

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Speaker of House

Received by Governor:

.....M.,....., 2003

Approved:

.....M.,....., 2003

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2003

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Secretary of State