

House Bill 2486

Sponsored by Representative MACPHERSON; Representative BERGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Department of Revenue to establish and promote voluntary compliance initiative for taxpayers who utilize abusive tax avoidance transactions to underreport personal income or corporate income or excise taxes.

Establishes reporting and registration requirements and enhanced penalties for persons who use abusive tax avoidance transactions, or who serve as material advisors for certain transactions. Extends period for which notice of deficiency may be issued in cases in which returns reflect use of abusive tax avoidance transactions.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax compliance; creating new provisions; amending ORS 314.410 and 314.415; and pre-
3 scribing an effective date.

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

5 **SECTION 1. Sections 2 to 14 of this 2005 Act are added to and made a part of ORS**
6 **chapter 314.**

7 **SECTION 2. As used in sections 2 to 11 of this 2005 Act:**

8 (1) "Abusive tax avoidance transaction" means:

9 (a) A listed transaction;

10 (b) A tax shelter; or

11 (c) Any other plan or arrangement devised for the principal purpose of avoiding any tax
12 imposed on or measured by income.

13 (2) "Listed transaction" means a transaction:

14 (a) That is a listed transaction under section 6707A of the Internal Revenue Code;

15 (b) That has been specifically identified as a listed transaction by the Department of Re-
16 venue by rule because the transaction has a potential for tax avoidance; or

17 (c) That is substantially similar to a transaction described in paragraph (a) or (b) of this
18 subsection.

19 (3) "Reportable transaction" means a transaction:

20 (a) That is a reportable transaction under section 6707A of the Internal Revenue Code;

21 (b) That has been specifically identified by the department as a transaction for which
22 information is required to be included with a return or statement because, as determined
23 by the department by rule, the transaction is of a type that the department determines by
24 rule as having a potential for tax avoidance or evasion;

25 (c) That is substantially similar to a transaction described in paragraph (a) or (b) of this
26 subsection; or

27 (d) That is a listed transaction.

28 (4) "Tax shelter" has the meaning given that term in section 6662 of the Internal Revenue

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 Code.

2 **SECTION 3.** (1) If required by rules adopted by the Department of Revenue:

3 (a) Any person who engages in a reportable transaction as a buyer or transferor shall
4 report the transaction to the department.

5 (b) Any person who, as the result of a reportable transaction, acquires an interest in
6 property, a present or future right to income, a present or future right to claim a loss, de-
7 duction, credit, exemption or other tax benefit or a present or future right to an adjustment
8 to basis shall report the transaction to the department.

9 (c) Any person who is associated with a reportable transaction in an association that the
10 department has by rule identified as an association that requires reporting shall report the
11 transaction to the department.

12 (2) A reportable transaction shall be reported to the department in the time, form and
13 manner prescribed by the department by rule.

14 **SECTION 4.** A person who is a material advisor to a reportable transaction under section
15 6111 of the Internal Revenue Code shall send a copy of the return required to be filed with
16 the Internal Revenue Service to the Department of Revenue within 20 days following the date
17 the return is required to be filed with the Internal Revenue Service, if the reportable trans-
18 action reported on the return satisfies any of the following conditions:

19 (1) The transaction occurs in this state; or

20 (2) At least one party to the transaction is an Oregon personal income taxpayer or an
21 Oregon corporate excise or income taxpayer.

22 **SECTION 5.** (1) The Department of Revenue shall develop a registration program for
23 persons engaged as sellers or other transferors in transactions that are listed transactions.

24 (2) A person that engages in a listed transaction in this state as a seller or other
25 transferor shall register with the department within 60 days after entering into the trans-
26 action or on the date the transaction becomes a listed transaction, whichever occurs later.

27 **SECTION 6.** (1) In addition to and not in lieu of any other penalty, a penalty may be
28 imposed in an amount equal to 20 percent of that portion of an underpayment of tax that is
29 attributable to the use of a reportable transaction.

30 (2) A penalty may not be imposed under this section with respect to any underpayment
31 of tax if:

32 (a) The underpayment is not attributable to a listed transaction;

33 (b) There was a reasonable cause for the underpayment;

34 (c) The taxpayer acted in good faith with respect to the underpayment;

35 (d) The relevant facts affecting the tax treatment of the item that caused the under-
36 payment are adequately disclosed in accordance with section 3 of this 2005 Act;

37 (e) There is substantial authority for the tax treatment of the item that caused the
38 underpayment; and

39 (f) The taxpayer reasonably believed that the tax treatment of the item that caused the
40 underpayment was more likely than not the proper treatment.

41 (3)(a) For purposes of subsection (2)(f) of this section, a taxpayer shall be treated as
42 having a reasonable belief if:

43 (A) The treatment was based on facts and law that existed at the time the return re-
44 porting the item was filed; and

45 (B) The belief relates solely to the taxpayer's chances of success on the merits of the

1 treatment and does not take into account the possibility that the return will not be audited,
 2 that issues over the treatment will not be raised on audit or that these issues will be re-
 3 solved through compromise or settlement if raised.

4 (b) Reliance on the advice of a tax advisor does not constitute grounds for reasonable
 5 belief if the tax advisor:

6 (A) Is a material advisor under section 4 of this 2005 Act with respect to the transaction;

7 (B) Is compensated by a person that is a material advisor under section 4 of this 2005
 8 Act with respect to the transaction;

9 (C) Participates in the organization, management, promotion or sale of a listed trans-
 10 action;

11 (D) Is related, under section 267(b) of the Internal Revenue Code, to a person who par-
 12 ticipates in the organization, management, promotion or sale of a listed transaction;

13 (E) Has a contingent fee arrangement with respect to a listed transaction that is con-
 14 tingent on all or part of the intended tax benefits from the transaction being sustained; or

15 (F) Under rules adopted by the department, has a continuing financial interest with re-
 16 spect to a listed transaction.

17 (4) Penalties imposed under this section shall be added to the tax liability of the taxpayer.

18 **SECTION 7.** (1) In addition to and not in lieu of any other penalty, an accuracy-related
 19 penalty may be imposed in an amount equal to 20 percent of that portion of an underpayment
 20 of tax due under ORS chapter 316, 317 or 318 that is attributable to:

21 (a) Negligence or disregard of tax law;

22 (b) A substantial understatement of tax;

23 (c) A substantial valuation misstatement that affects the amount of tax due under ORS
 24 chapter 316, 317 or 318; or

25 (d) A substantial overstatement of pension liabilities.

26 (2) The penalty imposed under this section shall be determined in accordance with
 27 sections 6662 and 6664 of the Internal Revenue Code.

28 (3) If there is an underpayment of tax that is attributable to a gross valuation mis-
 29 statement, as that term is defined under section 6662 of the Internal Revenue Code, the
 30 penalty under this section shall be equal to 40 percent of that portion of the underpayment
 31 to which the gross valuation misstatement is attributable.

32 (4) The Department of Revenue may waive all or a portion of a penalty imposed under
 33 this section if the department determines that waiver will promote efficiency in the col-
 34 lection of taxes due.

35 (5) Penalties imposed under this section shall be added to the tax liability of the taxpayer.

36 **SECTION 8.** (1) If a taxpayer has a noneconomic substance transaction understatement
 37 for a tax year, there shall be added to the tax liability of the taxpayer for the tax year a
 38 penalty equal to:

39 (a) Forty percent of the amount of the understatement; or

40 (b) Twenty percent of the amount of the understatement if:

41 (A) All relevant facts affecting or related to the tax treatment of the noneconomic sub-
 42 stance transaction are fully and adequately disclosed on the return of the taxpayer or on a
 43 statement attached to the return of the taxpayer prior to the date of any notice of the im-
 44 position of a penalty under this section; and

45 (B) The noneconomic substance transaction is not a listed transaction.

1 (2) The Director of the Department of Revenue may rescind all or part of a penalty im-
2 posed under this section if:

3 (a) The person on whom the penalty is imposed does not have a history of noncompliance
4 with the tax laws of this state;

5 (b) The noneconomic substance transaction understatement is due to an unintentional
6 mistake;

7 (c) The noneconomic transaction is not a listed transaction;

8 (d) Imposing the penalty would be contrary to principles of equity and good conscience;
9 and

10 (e) Rescinding the penalty would promote compliance with the tax laws of this state.

11 (3) A decision of the director under subsection (2) of this section may not be reviewed in
12 any administrative or judicial proceeding.

13 (4) The penalty imposed under this section is in addition to and not in lieu of any other
14 penalty.

15 (5) As used in this section:

16 (a) "Noneconomic substance transaction" means:

17 (A) A transaction that lacks a valid nontax business purpose;

18 (B) A loss, deduction, subtraction, credit or addition to income that lacks economic
19 substance; or

20 (C) A transaction or other arrangement that uses an entity or an interest in an entity
21 that lacks economic substance.

22 (b) "Noneconomic substance transaction understatement" means the sum of:

23 (A) The amount determined by multiplying the highest rate of tax imposed on the tax-
24 payer under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or
25 318, by any net increase in taxable income that results from a difference between the proper
26 tax treatment of a noneconomic substance transaction and the treatment of the transaction
27 on the return of the taxpayer; and

28 (B) The amount of any decrease in the aggregate amount of credits determined for pur-
29 poses of ORS chapter 316 or, if the taxpayer is a corporation, for purposes of ORS chapter
30 317 or 318, that results from the taxpayer's treatment of a noneconomic substance trans-
31 action and the proper tax treatment of that transaction.

32 **SECTION 9.** (1)(a) A person is liable for a penalty determined under this subsection if the
33 person fails to furnish a copy of a return that is required to be furnished to the Department
34 of Revenue under section 4 of this 2005 Act on or before the date on which the copy is re-
35 quired to be furnished.

36 (b) The amount of the penalty shall be determined by the department. The penalty may
37 not exceed the greater of:

38 (A) \$_____; or

39 (B) _____ percent of the gross income that the person derived from reportable trans-
40 actions.

41 (2)(a) A person is liable for a penalty determined under this subsection if the person fails
42 to comply with the registration program under section 5 of this 2005 Act by the date on
43 which registration is required.

44 (b) The amount of the penalty shall be determined by the department. The penalty may
45 not exceed the greater of:

1 (A) \$_____; or

2 (B) _____ percent of the gross income that the person derived from listed transactions.

3 (3) The penalties imposed under subsection (1) or (2) of this section do not apply until the
4 60th day following the date the department issues a notice under section 10 of this 2005 Act
5 demanding compliance with section 4 or 5 of this 2005 Act.

6 (4) The Director of the Department of Revenue may waive all or part of a penalty im-
7 posed under this section if:

8 (a) The act or failure to act upon which the penalty is based is due to an unintentional
9 mistake;

10 (b) Imposing the penalty would be contrary to principles of equity and good conscience;
11 and

12 (c) Rescinding the penalty would promote compliance with the tax laws of this state.

13 (5) A decision of the director under subsection (4) of this section may not be reviewed in
14 any administrative or judicial proceeding.

15 (6) A penalty imposed under this section is in addition to and not in lieu of any other
16 penalty.

17 **SECTION 10.** (1) If the Department of Revenue believes that a person is required to file
18 a copy of a federal return under section 4 of this 2005 Act and has failed to do so by the date
19 required under section 4 of this 2005 Act, the department shall send a written notice to the
20 person demanding compliance with section 4 of this 2005 Act.

21 (2) If the department believes that a person is required to register under section 5 of this
22 2005 Act and the person has failed to register by the date prescribed in section 5 of this 2005
23 Act, the department shall send a written notice to the person demanding compliance with
24 section 5 of this 2005 Act.

25 (3) A person receiving a notice under this section may appeal to the Oregon Tax Court.
26 Notwithstanding ORS 305.565, an appeal does not stay the collection of a penalty imposed
27 under section 9 of this 2005 Act.

28 **SECTION 11.** (1) A penalty shall be imposed on a person who promotes a tax shelter if:

29 (a) The person is or would be subject to a penalty for promoting an abusive tax shelter
30 under section 6700 of the Internal Revenue Code; and

31 (b) The tax shelter satisfies any of the following conditions:

32 (A) The tax shelter is organized in this state.

33 (B) The tax shelter is doing business in this state.

34 (C) The tax shelter derives income from sources in this state.

35 (D) At least one investor in the tax shelter is an Oregon personal income taxpayer or an
36 Oregon corporate excise or income taxpayer.

37 (2) The amount of the penalty shall equal 100 percent of the amount of gross income
38 derived by the person in promoting the tax shelter.

39 (3) A penalty imposed under this section shall be in addition to and not in lieu of any
40 other penalty.

41 **SECTION 12.** Moneys collected under section 9 or 11 of this 2005 Act shall be considered
42 net revenue from the tax imposed under ORS chapter 316 for purposes of ORS 316.502.

43 **SECTION 13.** (1) The Department of Revenue shall develop and administer a voluntary
44 compliance initiative, to be conducted during the period beginning January 1, 2006, and end-
45 ing July 1, 2006.

1 (2) The voluntary compliance initiative shall apply to tax liabilities attributable to abusive
 2 tax avoidance transactions for tax years beginning prior to January 1, 2006.

3 (3) The department shall publicize the voluntary compliance initiative so as to maximize
 4 public awareness of and participation in the initiative.

5 (4) The department may prescribe forms, issue instructions, conduct public meetings and
 6 undertake any other action necessary to maximize public participation in and compliance
 7 with the initiative and the collection of tax liabilities to which the initiative applies.

8 (5) Notwithstanding any other provision of law, the department may enter into closing
 9 agreements or adopt payment plans to facilitate the collection of tax liabilities to which the
 10 initiative applies.

11 **SECTION 14.** (1) The voluntary compliance initiative described in section 13 of this 2005
 12 Act applies to any taxpayer that, during the period beginning January 1, 2006, and ending
 13 July 1, 2006:

14 (a) Files an amended return for each tax year for which the taxpayer has previously filed
 15 a return that reflected the use of an abusive tax avoidance transaction or a reportable
 16 transaction to underreport the tax liability of the taxpayer for the tax year;

17 (b) For each return described in paragraph (a) of this subsection, reports all income from
 18 all sources, without regard to the abusive tax avoidance transaction or reportable trans-
 19 action;

20 (c) Identifies on each return described in paragraph (a) of this subsection, or as other-
 21 wise prescribed by the Department of Revenue, that the return is being filed under the vol-
 22 untary compliance initiative; and

23 (d) Except as authorized under section 13 (5) of this 2005 Act, pays in full all taxes and
 24 interest due.

25 (2) With respect to each return filed in compliance with subsection (1) of this section:

26 (a) All penalties that would otherwise be imposed shall be waived; and

27 (b) A taxpayer may not file a subsequent amended return seeking a refund of tax and
 28 may not otherwise appeal the amount of tax or interest due with respect to any item re-
 29 ported on the amended return.

30 (3)(a) After July 1, 2006, the department may issue a notice of deficiency and impose any
 31 penalty, interest or other sanction with respect to the difference between the amount shown
 32 on a return filed under subsection (1) of this section and the correct amount of tax.

33 (b) A taxpayer may make written objections to the deficiency or request a conference
 34 as prescribed in ORS 305.265.

35 (c) If no written objection or request is received by the department, or as otherwise au-
 36 thorized by ORS 305.265, the department shall assess the deficiency as prescribed in ORS
 37 305.265 and the taxpayer may appeal the assessment as prescribed in ORS 305.265.

38 **SECTION 15.** The definitions in section 2 of this 2005 Act apply to sections 13 and 14 of
 39 this 2005 Act.

40 **SECTION 16.** Sections 13 to 15 of this 2005 Act are repealed on January 2, 2010.

41 **SECTION 17.** ORS 314.410 is amended to read:

42 314.410. (1) At any time within three years after the return was filed, the Department of Re-
 43 venue may give notice of deficiency as prescribed in ORS 305.265.

44 (2) If the department finds that gross income equal to 25 percent or more of the gross income
 45 reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any

1 time within five years after the return was filed.

2 **(3) If the department finds that a return reports or reflects the use of an abusive tax**
 3 **avoidance transaction, as defined in section 2 of this 2005 Act, notice of a deficiency may be**
 4 **given at any time within six years after the return was filed.**

5 [(3)(a)] **(4)(a)** The limitations to the giving of notice of a deficiency provided in this section
 6 [shall] **do** not apply to a deficiency resulting from false or fraudulent returns, or in cases where no
 7 return has been filed.

8 (b)(A) If the Commissioner of Internal Revenue or other authorized officer of the federal gov-
 9 ernment or an authorized officer of another state's taxing authority makes a change or correction
 10 as described in ORS 314.380 (2)(a)(A) and, as a result of the change or correction, an assessment of
 11 tax or issuance of a refund is permitted under any provision of the Internal Revenue Code or ap-
 12 plicable law of the other state, or pursuant to an agreement between the taxpayer and the federal
 13 or other state taxing authority that extends the period in which an assessment of federal or other
 14 state tax may be made, then notice of a deficiency under any Oregon law imposing tax upon or
 15 measured by income for the corresponding tax year may be mailed within two years after the de-
 16 partment is notified by the taxpayer or the commissioner or other tax official of the correction, or
 17 within the applicable [three-year or five-year] period prescribed in subsections (1) [and (2)] **to (3)** of
 18 this section, whichever period expires later.

19 (B) A notice of deficiency mailed pursuant to this paragraph may assert any adjustment neces-
 20 sary to arrive at the correct amount of Oregon taxable income and Oregon tax liability for the tax
 21 year for which the federal or other state change or correction is made.

22 (c) If the taxpayer files an original or amended federal or other state return as described in ORS
 23 314.380 (2)(a)(B), the department may reduce any claim for refund as a result of a change in Oregon
 24 tax liability related to the original or amended federal or other state return, but may not give notice
 25 of a deficiency for an adjustment to Oregon tax liability following the expiration of the applicable
 26 period prescribed in subsections (1) [and (2)] **to (3)** of this section and paragraph (a) of this sub-
 27 section.

28 [(4)] **(5)** The tax deficiency must be assessed [and notice of tax assessment mailed to the taxpayer
 29 or authorized representative, who is authorized in writing, within one year from the date of the
 30 notice of deficiency unless an extension of time is agreed upon as prescribed in subsection [(6)] **(7)**
 31 of this section.

32 [(5)] **(6)** Notwithstanding other provisions of this section, the period for the assessment of any
 33 deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's
 34 principal residence, as provided in section 1034 of the Internal Revenue Code (as in effect prior to
 35 the repeal of section 1034 of the Internal Revenue Code by the Taxpayer Relief Act of 1997 (P.L.
 36 105-34)), does not expire prior to the expiration of three years from the date the department is no-
 37 tified by the taxpayer of:

38 (a) The cost of purchasing the new residence which the taxpayer claims results in
 39 nonrecognition of any part of such gain;

40 (b) The taxpayer's intention not to purchase a new residence; or

41 (c) A failure to purchase a new residence within the period prescribed in section 1034 of the
 42 Internal Revenue Code (as in effect prior to the repeal of section 1034 of the Internal Revenue Code
 43 by the Taxpayer Relief Act of 1997 (P.L. 105-34)).

44 [(6)] **(7)** If, prior to the expiration of any period of time prescribed in this section for giving of
 45 notice of deficiency or of assessment, the department and the taxpayer consent in writing to the

1 notice of deficiency being mailed or deficiency being assessed after the expiration of such prescribed
2 period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the
3 expiration of the period agreed upon. The period so agreed upon may be extended by subsequent
4 agreements in writing made before the expiration of the period agreed upon.

5 [(7)] (8) In the case of a deficiency attributable to the application to the taxpayer of a net op-
6 erating loss carryback, notice of such deficiency may be mailed at any time before the expiration
7 of the period within which notice of a deficiency for the taxable year of the net operating loss which
8 results in such carryback may be mailed.

9 [(8)] (9) Notwithstanding the other provisions of this section, if any taxpayer agreed with the
10 United States Commissioner of Internal Revenue or the taxing authority of another state for an
11 extension, or renewals thereof, of the period for giving notices of deficiencies and assessing defi-
12 ciencies in income tax for any year, the period for mailing notices of deficiencies of tax for such
13 years and the period for filing a claim for refund under ORS 314.380 (2)(b) shall expire on the later
14 of:

15 (a) The expiration of an applicable period described in subsections (1) to [(7)] (8) of this section;
16 or

17 (b) Six months after the date of the expiration of the agreed period for assessing a deficiency.

18 [(9)] (10) For purposes of this section, ORS 314.415 and any other provision of law establishing
19 the time for which a refund may be claimed or notice of deficiency may be given with respect to a
20 tax imposed on or measured by net income, "return" means the return required to be filed by the
21 taxpayer and does not include a return of any person from whom the taxpayer has received an item
22 of income, gain, loss, deduction or credit.

23 **SECTION 18.** ORS 314.415 is amended to read:

24 314.415. (1)(a) If the Department of Revenue determines pursuant to ORS 305.270 that the
25 amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the
26 department with interest at the rate established under ORS 305.220, for each month or fraction of
27 a month during a period beginning 45 days after the due date of the return or the date the tax was
28 paid, whichever is the later, to the time the refund is made.

29 (b)(A) No refund shall be allowed or made after three years from the time the return was filed,
30 or two years from the time the tax or a portion thereof was paid, whichever period expires the later,
31 unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance
32 with ORS 305.270, nor shall a refund claimed on an original return be allowed or made in any case
33 unless the return is filed within three years of the due date, excluding extensions, of the return in
34 respect of which the tax might have been credited. If a refund is disallowed for the tax year during
35 which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed
36 as a credit against any tax occurring on a return filed for a subsequent year. If the tax owed after
37 offsets for all amounts owed the state, or a county pursuant to a judgment obtained under ORS
38 169.151, is less than \$1, no refund shall be made.

39 (B) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a sus-
40 pension of the running of the periods specified for filing a claim for refund of federal income tax,
41 the period specified in subparagraph (A) of this paragraph shall also be suspended.

42 (c) No interest on a refund to an employee of a tax withheld by an employer shall be paid for
43 any period prior to the time the employee filed a personal income tax return for the tax year in-
44 volved, nor for any period prior to the day which is 45 days after the date when the employee's
45 annual return for that year was filed or was due, whichever is the later.

1 (d) No interest on a refund of estimated tax paid under ORS 314.505 to 314.525 or 316.557 to
2 316.589 shall be paid for any period prior to the time the taxpayer filed a tax return for the tax year
3 involved, nor for any period prior to the day which is 45 days after the date when the tax return
4 for that year was filed or was due, whichever is later.

5 (e) The amount of the refund, exclusive of interest thereon, shall not exceed the portion of the
6 tax paid during such period preceding the filing of the claim or, if no claim is filed, then during the
7 period preceding the allowance of the refund during which a claim might have been filed. Where
8 there has been an overpayment of any tax imposed, the amount of the overpayment and interest
9 thereon shall be credited against any tax, penalty or interest then due from the taxpayer, and only
10 the balance shall be refunded.

11 (f) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
12 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the
13 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
14 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
15 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
16 from the date of payment to the department. Nothing in this paragraph shall require that interest
17 be paid upon any amount for any period for which interest upon the same amount for the same pe-
18 riod is required to be paid under ORS 305.419.

19 (2) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1)
20 of this section, if, prior to the expiration of the period prescribed in subsection (1)(b) of this section,
21 the department and the taxpayer consent in writing to the refund of tax after the expiration of the
22 period prescribed, the refund shall be made at any time prior to the expiration of the period agreed
23 upon and no refund shall be made or allowed after the expiration of the period agreed upon unless
24 a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in com-
25 pliance with the manner prescribed by the department. The period so agreed upon may be extended
26 by subsequent agreements in writing made before the expiration of the period previously agreed
27 upon. The department shall have the power to consent to such refund only where the taxpayer has
28 consented to assessment of additional tax, if such be determined upon audit, after the expiration of
29 the applicable [*three-year or five-year*] period prescribed in ORS 314.410 (1) [*and (2)*] **to (3)**.

30 (3) If the claim for credit or refund relates to an overpayment on account of the deductibility
31 by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of
32 the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the
33 three-year period of limitation prescribed in subsection (1) of this section, the period shall be seven
34 years from the date prescribed by law for the filing of the return for the year with respect to which
35 the claim is made; provided, that if the claim is made in reliance upon this subsection after the ex-
36 piration of the three-year period prescribed in subsection (1)(b) of this section, no interest shall be
37 allowed with respect to any credit or refund determined to be due upon such claim for the period
38 beginning at the close of the three-year period prescribed in subsection (1) of this section and ending
39 at the expiration of six months after the date on which the claim is filed.

40 (4)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating
41 loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation pre-
42 scribed in subsection (1) of this section, the period shall be that period which ends three years after
43 the time prescribed by law for filing the return (including extensions thereof) for the taxable year
44 of the net operating loss or net capital loss which results in such carryback. In the case of such a
45 claim, the amount of the credit or refund may exceed the portion of the tax paid within the period

1 provided in subsection (1)(a) or (b) of this section or subsection (2) of this section, whichever is ap-
 2 plicable, to the extent of the amount of the overpayment attributable to such carryback. If the al-
 3 lowance of a credit or refund of an overpayment of tax attributable to a net operating loss
 4 carryback or a net capital loss carryback is otherwise prevented by the operation of any law or rule
 5 of law other than ORS 305.150, relating to closing agreements, such credit or refund may be allowed
 6 or made, if claim therefor is filed within the period provided in this subsection. To the extent that
 7 the carryback was not an issue in any proceeding in which the determination of a court, including
 8 the Oregon Tax Court, has become final, the claimed credit or refund applicable to that carryback
 9 may be allowed or made under this subsection.

10 (b) For purposes of subsection (1) of this section, if any overpayment of tax results from a
 11 carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have
 12 been made prior to the later of:

13 (A) The due date of the return for the taxable year in which such net operating loss or net
 14 capital loss arises;

15 (B) The date the return for the year in which the net operating or net capital loss arises is filed;
 16 or

17 (C) The date of filing of the return for the year to which the net operating loss or net capital
 18 loss is carried back.

19 (5) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270, or other provisions
 20 of this section, if the taxpayer has agreed with the United States Commissioner of Internal Revenue
 21 for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in fed-
 22 eral income tax for any year, the period within which a claim for credit or refund may be filed or
 23 credit or refund allowed or made if no claim is filed shall be the period provided within subsections
 24 (1) to (4) of this section or six months after the date of the expiration of the agreed period for as-
 25 sessing deficiency in federal income tax, whichever period expires the later.

26 (6) The department may make separate refunds of withheld taxes upon request by a husband or
 27 wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross
 28 earnings of each shown by the information returns filed by the employer or otherwise shown to the
 29 satisfaction of the department.

30 (7) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department
 31 may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490
 32 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the
 33 State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

34 **SECTION 19. (1) Sections 2, 7 and 8 of this 2005 Act and the amendments to ORS 314.410**
 35 **and 314.415 by sections 17 and 18 of this 2005 Act apply to tax years beginning on or after**
 36 **January 1, 2000.**

37 **(2) Sections 3, 4, 5, 6, 9, 10 and 11 of this 2005 Act apply to tax years beginning on or after**
 38 **January 1, 2005.**

39 **SECTION 20. This 2005 Act takes effect on the 91st day after the date on which the**
 40 **regular session of the Seventy-third Legislative Assembly adjourns sine die.**