

House Bill 2487

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**.

Requires mandatory withholding of income tax from distributions from employer-sponsored retirement plans. Requires mandatory withholding of income tax when Oregon real property interests are sold by nonresidents. Applies to distributions and sales occurring on or after January 1, 2006.

Allows local governments that impose personal income tax that meets certain requirements to request that Department of Revenue provide collection services, including collection of tax on state income tax return forms.

Appropriates moneys from Local Income Tax Collections Fund to Department of Revenue for distribution to local governments.

Authorizes state agencies, boards and commissions that issue occupational or professional licenses to require licensees to demonstrate and maintain tax compliance as condition of issuance or renewal of license.

Authorizes Department of Revenue to adopt rules that require payers of certain types of payments identified by department to withhold income tax from payments.

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 316.189; appropriating money;
3 and prescribing an effective date.

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

5 **SECTION 1.** ORS 316.189 is amended to read:

6 316.189. (1) As used in this section:

7 (a) "Commercial annuity" means an annuity, endowment or life insurance contract issued by an
8 insurance company authorized to transact insurance in the State of Oregon.

9 (b) "Department" means the Oregon Department of Revenue.

10 (c) "Designated distribution" means any distribution or payment from or under an employer de-
11 ferred compensation plan, an individual retirement plan or a commercial annuity. "Designated dis-
12 tribution" does not include any amount treated as wages as defined in ORS 316.162, the portion of
13 any distribution or payment that is not includable in the gross income of the recipient or any dis-
14 tribution or payment made under section 404(k)(2) of the Internal Revenue Code.

15 (d) "Employer deferred compensation plan" means any pension, annuity, profit-sharing or stock
16 bonus plan or other plan deferring the receipt of compensation.

17 (e) "Individual retirement plan" means an individual retirement account described in section
18 408(a) of the Internal Revenue Code or an individual retirement annuity described in section 408(b)
19 of the Internal Revenue Code.

20 (f) "Nonperiodic distribution" means any designated distribution which is not a periodic pay-
21 ment.

22 (g) "Payer" means any payer of a designated distribution doing business in or making payments
23 or distributions from sources in this state.

24 (h) "Periodic payment" means a designated distribution which is an annuity or similar periodic

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 payment.

2 (i) "Plan administrator" means a plan administrator as described in section 414(g) of the Internal
3 Revenue Code, who is the administrator of a plan created by an Oregon employer.

4 (j) "Qualified total distribution" means any designated distribution made under a retirement,
5 annuity or deferred compensation plan described in section 401(a), 403(a) or 457(b) of the Internal
6 Revenue Code, that consists of the balance to the credit of the employee, exclusive of accumulated
7 deductible employee contributions, made within one tax year of the recipient.

8 (2)(a) The payer of any periodic payment shall withhold from [*such*] **the** payment the amount
9 [*which*] **that** would be required to be withheld from [*such*] **the** payment under ORS 316.167 if the
10 payment were wages paid by an employer to an employee. The time and manner of payment of
11 withheld amounts to the department shall be the same as that required under ORS 316.197 for
12 withholding of income taxes from wages.

13 (b) The payer of any nonperiodic distribution shall withhold from [*such*] **the** distribution an
14 amount determined under tables prescribed by the department.

15 (c) The maximum amount to be withheld under this section on any designated distribution shall
16 not exceed 10 percent of the amount of money and the fair market value of other property received
17 in the distribution. If the distribution is not subject to withholding for federal income tax purposes
18 under section 3405 of the Internal Revenue Code, it shall not be subject to withholding under this
19 section.

20 (3)(a) Except as provided in paragraph (b) of this subsection, the payer of a designated distrib-
21 ution shall withhold and be liable for payment of amounts required to be withheld under this section.

22 (b) In the case of any plan described in section 401(a), 403(a) or 457(b) of the Internal Revenue
23 Code, or section 301(d) of the Tax Reduction Act of 1975, the plan administrator shall withhold and
24 be liable for payment of amounts required to be withheld under this section, unless the plan ad-
25 ministrator has directed the payer to withhold the tax and has provided the payer with the infor-
26 mation required by rule of the department.

27 (4)(a) An individual may elect to have no withholding by a payer under subsection (2) of this
28 section. If an individual has elected to have no federal withholding from payments or distributions
29 described in this section the individual shall be deemed to have elected no withholding for state
30 purposes, unless the individual notifies the payer otherwise.

31 (b) An election made under this subsection shall be effective as provided under rules
32 promulgated by the department. The rules required under this paragraph shall provide the manner
33 in which an election may be revoked and when such revocation shall be effective.

34 (c) **An election may not be made under this subsection with respect to any distribution**
35 **for which federal income taxes are to be withheld or are required to be withheld under sec-**
36 **tion 3405 of the Internal Revenue Code.**

37 (5) The payer of any periodic payment or nonperiodic distribution **for which an election may**
38 **be made under subsection (4) of this section** shall give notice to the payee of the right to make
39 [*an election to have no state withholding from the payment or distribution*] **the election.** The depart-
40 ment shall provide by rule for the time and manner of giving the notice required under this sub-
41 section.

42 (6) Any rules permitted or required to be promulgated by the department under this section
43 shall, insofar as is practicable, be consistent with corresponding provisions of section 3405 of the
44 Internal Revenue Code and regulations promulgated thereunder.

45 (7) Any designated distribution shall be treated as if it were wages paid by an employer to an

1 employee within the meaning of ORS 316.162 to 316.219 for all other purposes of ORS 316.162 to
 2 316.219. In the case of any designated distribution not subject to withholding by reason of an
 3 election under subsection (4) of this section, the amount withheld shall be treated as zero.

4 **SECTION 2. The amendments to ORS 316.189 by section 1 of this 2005 Act apply to dis-**
 5 **tributions made on or after January 1, 2006.**

6 **SECTION 3. Section 4 of this 2005 Act is added to and made a part of ORS chapter 314.**

7 **SECTION 4. (1) As used in this section:**

8 (a) **“Authorized agent” means an agent who is responsible for closing and settlement**
 9 **services in a conveyance of a real property interest.**

10 (b) **“Closing and settlement services” means services that are provided for the benefit**
 11 **of a transferor or a transferee in connection with a conveyance of a real property interest,**
 12 **or the receipt or disbursement of moneys in connection with a sale, lease, encumbrance,**
 13 **mortgage or deed of trust in or related to real property.**

14 (c) **“Conveyance” means a sale, lease, encumbrance, mortgage or creation of a secured**
 15 **interest in real property.**

16 (d) **“Real property interest” means a United States real property interest, as defined in**
 17 **section 897(c) of the Internal Revenue Code, that is located in the State of Oregon.**

18 (2) **If there is a conveyance of a real property interest, the authorized agent providing**
 19 **closing and settlement services is required to withhold an amount equal to four percent of**
 20 **the consideration for the real property interest being conveyed or the net proceeds resulting**
 21 **from the conveyance, whichever is less, when:**

22 (a) **The transferor is an individual who is not a resident of this state at the time of both**
 23 **the closing date of the conveyance and the date on which proceeds of the conveyance are**
 24 **disbursed; or**

25 (b) **The transferor is a corporation that, immediately after the conveyance of the real**
 26 **property interest, is not doing business in this state.**

27 (3) **Notwithstanding subsection (2) of this section, an authorized agent is not required to**
 28 **withhold amounts under this section if:**

29 (a) **The consideration for the conveyance does not exceed \$100,000;**

30 (b) **The transferee acquires the real property interest through foreclosure; or**

31 (c) **The authorized agent obtains a written affirmation executed by the transferor on a**
 32 **form prescribed by the Department of Revenue certifying under penalty of perjury that the**
 33 **transferor:**

34 (A) **If an individual, is a resident of this state;**

35 (B) **If a corporation, has a permanent place of business in this state; or**

36 (C) **Will not owe tax under ORS chapter 316, 317 or 318 for the tax year because the**
 37 **conveyance is a nontaxable exchange under the Internal Revenue Code.**

38 (4) **For purposes of this section, a corporation is not doing business in this state if:**

39 (a) **The corporation has not been issued a certificate of existence or a certificate of au-**
 40 **thorization by the Secretary of State as described in ORS 60.027; and**

41 (b) **The corporation does not maintain a permanent office with a staff of at least one**
 42 **employee in this state or does not own or lease property in this state other than the property**
 43 **that is the subject of the conveyance.**

44 (5) **Amounts withheld pursuant to this section are held in trust for the State of Oregon**
 45 **and shall be paid to the department in the time and manner prescribed by the department**

1 by rule. If an authorized agent fails to remit an amount withheld or required to be withheld
 2 by the agent under this section by the time remittance is required, the department may en-
 3 force collection in the same manner as the department enforces the collection of amounts
 4 withheld by employers under ORS 316.162 to 316.219.

5 **SECTION 5.** Section 4 of this 2005 Act applies to conveyances of real property interests
 6 occurring on or after January 1, 2006.

7 **SECTION 6.** Sections 7 to 11 of this 2005 Act are added to and made a part of ORS 305.620
 8 to 305.640.

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

10 (1) "Local government" means a city, county or other local district that has the author-
 11 ity to impose an income tax.

12 (2) "Local tax" means a tax that meets the criteria set forth in section 8 (1) of this 2005
 13 Act.

14 **SECTION 8.** (1) In lieu of an agreement entered into under ORS 305.620, a local govern-
 15 ment that has adopted an ordinance, resolution or other local legislation levying a tax im-
 16 posed on income may request collection services to be performed by the Department of
 17 Revenue if:

18 (a) The rate of tax does not exceed one percent;

19 (b) The tax is imposed on residents of the territory of the local government imposing the
 20 tax; and

21 (c) The tax is imposed only on taxable income as determined under ORS chapter 316.

22 (2) A local government must request collection services under this section at least six
 23 months prior to the beginning of the first calendar year for which the collection services are
 24 sought.

25 (3) If a local government requests collection services under this section and the tax im-
 26 posed by the local government is a local tax:

27 (a) The department shall modify the state personal income tax return forms and in-
 28 structions so that the local tax is reported and collected on the same form, at the same time
 29 and in the same manner as the state personal income tax is reported and collected.

30 (b) An underpayment of estimated local tax shall be treated as an underpayment of es-
 31 timated tax under ORS 314.505 to 314.525 or 316.557 to 316.589. The department may waive
 32 interest on underpayments of estimated local tax for the first year for which the department
 33 provides collection services to the local government under this section.

34 (4) For any period for which collection services are being provided by the department
 35 under this section, the local government for which the services are being provided may not
 36 accept payment of the tax from a taxpayer.

37 (5) The department may provide collection services under this section to more than one
 38 local government that has overlapping territory with another local government for which the
 39 department is required to provide collection services under this section, but may not provide
 40 collection services if the combined tax rate of the local jurisdictions exceeds one percent. A
 41 local government that has obtained collection services from the department under this sec-
 42 tion and is currently receiving collection services from the department under this section
 43 has priority over a local government that is seeking collection services under this section.

44 **SECTION 9.** (1) The Department of Revenue shall deposit all collections of local tax re-
 45 ceived by the department in the performance of collection services under section 8 of this

1 2005 Act into the Local Income Tax Collections Fund established under section 11 of this 2005
 2 Act. The department shall record the amount of each collection and the local government
 3 for which the collection is made.

4 (2) Based on the amounts of local tax actually collected, the department shall develop a
 5 distribution schedule consisting of the ratios of the collections on behalf of each local gov-
 6 ernment for which collection services are being performed to the total amount of local tax
 7 collections. The department shall periodically adjust the distribution schedule to reflect
 8 changes in collections.

9 SECTION 10. Unless the context requires otherwise, with respect to a local tax for which
 10 the Department of Revenue is providing collection services under section 8 of this 2005 Act,
 11 the provisions of ORS chapters 305, 314 and 316 apply to the determination of deficiencies,
 12 assessments, claims for refunds, confidentiality and disclosure of information, penalties, in-
 13 terest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court
 14 as if the local tax were a state tax imposed on or measured by income.

15 SECTION 11. (1) The Local Income Tax Collections Fund is created, separate and distinct
 16 from the General Fund. Interest earned by the Local Income Tax Collections Fund shall be
 17 credited to the Local Income Tax Collections Fund.

18 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may
 19 be retained for the payment of refunds, but the working balance may not exceed \$_____.

20 (3) Except as provided in subsection (2) of this section, the Department of Revenue shall
 21 at least quarterly distribute all revenue in the Local Income Tax Collections Fund as follows:

22 (a) An amount equal to the costs incurred by the department in providing collection
 23 services under section 8 of this 2005 Act, not to exceed _____ percent of the total amount
 24 being distributed under this section, shall be distributed to the department for cost re-
 25 imbursement; and

26 (b) The balance to the local governments for which the department performs collection
 27 services under section 8 of this 2005 Act, in accordance with the distribution schedule es-
 28 tablished under section 9 of this 2005 Act.

29 (4) Moneys distributed under subsection (3) of this section are continuously appropriated
 30 to the department for the purposes for which the distributions are being made under sub-
 31 section (3) of this section.

32 SECTION 12. Notwithstanding sections 9 and 11 of this 2005 Act, the Department of Re-
 33 venue may by rule modify the distribution schedule established under section 9 of this 2005
 34 Act in order to recover an equitable portion of administrative costs incurred in the first year
 35 in which any local government received collection services from the department from those
 36 local governments that receive collection services from the department in subsequent years.

37 SECTION 13. Section 12 of this 2005 Act is repealed on January 2, 2012.

38 SECTION 14. Section 15 of this 2005 Act is added to and made a part of ORS chapter 305.

39 SECTION 15. (1) Any state agency, board or commission that issues occupational licenses
 40 or licenses for the privilege of engaging in an occupation or profession within this state may,
 41 as a condition of issuance or renewal of a license, require the licensee to demonstrate com-
 42 pliance with the personal income tax laws of this state or the corporate excise or income tax
 43 laws of this state, whichever are applicable.

44 (2) Any state agency, board or commission that requires tax compliance as a condition
 45 of issuance or renewal of a license under subsection (1) of this section may suspend, revoke

1 or refuse to issue or renew a license if the licensee fails to demonstrate or maintain tax
 2 compliance.

3 (3) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose to
 4 a state agency, board or commission that requires tax compliance as a condition of issuance
 5 or renewal of a license under subsection (1) of this section any information the department
 6 considers necessary to assist the state agency, board or commission in verifying the tax
 7 compliance of the licensees of the state agency, board or commission.

8 (4) The department may enter into agreements with any state agency, board or com-
 9 mission that requires tax compliance as a condition of issuance or renewal of a license under
 10 subsection (1) of this section in order to assist in the administration of the tax compliance
 11 requirement.

12 (5) The department may adopt rules defining tax compliance for purposes of this section.

13 **SECTION 16.** Section 17 of this 2005 Act is added to and made a part of ORS 316.162 to
 14 316.219.

15 **SECTION 17.** (1) The Department of Revenue may adopt rules to require the payer of a
 16 specified type of payment to withhold from the payment the amount that would be required
 17 to be withheld from the payment under ORS 316.167 if the payment were wages paid by an
 18 employer to an employee. The rules shall identify the types of payments for which with-
 19 holding is required and may set forth any other requirements necessary to facilitate the
 20 withholding and payment of the proper amounts from the payments from which withholding
 21 is being required.

22 (2) The maximum amount that may be required to be withheld from a payment may not
 23 exceed 10 percent of the amount of the payment.

24 (3) Amounts withheld pursuant to this section are held in trust for the State of Oregon
 25 and shall be paid to the department in the time and manner prescribed by the department
 26 by rule. If a payer is required to withhold amounts under rules adopted under this section
 27 and fails to remit an amount withheld by the payer under this section by the time remittance
 28 is required, the department may enforce collection in the same manner as the department
 29 enforces the collection of amounts withheld by employers under ORS 316.162 to 316.219.

30 **SECTION 18.** This 2005 Act takes effect on the 91st day after the date on which the
 31 regular session of the Seventy-third Legislative Assembly adjourns sine die.

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