

House Bill 2914

Sponsored by Representatives FARR, HUNT

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**.

Expands elderly rental assistance program to include members of Oregon National Guard, military reserve forces or organized militia of other states or territories of United States and their spouses, and veterans. Permits participation in program by members of armed forces without regard to maximum household income limit.

Applies to claims for rental assistance made on or after January 1, 2006.

A BILL FOR AN ACT

1
2 Relating to rental assistance; creating new provisions; and amending ORS 18.512, 18.845, 179.640,
3 305.380, 305.514, 310.630, 310.635, 310.652, 310.657, 310.690, 310.692, 310.706, 311.678, 314.400,
4 314.860 and 411.700.

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

6 **SECTION 1.** ORS 310.630 is amended to read:

7 310.630. As used in ORS 310.630 to 310.706:

8 (1) "Contract rent" means rental paid to the landlord for the right to occupy a homestead, in-
9 cluding the right to use the personal property located therein. "Contract rent" does not include
10 rental paid for the right to occupy a homestead that is exempt from taxation, unless payments in lieu
11 of taxes of 10 percent or more of the rental exclusive of fuel and utilities are made on behalf of the
12 homestead. "Contract rent" does not include advanced rental payments for another period and rental
13 deposits, whether or not expressly set out in the rental agreement, or payments made to a nonprofit
14 home for the elderly described in ORS 307.375. If a landlord and tenant have not dealt with each
15 other at arm's length, and the Department of Revenue is satisfied that the contract rent charged
16 was excessive, it may adjust the contract rent to a reasonable amount for purposes of ORS 310.630
17 to 310.706.

18 (2) "Department" means the Department of Revenue.

19 (3) "Fuel and utility payments" includes payments for heat, lights, water, sewer and garbage
20 made solely to secure those commodities or services for the homestead of the taxpayer. "Fuel and
21 utility payments" does not include telephone service.

22 (4) "Gross rent" means contract rent paid plus the fuel and utility payments made for the
23 homestead in addition to the contract rent, during the calendar year for which the claim is filed.

24 (5) "Homestead" means the taxable principal dwelling located in Oregon, either real or personal
25 property, rented by the taxpayer, and the taxable land area of the tax lot upon which it is built.

26 (6) "Household" means the taxpayer, the spouse of the taxpayer and all other persons residing
27 in the homestead during any part of the calendar year for which a claim is filed.

28 (7) "Household income" means the aggregate income of the taxpayer and the spouse of the tax-
29 payer who reside in the household, that was received during the calendar year for which the claim
30 is filed. "Household income" includes payments received by the taxpayer or the spouse of the tax-

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 payer under the federal Social Security Act for the benefit of a minor child or minor children who
 2 are members of the household.

3 (8) "Income" means "adjusted gross income" as defined in the federal Internal Revenue Code,
 4 as amended and in effect on December 31, 2002, even when the amendments take effect or become
 5 operative after that date, relating to the measurement of taxable income of individuals, estates and
 6 trusts, with the following modifications:

7 (a) There shall be added to adjusted gross income the following items of otherwise exempt in-
 8 come:

9 (A) The gross amount of any otherwise exempt pension less return of investment, if any.

10 (B) Child support received by the taxpayer.

11 (C) Inheritances.

12 (D) Gifts and grants, the sum of which are in excess of \$500 per year.

13 (E) Amounts received by a taxpayer or spouse of a taxpayer for support from a parent who is
 14 not a member of the taxpayer's household.

15 (F) Life insurance proceeds.

16 (G) Accident and health insurance proceeds, except reimbursement of incurred medical expenses.

17 (H) Personal injury damages.

18 (I) Sick pay which is not included in federal adjusted gross income.

19 (J) Strike benefits excluded from federal gross income.

20 (K) Worker's compensation, except for reimbursement of medical expense.

21 (L) Military pay and benefits.

22 (M) Veteran's benefits.

23 (N) Payments received under the federal Social Security Act which are excluded from federal
 24 gross income.

25 (O) Welfare payments, except as follows:

26 (i) Payments for medical care, drugs and medical supplies, if the payments are not made directly
 27 to the welfare recipient;

28 (ii) In-home services authorized and approved by the Department of Human Services; and

29 (iii) Direct or indirect reimbursement of expenses paid or incurred for participation in work or
 30 training programs.

31 (P) Nontaxable dividends.

32 (Q) Nontaxable interest not included in federal adjusted gross income.

33 (R) Rental allowance paid to a minister that is excluded from federal gross income.

34 (S) Income from sources without the United States that is excluded from federal gross income.

35 (b) Adjusted gross income shall be increased due to the disallowance of the following deductions:

36 (A) The amount of the net loss, in excess of \$1,000, from all dispositions of tangible or intangible
 37 properties.

38 (B) The amount of the net loss, in excess of \$1,000, from the operation of a farm or farms.

39 (C) The amount of the net loss, in excess of \$1,000, from all operations of a trade or business,
 40 profession or other activity entered into for the production or collection of income.

41 (D) The amount of the net loss, in excess of \$1,000, from tangible or intangible property held for
 42 the production of rents, royalties or other income.

43 (E) The amount of any net operating loss carryovers or carrybacks included in federal adjusted
 44 gross income.

45 (F) The amount, in excess of \$5,000, of the combined deductions or other allowances for depre-

1 ciation, amortization or depletion.

2 (G) The amount added or subtracted, as required within the context of this section, for adjust-
3 ments made under ORS 316.680 (2)(d) and 316.707 to 316.737.

4 (c) "Income" does not include any of the following:

5 (A) Any governmental grant which must be used by the taxpayer for rehabilitation of the
6 homestead of the taxpayer.

7 (B) The amount of any payments made pursuant to ORS 310.630 to 310.706.

8 (C) Any refund of Oregon personal income taxes that were imposed under ORS chapter 316.

9 (9) "Payments for heat" means those payments made to secure the commodities or services to
10 be used as the principal source of heat for the homestead of the taxpayer and includes payments for
11 natural gas, oil, firewood, coal, sawdust, electricity, steam or other materials that are capable of use
12 as a primary source of heat for the homestead.

13 **(10) "Rental assistance" means armed forces rental assistance, elderly rental assistance**
14 **or veterans rental assistance.**

15 [(10)] (11) "Statement of gross rent" means a declaration by the applicant, under penalties of
16 false swearing, that the amount of contract rent and fuel and utility payments designated is the
17 actual amount both incurred and paid during the year for which [elderly] rental assistance is
18 claimed.

19 [(11)] (12) "Taxpayer" means an individual who is a resident of this state on December 31 of the
20 year for which [elderly] rental assistance is claimed and whose homestead, as of the same December
21 31 and during all or a portion of the year ending on the same December 31, is rented and while
22 rented is the subject, directly or indirectly, of property tax levied by this state or a political subdivi-
23 sion or of payments made in lieu of taxes.

24 **SECTION 2.** ORS 310.635 is amended to read:

25 310.635. (1) A taxpayer who is eligible for [elderly] rental assistance shall be granted the rental
26 assistance either in the amount determined under subsection (2), (3) or (4) of this section, **which-**
27 **ever is applicable**, or by using the schedule for renters set forth in subsection [(3)] (5) of this sec-
28 tion, whichever is greater.

29 **(2)(a)** A taxpayer is eligible for elderly rental assistance under this section if:

30 [(a)] (A) The taxpayer is 58 years of age or older before the close of the calendar year imme-
31 diately preceding the year in which the rental assistance is claimed;

32 [(b)] (B) The household income of the taxpayer is less than \$10,000;

33 [(c)] (C) The gross rent of the taxpayer [is in excess of] **exceeds** 20 percent of household income;
34 and

35 [(d)] (D) The taxpayer files a claim with the Department of Revenue as required by ORS 310.657.

36 [(2)] (b) A taxpayer eligible for elderly rental assistance under this section shall be paid by the
37 Department of Revenue an amount equal to the positive difference between the taxpayer's gross
38 rent, not to exceed \$2,100, and 20 percent of household income.

39 **(3)(a) A taxpayer is eligible for veterans rental assistance under this section if:**

40 **(A) The taxpayer is a war veteran;**

41 **(B) The household income of the taxpayer is less than \$10,000;**

42 **(C) The gross rent of the taxpayer exceeds 20 percent of household income; and**

43 **(D) The taxpayer files a claim with the Department of Revenue as required by ORS**
44 **310.657.**

45 **(b) A taxpayer eligible for veterans rental assistance under this section shall be paid by**

1 the Department of Revenue an amount equal to the positive difference between the taxpay-
 2 er's gross rent, not to exceed \$2,100, and 20 percent of household income.

3 (4)(a) A taxpayer is eligible for armed forces rental assistance under this section if:

4 (A) The taxpayer is a member of the Oregon National Guard, the military reserve forces
 5 or the organized militia of any other state or territory of the United States, or the spouse
 6 of a member;

7 (B) The member is in a status under Title 10 of the United States Code;

8 (C) The gross rent of the taxpayer exceeds 20 percent of household income; and

9 (D) The taxpayer files a claim with the Department of Revenue as required by ORS
 10 310.657.

11 (b) A taxpayer eligible for armed forces rental assistance under this section shall be paid
 12 by the Department of Revenue an amount equal to the taxpayer's gross rent, not to exceed
 13 \$2,100.

14 [(3)] (5) The schedule for renters referred to in [subsection (1)] subsections (2) and (3) of this
 15 section is:

	Household Income	Maximum Refundable Rent Constituting Property Tax
\$	0 - 499	\$ 250
	500 - 999	245
	1,000 - 1,499	238
	1,500 - 1,999	228
	2,000 - 2,499	217
	2,500 - 2,999	205
	3,000 - 3,499	192
	3,500 - 3,999	179
	4,000 - 4,499	165
	4,500 - 4,999	151
	5,000 - 5,499	136
	5,500 - 5,999	121
	6,000 - 6,499	106
	6,500 - 6,999	91
	7,000 - 7,499	77
	7,500 - 7,999	63
	8,000 - 8,499	50
	8,500 - 8,999	38
	9,000 - 9,499	27
	9,500 - 9,999	18

44 [(4)] (6) The [elderly] rental assistance payments required by [subsection (2)] subsections (2) to

1 (5) of this section shall be made by the Department of Revenue during the month of October.

2 [(5)] (7) The [elderly] rental assistance granted under this section applies to gross rent paid in
3 the calendar year for which the claim is filed.

4 [(6)] (8) The Department of Revenue may not grant [elderly] rental assistance under this section:

5 (a) **In the case of elderly rental assistance**, to a person who is, as of December 31 of the year
6 for which elderly rental assistance is claimed, a tenant-stockholder of a cooperative housing corpo-
7 ration or a resident of a nonprofit home for the elderly owned or being purchased by a corporation
8 described in ORS 307.375.

9 (b) For less than \$1, after offsets for all amounts owed to the state.

10 (c) For any period during which the taxpayer's needs were included in a payment made by the
11 Department of Human Services pursuant to ORS 418.172. However, if it is determined that the tax-
12 payer's needs were included in a payment made by the Department of Human Services under ORS
13 418.172 and the taxpayer is eligible for the period for [elderly] rental assistance in an amount
14 greater than the payment, the Department of Revenue shall grant [elderly] rental assistance in the
15 amount of the difference.

16 [(7)] (9) [Elderly] Rental assistance allowed pursuant to this section is not subject to
17 garnishment under ORS 18.600 to 18.850, except by a government entity.

18 **SECTION 3.** ORS 310.652 is amended to read:

19 310.652. (1) A taxpayer who is under 65 years of age on December 31 of the year for which a
20 claim for elderly rental assistance **or veterans rental assistance** is filed under ORS [310.635 and]
21 310.657 [or 310.706] and who has household assets that in combination exceed \$25,000 in value as
22 of that same December 31 [shall not be] **is not** eligible to receive the rental assistance for that year.

23 (2) For purposes of determining if the assets of the taxpayer exceed the amount permitted under
24 subsection (1) of this section, the values of the following household assets and no other household
25 assets shall be added together:

26 (a) Real property, but excluding the value of the homestead.

27 (b) Tangible personal property used in a trade or business in which the taxpayer has an own-
28 ership interest, but excluding under this paragraph the value of any assets described under para-
29 graph (c) of this subsection.

30 (c) Intangible personal property, including but not limited to shares of stock, evidence of debt,
31 funds on deposit, money on hand and money on deposit, all as defined under ORS 310.651 and ex-
32 cluding the value of any benefits or contributions made to a retirement or deferred compensation
33 plan by or on behalf of the taxpayer.

34 (3) Any claim **for elderly rental assistance or veterans rental assistance** filed under ORS
35 310.657 [or 310.706] shall be accompanied by a statement, signed by the taxpayer or representative
36 and verified upon oath or affirmation of the taxpayer or representative, stating that the assets of
37 the taxpayer, as of the December 31 of the year for which the claim is filed, do not in combination
38 exceed \$25,000.

39 (4) As used in this section, "household assets" means the sum of the assets of the taxpayer and
40 the spouse of the taxpayer that have been added together as described under subsection (2) of this
41 section.

42 **SECTION 4.** ORS 310.657 is amended to read:

43 310.657. (1) On or before July 1 following the year for which the claim is filed, a taxpayer
44 claiming the [elderly] rental assistance provided under ORS 310.635 shall submit a claim to the De-
45 partment of Revenue, together with a copy of the statement of gross rent. The claim shall be sub-

mitted on a form prescribed and furnished by the department. The department shall prepare blank forms for the claims and shall distribute them throughout the state. The department may require from the taxpayer any proof it considers necessary to determine if the taxpayer is eligible for [elderly] rental assistance pursuant to ORS 310.635. If the taxpayer is unable to submit the claim of the taxpayer, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(2) A claim for [elderly] rental assistance that is filed after July 1 shall be paid by the department at the time and to the extent that payments for timely filed claims made in the next succeeding year are made by the department.

(3) The department shall audit or examine the claim and, if it appears that the taxpayer is eligible for rental assistance, shall determine the amount to which the taxpayer is entitled under ORS 310.635.

(4) If the department denies the claim in whole or in part, the department shall notify the taxpayer. If the claim is allowed in whole or in part, the entire [elderly] rental assistance shall be paid on or before November 15 of the year in which the claim is filed. The department shall make the payments required by this section from the suspense account referred to in ORS 310.692. If necessary, the department may prorate the payments as provided in ORS 310.692.

SECTION 5. ORS 310.690 is amended to read:

310.690. The Department of Revenue shall adopt the rules and prescribe the forms necessary to administer the [elderly] rental assistance program established under ORS 310.635.

SECTION 6. ORS 310.692 is amended to read:

310.692. (1) Amounts necessary to make the payments authorized by ORS 307.244 and 310.635 shall be transferred to a suspense account established under ORS 293.445 from the appropriation made by the Legislative Assembly to fund the [elderly] rental assistance program. Moneys in the suspense account are continuously appropriated to the Department of Revenue to carry out the purposes of the [elderly] rental assistance program.

(2) If any portion of the tax liability for which the refund payments described in subsection (1) of this section are authorized are offset against the refund, the Department of Revenue shall transfer from the suspense account referred to in subsection (1) of this section to the General Fund an amount equal to the income tax liability.

(3) Of the total amount transferred to the suspense account referred to in subsection (1) of this section for the biennium, the department shall allocate a portion to each fiscal year. The allocation shall be the department's best estimate of the most efficient use of the moneys in the suspense account so as to minimize any reductions in the payments required under ORS 307.244 and 310.635 for each fiscal year.

(4) On or before November 1 of each fiscal year of each biennium, the Department of Revenue shall determine the amount of money needed to make the payments under ORS 307.244 and 310.635 for that fiscal year. If the sum of the obligations is greater than the amounts credited to the suspense account referred to in subsection (1) of this section and allocated to that fiscal year for those obligations under subsection (3) of this section, the payments required under ORS 307.244 and 310.635 shall be proportionally reduced so that the state does not accrue a debt in excess of the amount credited. A claim for payment may not accrue to a taxpayer under ORS 310.635 or to a county under ORS 307.244 in excess of the amount determined under this subsection.

(5) If the amount allocated to the first fiscal year of a biennium under subsection (3) of this section exceeds the amount of actual payments made under ORS 307.244 or 310.635, the excess

1 amount shall be available for payments under ORS 307.244 or 310.635 in the second fiscal year of
2 the biennium.

3 **SECTION 7.** ORS 310.706 is amended to read:

4 310.706. (1) Unless the context requires otherwise, the provisions of ORS chapters 305 and 314
5 as to the audit and examination of reports and returns, determination of deficiencies, assessments,
6 claims for refund, conferences and appeals to the Oregon Tax Court, and procedures relating
7 thereto, shall apply to ORS 310.630 to 310.706.

8 (2) No interest shall be allowed on [elderly] rental assistance payments to be made by the De-
9 partment of Revenue under ORS 310.635.

10 (3) No [elderly] rental assistance payment shall be made under ORS 310.635 to a taxpayer who
11 fails to file a claim under ORS 310.657 within three years after the due date of the claim.

12 **SECTION 8. The amendments to ORS 310.630, 310.635, 310.652, 310.657, 310.690, 310.692 and**
13 **310.706 by sections 1 to 7 of this 2005 Act apply to rental assistance claims made on or after**
14 **January 1, 2006.**

15 **SECTION 9.** ORS 18.512 is amended to read:

16 18.512. (1) The challenge to execution form described in this section does not expand or restrict
17 the law relating to exempt property. A determination as to whether property is exempt from at-
18 tachment or execution must be made by reference to other law. The form provided in this section
19 may be modified to provide more information or to update the notice based on subsequent changes
20 in exemption laws.

21 (2) A challenge to execution form must be in substantially the following form:

22 _____

23
24 _____ COURT
25 COUNTY OF _____

26
27 _____) CHALLENGE TO
28 Plaintiff,) EXECUTION
29)
30 vs.) Case No. _____
31)
32 _____)
33 Defendant.)

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35 THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS
36 FROM EXECUTION AS ARE PERMITTED BY LAW.

37
38 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
39 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

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41 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

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43 I/We claim that the following described property or money is exempt from execution:
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I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone _____	Telephone _____
Number _____	Number _____
(Required)	(Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EX-EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.518.

NOTICE OF EXEMPT PROPERTY

1 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
2 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
3 are enclosed.

4 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
5 FULLY.

6 State and federal law specify that certain property may not be taken. Some of the property that
7 you may be able to get back is listed below.

8 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
9 amounts is greater:

10 (a) 75 percent of your take-home wages; or

11 (b) \$170 per workweek.

12 (2) Social Security benefits.

13 (3) Supplemental Security Income (SSI).

14 (4) Public assistance (welfare).

15 (5) Unemployment benefits.

16 (6) Disability benefits (other than SSI benefits).

17 (7) Workers' compensation benefits.

18 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
19 disability benefits when placed in a checking or savings account (up to \$7,500).

20 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
21 for your support or the support of any of your dependents.

22 (10) A homestead (home, farm, manufactured dwelling or houseboat) if you live in it, to the value
23 of \$20,000 (\$23,000 for a manufactured dwelling with land included; \$25,000 for any other homestead
24 with land included) or proceeds from its sale for one year.

25 (11) Household goods, furniture, radios, a television set and utensils with a combined value not
26 to exceed \$3,000.

27 *(12) An automobile, truck, trailer or other vehicle with a value not to exceed \$1,700.

28 *(13) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
29 occupation, with a combined value not to exceed \$3,000.

30 *(14) Books, pictures and musical instruments with a combined value not to exceed \$600.

31 *(15) Wearing apparel, jewelry and other personal items with a combined value not to exceed
32 \$1,800.

33 (16) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
34 and their food for 60 days.

35 (17) Provisions (food) and fuel for your family for 60 days.

36 (18) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
37 may not exceed \$1,000.

38 (19) Public or private pensions.

39 (20) Veterans' benefits and loans.

40 (21) Medical assistance benefits.

41 (22) Health insurance proceeds and disability proceeds of life insurance policies.

42 (23) Cash surrender value of life insurance policies not payable to your estate.

43 (24) Federal annuities.

44 (25) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
45 emption as wages).

1 (26) Professionally prescribed health aids for you or any of your dependents.

2 *(27) [*Elderly*] Rental assistance allowed pursuant to ORS 310.635.

3 *(28) Your right to receive, or property traceable to:

4 *(a) An award under any crime victim reparation law.

5 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
6 jury suffered by you or an individual of whom you are a dependent.

7 *(c) A payment in compensation of loss of future earnings of you or an individual of whom you
8 are or were a dependent, to the extent reasonably necessary for your support and the support of
9 any of your dependents.

10 (29) Amounts paid to you as an earned income tax credit under federal tax law.

11 (30) Interest in personal property to the value of \$400, but this cannot be used to increase the
12 amount of any other exemption.

13 (31) Equitable interests in property.

14 Note: If two or more people in your household owe the claim or judgment, each of them may
15 claim the exemptions marked by an asterisk (*).

17
18 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
19 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
20 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
21 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
22 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
23 obligation.

24
25
26 **SECTION 10.** ORS 18.845 is amended to read:

27 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
28 Nothing in the notice form described in this section is intended to expand or restrict the law re-
29 lating to exempt property. A determination as to whether property is exempt from execution, at-
30 tachment and garnishment must be made by reference to other law. The form provided in this
31 section may be modified to provide more information or to update the notice based on subsequent
32 changes in exemption laws.

33
34
35 NOTICE OF EXEMPT PROPERTY
36 AND INSTRUCTIONS FOR
37 CHALLENGE TO GARNISHMENT
38

39 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be
40 reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
41 are enclosed.

42 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
43 FULLY.

44 State and federal law specify that certain property may not be taken. Some of the property that
45 you may be able to get back is listed below.

- 1 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
- 2 amounts is greater:
- 3 (a) 75 percent of your take-home wages; or
- 4 (b) \$170 per workweek.
- 5 (2) Social Security benefits.
- 6 (3) Supplemental Security Income (SSI).
- 7 (4) Public assistance (welfare).
- 8 (5) Unemployment benefits.
- 9 (6) Disability benefits (other than SSI benefits).
- 10 (7) Workers' compensation benefits.
- 11 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
- 12 disability benefits when placed in a checking or savings account (up to \$7,500).
- 13 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
- 14 for your support or the support of any of your dependents.
- 15 (10) A homestead (home, farm, manufactured dwelling or houseboat) if you live in it, to the value
- 16 of \$20,000 (\$23,000 for a manufactured dwelling with land included; \$25,000 for any other homestead
- 17 with land included) or proceeds from its sale for one year.
- 18 (11) Household goods, furniture, radios, a television set and utensils with a combined value not
- 19 to exceed \$3,000.
- 20 *(12) An automobile, truck, trailer or other vehicle with a value not to exceed \$1,700.
- 21 *(13) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
- 22 occupation, with a combined value not to exceed \$3,000.
- 23 *(14) Books, pictures and musical instruments with a combined value not to exceed \$600.
- 24 *(15) Wearing apparel, jewelry and other personal items with a combined value not to exceed
- 25 \$1,800.
- 26 (16) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
- 27 and their food for 60 days.
- 28 (17) Provisions (food) and fuel for your family for 60 days.
- 29 (18) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
- 30 may not exceed \$1,000.
- 31 (19) Public or private pensions.
- 32 (20) Veterans' benefits and loans.
- 33 (21) Medical assistance benefits.
- 34 (22) Health insurance proceeds and disability proceeds of life insurance policies.
- 35 (23) Cash surrender value of life insurance policies not payable to your estate.
- 36 (24) Federal annuities.
- 37 (25) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
- 38 emption as wages).
- 39 (26) Professionally prescribed health aids for you or any of your dependents.
- 40 *(27) [*Elderly*] Rental assistance allowed pursuant to ORS 310.635.
- 41 (28) Your right to receive, or property traceable to:
- 42 (a) An award under any crime victim reparation law.
- 43 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
- 44 jury suffered by you or an individual of whom you are a dependent.
- 45 (c) A payment in compensation of loss of future earnings of you or an individual of whom you

1 are or were a dependent, to the extent reasonably necessary for your support and the support of
2 any of your dependents.

3 (29) Amounts paid to you as an earned income tax credit under federal tax law.

4 *(30) Interest in personal property to the value of \$400, but this cannot be used to increase the
5 amount of any other exemption.

6 (31) Equitable interests in property.

7 (32) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
8 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
9 Calculation form.

10
11 Note: If two or more people in your household owe the claim or judgment, each of them may
12 claim the exemptions marked by an asterisk (*).

13
14
15 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
16 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
17 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
18 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
19 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
20 obligation.

21
22 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.
23 You may seek to reclaim your exempt property by doing the following:

24 (1) Fill out the Challenge to Garnishment form that you received with this notice.

25 (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address
26 shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail
27 or deliver the form within 120 days after you receive this notice. If you wish to claim that any other
28 money or property is exempt, or claim that the property is not subject to garnishment, you must
29 mail or deliver the form within 30 days after you receive this notice. You have the burden of
30 showing that your challenge is made on time, so you should keep records showing when the chal-
31 lenge was mailed or delivered.

32 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days
33 before applying it to the Creditor's use. You may be able to keep the property from being used by
34 the Creditor by promptly following (1) and (2) above.

35
36 You should be prepared to explain your exemption in court. If you have any questions about the
37 garnishment or the debt, you should see an attorney.

38 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
39 ING PURPOSES:

40 (1) To claim such exemptions from garnishment as are permitted by law.

41 (2) To assert that property is not garnishable property under ORS 18.618.

42 (3) To assert that the amount specified in the writ of garnishment as being subject to
43 garnishment is greater than the total amount owed.

44
45 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE

1 VALIDITY OF THE DEBT.

2 IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUB-
 3 JECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties
 4 that you could be subject to are listed in ORS 18.715.

5 When you file a Challenge to Garnishment form, the Garnishee may be required to make all
 6 payments under the garnishment to the court, and the Garnishor may be required to pay to the
 7 court all amounts received by the Garnishor that are subject to the challenge to the garnishment.
 8 The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of
 9 their responsibilities, see ORS 18.705 and 18.708.

11
 12 **SECTION 11.** ORS 179.640 is amended to read:

13 179.640. (1)(a) Both the Department of Human Services and the Department of Corrections shall
 14 establish rules for determining ability to pay for persons in their respective institutions. The rules
 15 adopted by each agency shall require, in addition to other relevant factors, consideration of the
 16 personal estate, the person’s need for funds for personal support after release, and the availability
 17 of third-party benefits such as, but not limited to, Medicare or private insurance. Each agency may
 18 also consider the probable length of stay at the state institution. Nothing in this section requires
 19 the Department of Corrections to investigate a person’s ability to pay or to issue an ability-to-pay
 20 order.

21 (b) When adopting rules under paragraph (a) of this subsection, the Department of Corrections
 22 shall consider the person’s needs for funds to pay for the support of the person’s children and to pay
 23 any monetary obligations imposed on the person as a result of the person’s conviction.

24 (2) In determining a person’s ability to pay, neither agency may consider as part of the personal
 25 estate of the person or the decedent’s estate:

26 (a) Any assets received by or owing to the person and the personal estate of the person, or the
 27 decedent’s estate, as compensation from the state for injury, death or, if the collection is being made
 28 by the Department of Corrections, the false imprisonment of the person that occurred when the
 29 person was in a state institution listed in ORS 179.321 and for which the state admits liability or is
 30 found liable through adjudication; and

31 (b) Any real or personal property that the person or an authorized representative of the person
 32 can demonstrate was purchased solely with assets referred to in paragraph (a) of this subsection or
 33 partially with such assets, to the extent such assets were used in the purchase.

34 (3) A person and the authorized representative of the person, if any, shall provide all financial
 35 information requested by the agency that is necessary to determine the person’s ability to pay. To
 36 determine ability to pay, the agency may use any information available to the agency, including in-
 37 formation provided by the Department of Revenue from personal income tax returns pursuant to
 38 ORS 314.840, and [elderly] rental assistance claims **under ORS 310.657**. Upon request, the Depart-
 39 ment of Revenue shall release copies of tax returns to the agency. When the person or the person’s
 40 authorized representative fails to provide evidence to demonstrate an inability to pay full cost of
 41 care, the agency may determine the person has the ability to pay the full cost of care.

42 (4) The agency shall provide actual notice to the person and any authorized representative, if
 43 known to the agency, of its determination by issuing an ability-to-pay order. The order shall state
 44 the person’s full liability and the person’s determined ability to pay. Actual notice means receipt by
 45 the person and the authorized representative of notice. The notice shall include a copy of the

1 ability-to-pay order, a description of the person's appeal rights and the date upon which appeal
 2 rights terminate and state the address where a request for hearing may be mailed or delivered. At
 3 any time, the agency may reissue an ability-to-pay order to notify an authorized representative as
 4 provided by ORS 179.653 (4).

5 (5) At any time during the person's stay at the state institution or within 36 months from the
 6 date the person is released, if the agency receives new financial information that shows a change
 7 in the person's financial circumstances, the agency shall consider the changed circumstances and
 8 issue a new ability-to-pay order.

9 (6) Orders issued after the person is released may not require the person to make payments to-
 10 ward the cost of care for more than 36 consecutive months following release. However, the agency
 11 may collect beyond the 36-month period any payments that became due but were not paid within the
 12 36 months following release. Any remaining balance of full cost of care shall be collected as pro-
 13 vided in ORS 179.740.

14 (7) Notwithstanding ORS 183.315 (5), if a person or authorized representative disagrees with any
 15 ability-to-pay order issued pursuant to this section, the person or authorized representative may re-
 16 quest a contested case hearing. To the extent practical, the hearing will be held at a location con-
 17 venient to the person or the authorized representative. The request must be postmarked within 60
 18 days from the date of the mailing of the ability-to-pay order. If the person or the authorized repre-
 19 sentative makes a timely request for a contested case hearing, the hearing and any appeal of the
 20 final hearing order shall be governed by ORS 183.413 to 183.497. If the person or the authorized
 21 representative fails to make a timely request for a contested case hearing, the ability-to-pay order
 22 shall be final and not subject to judicial review, except as subsequently modified by the agency as
 23 provided in subsection (5) of this section.

24 (8) On appeal, regardless of other information presented, payment of the full cost of care may
 25 be ordered if the person or the authorized representative refuses to produce financial information
 26 that the Hearings Officer or administrative law judge determines is relevant and must be produced.

27 **SECTION 12.** ORS 305.514 is amended to read:

28 305.514. (1) A plaintiff may elect to file a small claims procedure in the following classes of
 29 cases:

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

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

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

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

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

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

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

44 (d) A proceeding for the [elderly] rental assistance authorized under ORS 310.635 without limi-
 45 tation to the amount in controversy.

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

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

7 (g) A proceeding for refund or to set aside interest or penalties assessed in connection with any
8 tax administered by the Department of Revenue, where the amount in controversy does not exceed
9 \$5,000. This paragraph does not apply to the denial of a request for the discretionary waiver of in-
10 terest or penalties.

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

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

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

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

26 (d) The taxpayer shall pay to the appraiser appointed under paragraph (c) of this subsection a
27 reasonable fee for the appraisal services rendered by the appraiser.

28 **SECTION 13.** ORS 305.380 is amended to read:

29 305.380. As used in ORS 305.385:

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

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

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

37 (4) "Tax" means a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316,
38 317, 318, 320, 321 and 323; the [*elderly*] rental assistance program under ORS 310.630 to 310.706; and
39 local taxes administered by the Department of Revenue under ORS 305.620.

40 **SECTION 14.** ORS 311.678 is amended to read:

41 311.678. (1) On or before December 15 of each year, the Department of Revenue shall send a
42 notice to each taxpayer who has claimed deferral of property taxes for the current tax year. The
43 notice shall:

44 (a) Inform the taxpayer that the property taxes have or have not been deferred in the current
45 year.

1 (b) Show the total amount of deferred taxes remaining unpaid since initial application for
 2 deferral and the interest accruing therein to November 15 of the current year.

3 (c) Inform the taxpayer that voluntary payment of the deferred taxes may be made at any time
 4 to the Department of Revenue.

5 (d) Contain any other information that the department considers necessary to facilitate admin-
 6 istration of the homestead deferral program, including but not limited to the right of the taxpayer
 7 to submit any [elderly] rental assistance amount received under ORS 310.630 to 310.706 to reduce
 8 the total amount of the deferred taxes and interest.

9 (2) The department shall give the notice required under subsection (1) of this section by an un-
 10 sealed postcard or other form of mail sent to the residence address of the taxpayer as shown in the
 11 claim for deferral or as otherwise determined by the department to be the correct address of the
 12 taxpayer.

13 **SECTION 15.** ORS 314.400 is amended to read:

14 314.400. (1) In the case of a failure:

15 (a) To pay a tax at the time the tax becomes due, there shall be added to the amount of tax that
 16 is shown as tax on the report or return filed by the taxpayer a delinquency penalty of five percent
 17 of the amount of such tax; or

18 (b) To file a report or return of tax or tax liability or of income at the time prescribed for the
 19 filing of the report or return, there shall be added to the amount required to be shown as tax on the
 20 report or return a delinquency penalty of five percent of the amount of the tax.

21 (2) If the failure to file a report or return continues for a period in excess of three months after
 22 the due date:

23 (a)(A) There shall be added to the amount of tax required to be shown on the report or return
 24 a failure to file penalty of 20 percent of the amount of such tax; and

25 (B) Thereafter the Department of Revenue may send a notice and demand to the person to file
 26 a report or return within 30 days of the mailing of the notice. If after such notice and demand no
 27 report or return is filed within the 30 days, the department may determine the tax according to the
 28 best of its information and belief, assess the tax with appropriate penalty and interest plus an ad-
 29 ditional penalty of 25 percent of the tax deficiency determined by the department and give written
 30 notice of the determination and assessment to the person required to make the filing.

31 (b) But the report or return is filed before a notice of determination and assessment is issued
 32 by the department, the failure to file penalty referred to in paragraph (a)(A) of this subsection shall
 33 be added to the amount of tax shown on the report or return.

34 (3) A penalty equal to 100 percent of any deficiency determined by the department shall be as-
 35 sessed and collected if:

36 (a) There is a failure to file a report or return with intent to evade the tax;

37 (b) A report or return was falsely prepared and filed with intent to evade the tax; or

38 (c) A false claim was intentionally filed under ORS [310.635,] 310.657 [and 310.706].

39 (4) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for
 40 each month or fraction of a month, computed from the time the tax became due, during which the
 41 tax remains unpaid.

42 (5) Each penalty imposed under this section is in addition to any other penalty imposed under
 43 this section. However, the total amount of penalty imposed under this section and ORS 305.265 (13)
 44 with respect to any deficiency shall not exceed 100 percent of the deficiency.

45 (6) For purposes of subsections (1) and (2) of this section, the amount of tax required to be

1 shown or that is shown on the report or return shall be reduced by the amount that is paid on or
 2 before the date prescribed for payment of the tax and by the amount of any credit against the tax
 3 that is claimed on the report or return. If the amount required to be shown as tax on the report or
 4 return is less than the amount that is actually shown as tax on the report or return, this subsection
 5 shall be applied by substituting the lower amount.

6 (7) Notwithstanding subsection (1) of this section, the five percent penalty for failure to pay the
 7 tax at the time the tax becomes due shall not be imposed if:

8 (a) The taxpayer pays the full amount of the tax plus accrued interest within 30 days of the date
 9 shown on the department's notice sent to the taxpayer; and

10 (b)(A) The taxpayer had filed an amended individual tax return or an amended corporate return
 11 of income or excise tax accompanied by less than full payment of the tax shown on the return plus
 12 accrued interest; or

13 (B) The taxpayer's individual income tax return or corporate income or excise tax return had
 14 been timely filed, including extensions, and a difference exists in the amount of tax paid on or before
 15 the due date:

16 (i) As shown on the return; and

17 (ii) As shown in the records of the department.

18 **SECTION 16.** ORS 314.860 is amended to read:

19 314.860. (1) The Department of Revenue may disclose certain information relative to applicants
 20 for [*elderly*] rental assistance to the Director of Human Services or to employees of the Department
 21 of Human Services. The information disclosed by the Department of Revenue shall be confined to
 22 the names, addresses and Social Security numbers of applicants under ORS 310.630 to 310.706 for
 23 the current and preceding calendar year. The information requested shall be confined to those
 24 names, addresses and Social Security numbers which will assist in the collection of debts due and
 25 owing to the State of Oregon arising from client-caused overpayments of public assistance and shall
 26 be used solely for such purpose and shall not be used or disclosed for any other purpose. Any person
 27 who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS
 28 314.991 (2).

29 (2) Disclosure under this section shall be given only upon written request of the Director of
 30 Human Services. The form for the request shall be prescribed by the Director of Human Services
 31 and approved by the Director of the Department of Revenue.

32 (3) The Department of Revenue shall keep on file the requests for disclosure made pursuant to
 33 this section. The requests constitute a public record within the meaning of ORS 192.410 to 192.505.

34 **SECTION 17.** ORS 411.700 is amended to read:

35 411.700. (1) In the determination of eligibility and the amount of need with respect to a recipient
 36 or applicant of public assistance under ORS chapters 412, 413 and 414, the Department of Human
 37 Services may disregard such amounts of income and resources as are required by federal law or
 38 rules adopted pursuant thereto or as are authorized by the Legislative Assembly including the fol-
 39 lowing:

40 (a) Any [*elderly*] rental assistance payments provided by ORS 310.635 or refunds in lieu of such
 41 relief shall be disregarded in determining eligibility and need.

42 (b) Any increase in the amount of assistance that is authorized by section 4, Public Law 93-233
 43 (87 Stat. 953) and which is also being paid on March 5, 1974, shall be disregarded in determining
 44 eligibility and need.

45 (2) Any increase in the amount of assistance provided under Title XVI of the Social Security

1 Act to meet changes in the cost of living that is an increase over that amount being paid on January
2 1, 1977, pursuant to an Act of Congress and which will first be paid after January 1, 1977, shall be
3 disregarded in determining eligibility and need.

4 (3) When considering an application for public assistance, the department shall exempt from
5 consideration as a resource up to \$10,000 equity value of any licensed and unlicensed vehicles owned
6 by the applicant or recipient.

7 (4) The department shall implement subsection (3) of this section statewide to the extent possible
8 that is consistent with federal regulation to maintain state eligibility for federal participation in
9 public assistance programs. In the event the department determines that this policy has a net fiscal
10 cost to the state, the department shall present the fiscal analysis to the Emergency Board for addi-
11 tional funding or direction to modify or suspend the policy.

12
