

Senate Bill 438

Sponsored by Senator C STARR; Senators ATKINSON, BEYER, FERRIOLI, GEORGE, KRUSE, MORSE, B STARR, WHITSETT, WINTERS, Representatives KROPP, SCOTT

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**.

Eliminates Oregon inheritance tax on transfers of property occurring as result of decedents who die on or after January 1, 2006.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 114.075, 116.083, 116.173, 116.303,
3 238.445, 305.270, 305.280, 305.380, 305.385, 305.490, 305.514, 305.565, 305.620, 305.850, 305.992 and
4 314.430; and repealing ORS 111.025, 118.005, 118.007, 118.009, 118.010, 118.100, 118.120, 118.160,
5 118.171, 118.210, 118.220, 118.225, 118.230, 118.240, 118.250, 118.260, 118.270, 118.280, 118.290,
6 118.300, 118.310, 118.350, 118.410, 118.470, 118.510, 118.525, 118.535, 118.810, 118.820, 118.830,
7 118.840 and 118.990.

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

9 **SECTION 1. A tax may not be imposed under ORS 118.005 to 118.840 on the transfer of**
10 **property that occurs as the result of a decedent who dies on or after January 1, 2006.**

11 **SECTION 2. ORS 111.025, 118.005, 118.007, 118.009, 118.010, 118.100, 118.120, 118.160, 118.171,**
12 **118.210, 118.220, 118.225, 118.230, 118.240, 118.250, 118.260, 118.270, 118.280, 118.290, 118.300,**
13 **118.310, 118.350, 118.410, 118.470, 118.510, 118.525, 118.535, 118.810, 118.820, 118.830, 118.840 and**
14 **118.990 are repealed on January 2, 2010.**

15 **SECTION 3. The repeal of ORS 111.025, 118.005, 118.007, 118.009, 118.010, 118.100, 118.120,**
16 **118.160, 118.171, 118.210, 118.220, 118.225, 118.230, 118.240, 118.250, 118.260, 118.270, 118.280,**
17 **118.290, 118.300, 118.310, 118.350, 118.410, 118.470, 118.510, 118.525, 118.535, 118.810, 118.820,**
18 **118.830, 118.840 and 118.990 by section 2 of this 2005 Act does not affect the administration**
19 **of inheritance tax laws or the collection of inheritance taxes that are related to the estates**
20 **of decedents who died before January 1, 2006.**

21 **SECTION 4. ORS 114.075 is amended to read:**

22 114.075. Subject to the limitations imposed by ORS 114.065, provision for support under ORS
23 114.015 ordered by the court has priority over claims and expenses of administration. The provision
24 shall not be charged against the distributive share of the person receiving support. The provision
25 shall be treated as an expense of administration[, *but shall not be a deduction for inheritance tax*
26 *purposes*].

27 **SECTION 5. ORS 116.083 is amended to read:**

28 116.083. (1) A personal representative shall make and file in the estate proceeding a verified
29 account of the personal representative's administration:

30 (a) Unless the court orders otherwise, annually within 30 days after the anniversary date of the
31 personal representative's appointment.

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 (b) Within 30 days after the date of the personal representative's removal or resignation or the
2 revocation of the personal representative's letters.

3 (c) When the estate is ready for final settlement and distribution.

4 (d) At such other times as the court may order.

5 (2) Each account shall include the following information:

6 (a) The period of time covered by the account.

7 (b) The total value of the property with which the personal representative is chargeable ac-
8 cording to the inventory, or, if there was a prior account, the amount of the balance of the prior
9 account.

10 (c) All money and property received during the period covered by the account.

11 (d) All disbursements made during the period covered by the account. Vouchers for disburse-
12 ments shall accompany the account, unless otherwise provided by order or rule of the court, or un-
13 less the personal representative is a trust company that has complied with ORS 709.030, but that
14 personal representative shall:

15 (A) Maintain the vouchers for a period of not less than one year following the date on which
16 the order approving the final account is entered;

17 (B) Permit interested persons to inspect the vouchers and receive copies thereof at their own
18 expense at the place of business of the personal representative during the personal representative's
19 normal business hours at any time prior to the end of the one-year period following the date on
20 which the order approving the final account is entered; and

21 (C) Include in each annual account and in the final account a statement that the vouchers are
22 not filed with the account but are maintained by the personal representative and may be inspected
23 and copied as provided in subparagraph (B) of this paragraph.

24 (e) The money and property of the estate on hand.

25 (f) Such other information as the personal representative considers necessary to show the con-
26 dition of the affairs of the estate or as the court may require.

27 (3) When the estate is ready for final settlement and distribution, the account shall also include:

28 (a) A statement that all Oregon income[, *inheritance*] and personal property taxes, if any, have
29 been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or oth-
30 erwise, and that all required tax returns have been filed.

31 (b) A petition for a judgment authorizing the personal representative to distribute the estate to
32 the persons and in the portions specified therein.

33 (4) If the distributees consent thereto in writing and all creditors of the estate have been paid
34 in full, the personal representative, in lieu of the final account otherwise required by this section,
35 may file a verified statement that includes the following:

36 (a) The period of time covered by the statement.

37 (b) A statement that all creditors have been paid in full.

38 (c) The statement and petition referred to in subsection (3) of this section.

39
40 Notice of time for filing objections to the verified statement is not required.

41 (5) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
42 counts that must be filed by a personal representative.

43 **SECTION 6.** ORS 116.173 is amended to read:

44 116.173. (1) Upon application to the court a personal representative is entitled to receive com-
45 pensation for services as provided in this section. If there is more than one personal representative

1 acting concurrently, the compensation shall not be increased, but may be divided among them as
 2 they agree or as the court may order. The compensation is a commission upon the whole estate, as
 3 follows:

4 (a) Upon the property subject to the jurisdiction of the court, including income and realized
 5 gains:

6 (A) Seven percent of any sum not exceeding \$1,000.

7 (B) Four percent of all above \$1,000 and not exceeding \$10,000.

8 (C) Three percent of all above \$10,000 and not exceeding \$50,000.

9 (D) Two percent of all above \$50,000.

10 (b) One percent of the property, exclusive of life insurance proceeds, not subject to the juris-
 11 diction of the court but reportable for [*Oregon inheritance tax or*] federal estate tax purposes.

12 (2) In all cases, such further compensation as is just and reasonable may be allowed by the court
 13 for any extraordinary and unusual services not ordinarily required of a personal representative in
 14 the discharge of a trust.

15 (3) When a decedent by will has made special provision for the compensation of a personal
 16 representative, the personal representative is not entitled to any other compensation for services
 17 unless prior to appointment the personal representative signs and files with the clerk of the court
 18 a written renunciation of the compensation provided by the will.

19 **SECTION 7.** ORS 116.303 is amended to read:

20 116.303. As used in ORS 116.303 to 116.383:

21 (1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate
 22 tax [*and the inheritance tax payable to this state under ORS 118.005 to 118.840*].

23 (2) "Person" means any individual, partnership, association, joint stock company, corporation,
 24 government, political subdivision, governmental agency or local governmental agency.

25 (3) "Person interested in the estate" means any person entitled to receive, or who has received,
 26 from a decedent or by reason of the death of a decedent any property or interest therein included
 27 in the decedent's estate. It includes a personal representative, guardian, conservator or trustee.

28 (4) "State" means any state, territory or possession of the United States, the District of
 29 Columbia or the Commonwealth of Puerto Rico.

30 (5) "Tax" means the federal estate tax [*and the inheritance tax payable to this state under ORS*
 31 *118.005 to 118.840,*] and interest and penalties imposed in addition to the tax.

32 **SECTION 8.** ORS 238.445 is amended to read:

33 238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity
 34 or a retirement allowance, to the return of contribution, the pension, annuity or retirement allow-
 35 ance itself, any optional benefit or death benefit, or any other right accrued or accruing to any
 36 person under the provisions of this chapter or ORS chapter 238A, and the money in the various
 37 funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county
 38 and municipal taxes heretofore or hereafter imposed, [*except as provided under ORS chapter 118,*]
 39 shall not be subject to execution, garnishment, attachment or any other process or to the operation
 40 of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be un-
 41 assignable.

42 (2) Subsection (1) of this section does not apply to state personal income taxation of amounts
 43 paid under this chapter and ORS chapter 238A.

44 (3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or
 45 other process granted under this section applies to 75 percent of amounts paid under this chapter

1 and ORS chapter 238A if the execution or other process is issued for a support obligation or an
2 order or notice entered or issued under ORS chapter 25, 107, 108, 109, 110, 416, 419B or 419C.

3 **SECTION 9.** ORS 305.270 is amended to read:

4 305.270. (1) If the amount of the tax shown as due on a report or return originally filed with the
5 Department of Revenue with respect to a tax imposed under ORS chapter [118,] 308, 308A, 310, 314,
6 316, 317, 318 or 321, or collected pursuant to ORS 305.620, or as corrected by the department, is less
7 than the amount theretofore paid, or if a person files a claim for refund of any tax paid to the de-
8 partment under such laws within the period specified in subsection (2) of this section, any excess
9 tax paid shall be refunded by the department with interest as provided in this section and ORS
10 314.415.

11 (2) The claim shall be made on a form prescribed by the department, except that an amended
12 report or return showing a refund due and filed within the time allowed by this subsection for the
13 filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the
14 period specified in ORS 314.415 (1)(b) for taxes imposed under ORS chapters 310, 314, 316, 317 and
15 318, or collected pursuant to ORS 305.620 (except where any applicable ordinance specifies another
16 period)[, *within the period specified in ORS 118.100 (2) for taxes imposed under ORS chapter 118*] and
17 within two years of the payment of any tax under ORS chapter 308, 308A or 321.

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

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

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

42 (5) If no conference is requested, and the adjustments have not resulted in the finding of a de-
43 ficiency, the following shall apply:

44 (a) If written objections have been made by the claimant, the department shall consider the ob-
45 jections, determine any issues raised and send the claimant a notice of refund denial or payment of

1 any amount found to be refundable, together with any interest provided by this section.

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

4 (6) If no conference is requested, and the notice of proposed adjustment has asserted a defi-
5 ciency, the department shall consider any objections made by the person denied the refund, make
6 a determination of any issues raised, pay any refunds found due, with applicable interest, or assess
7 any deficiency and mail a notice thereof within one year from the date of the notice of deficiency,
8 unless an extension of time is agreed upon as described in subsection (7) of this section.

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

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

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

27 (10) The claimant may appeal any notice of proposed adjustment, refund denial or notice of as-
28 sessment in the manner provided in ORS 305.404 to 305.560. The failure to file written objections
29 or to request or have a conference shall not affect the rights of appeal so provided. All notices and
30 determinations shall set forth rights of appeal.

31 **SECTION 10.** ORS 305.280 is amended to read:

32 305.280. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2)
33 shall be filed within 90 days after the act, omission, order or determination becomes actually known
34 to the person, but in no event later than one year after the act or omission has occurred, or the
35 order or determination has been made. An appeal under ORS 308.505 to 308.665 shall be filed within
36 the time prescribed under ORS 308.595. An appeal from a supervisory order or other order or de-
37 termination of the Department of Revenue shall be filed within 90 days after the date a copy of the
38 order or determination or notice of the order or determination has been served upon the appealing
39 party by mail as provided in ORS 306.805.

40 (2) An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial
41 issued by the Department of Revenue with respect to a tax imposed under ORS chapter [118,] 308,
42 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed
43 within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS
44 305.270 shall be filed within 90 days after the date the notice of adjustment is final.

45 (3) Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes

1 imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the
2 amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.

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

8 (5) If the tax court denies an appeal made pursuant to this section on the grounds that it does
9 not meet the requirements of this section or ORS 305.275 or 305.560, the tax court shall issue a
10 written decision rejecting the petition and shall set forth in the decision the reasons the tax court
11 considered the appeal to be defective.

12 **SECTION 11.** ORS 305.385 is amended to read:

13 305.385. (1) Upon request of the Department of Revenue, an agency issuing or renewing a license
14 to conduct a business, trade or profession shall annually, on or before March 1, supply the depart-
15 ment with a list of specified licenses issued or renewed by the agency during the preceding calendar
16 year.

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

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

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

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

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

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

44 (5) The department may enter into an installment payment agreement with a licensee or pro-
45 vider with respect to any unpaid tax, penalty and interest. The agreement shall provide for interest

1 on the outstanding amount at the rate prescribed by ORS 305.220. The department may issue a
 2 provisional certificate of good standing pursuant to subsection (4)(b) and (d) of this section which
 3 shall remain in effect so long as the licensee or provider fully complies with the terms of the in-
 4 stallment agreement. Failure by the licensee or provider to fully comply with the terms of the in-
 5 stallment agreement shall render the agreement and the provisional certificate of good standing null
 6 and void, unless the department determines that the failure was due to reasonable cause. If the de-
 7 partment determines that the failure was not due to reasonable cause, the total amount of the tax,
 8 penalty and interest shall be immediately due and payable, and the department shall notify any af-
 9 fected agency that the licensee or provider is not in good standing. The agency shall then take ap-
 10 propriate action under subsection (4)(b) and (d) of this section.

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

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

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

21 (b) The department may by rule exempt certain contracts from the requirements of subsection
 22 (6) of this section.

23 **SECTION 12.** ORS 305.490 is amended to read:

24 305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a
 25 filing fee for each complaint or petition as follows:

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

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

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

29 (d) If a complaint or petition is specially designated under ORS 305.501 for hearing in the reg-
 30 ular division, a fee of \$50.

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

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

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

44 (B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees
 45 of other experts incurred by the [*executor or*] individual taxpayer in preparing for and conducting

1 the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the
2 magistrate.

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

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

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

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

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

15 (5) All fees and other moneys received or collected by the clerk by virtue of the office of the
16 clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund
17 as miscellaneous receipts.

18 **SECTION 13.** ORS 305.514 is amended to read:

19 305.514. (1) A plaintiff may elect to file a small claims procedure in the following classes of
20 cases:

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

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

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

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

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

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

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

35 *[(d)]* (c) A proceeding for the elderly rental assistance authorized under ORS 310.635 without
36 limitation to the amount in controversy.

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

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

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

1 of interest or penalties.

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

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

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

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

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

19 **SECTION 14.** ORS 305.565 is amended to read:

20 305.565. (1) Except as provided in subsection (2) of this section, proceedings for the collection
21 of any taxes, interest or penalties resulting from an assessment of additional taxes imposed by ORS
22 chapter [118,] 310, 314, 316, 317, 318, 321 or this chapter shall be stayed by the taking or pendency
23 of any appeal to the tax court.

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

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

31 (b) A taxpayer's position in an appeal is frivolous if that position is of the kind described in ORS
32 316.992 (5).

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

38 (4) The tax court may, as a condition of a stay, require the posting of a bond sufficient to
39 guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a
40 waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed.

41 **SECTION 15.** ORS 305.620 is amended to read:

42 305.620. (1) Any state agency or department may enter into agreements with any political sub-
43 division of this state for the collection, enforcement, administration and distribution of local taxes
44 of the political subdivision imposed upon or measured by gross or net income, wages or net earnings
45 from self-employment or local general sales and use taxes.

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

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

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

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

14 (6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the De-
15 partment of Revenue or orders of another department or agency relating to the collection, enforce-
16 ment, administration and distribution of local taxes under agreements entered into under subsection
17 (1) of this section.

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

21 (8) An appeal from a determination or an order may be taken by the taxpayer or by the political
22 subdivision whose taxes are in issue, by filing an original and two certified copies of a complaint
23 with the clerk of the Oregon Tax Court at its principal office [at the state capital,] in Salem, Oregon,
24 within 60 days after the notice of the determination of the Department of Revenue or the order of
25 the department or agency is sent to the taxpayer or the political subdivision. The filing of the
26 complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service of the tax-
27 payer's complaint shall be accomplished by the clerk of the tax court by filing a certified copy of
28 the complaint with the administrative head of the department or agency and a certified copy with
29 the political subdivision. Service of the political subdivision's complaint shall be accomplished by the
30 clerk of the tax court by filing a certified copy of the complaint with the administrative head of the
31 department or agency and mailing a certified copy of the complaint to the taxpayer. The complaint
32 of a taxpayer shall be entitled in the name of the person filing as plaintiff and the department or
33 agency as defendant. The complaint of a political subdivision shall be entitled in the name of the
34 political subdivision as plaintiff and the taxpayer and the department or agency as defendants. A
35 copy of the order of the department or agency shall be attached to the original complaint. All pro-
36 cedures shall be in accordance with ORS 305.405 to 305.494.

37 **SECTION 16.** ORS 305.992 is amended to read:

38 305.992. (1) If any returns required to be filed under ORS chapter [118,] 314, 316, 317, 318, 321
39 or 323 or under a local tax administered by the Department of Revenue under ORS 305.620 are not
40 filed for three consecutive years by the due date (including extensions) of the return required for
41 the third consecutive year, there shall be a penalty for each year of 100 percent of the tax liability
42 determined after credits and prepayments for each such year.

43 (2) The penalty imposed under this section is in addition to any other penalty imposed by law.
44 However, the total amount of penalties imposed for any taxable year under this section, ORS 305.265
45 (13), 314.400, 323.403 or 323.585 shall not exceed 100 percent of the tax liability.

1 **SECTION 17.** ORS 314.430 is amended to read:

2 314.430. (1) If any tax imposed under ORS chapter [118,] 316, 317 or 318 or any portion of the
3 tax is not paid within 30 days after the date that the written notice and demand for payment re-
4 quired under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of
5 the termination of the tax year by the Department of Revenue under the provisions of ORS 314.440)
6 and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to
7 regulations promulgated by the department, the department may issue a warrant directed to the
8 sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal
9 property of the taxpayer found within that county, for the payment of the amount of the tax, with
10 the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and
11 to return such warrant to the department and pay to it the money collected by virtue thereof by a
12 time to be therein specified, not less than 60 days from the date of the warrant. A copy of the
13 warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known
14 address.

15 (2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of
16 the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the
17 name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and
18 penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the
19 amount of the warrant so recorded shall become a lien upon the title to and interest in property
20 of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The
21 sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same
22 manner prescribed by law in respect to executions issued against property upon judgment of a court
23 of record, and shall be entitled to the same fees for services in executing the warrant, to be added
24 to and collected as a part of the warrant liability.

25 (3) In the discretion of the department a warrant of like terms, force and effect may be issued
26 and directed to any agent authorized to collect taxes, and in the execution thereof the agent shall
27 have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in ex-
28 cess of actual expenses paid in the performance of such duty.

29 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies
30 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered
31 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record
32 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

33 **SECTION 18.** ORS 305.380 is amended to read:

34 305.380. As used in ORS 305.385:

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

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

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

42 (4) "Tax" means a state tax imposed by ORS 401.792 to 401.816 and ORS chapters [118,] 314, 316,
43 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and
44 local taxes administered by the Department of Revenue under ORS 305.620.

45 **SECTION 19.** ORS 305.850 is amended to read:

1 305.850. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Direc-
2 tor of the Department of Revenue may engage the services of a collection agency to collect any
3 taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by
4 ORS chapter [118,] 310, 314, 316, 317, 318, 320, 321 or 323 and any other tax laws administered by
5 the Department of Revenue. The director may engage the services of a collection agency by entering
6 into an agreement to pay reasonable charges on a contingent fee or other basis.

7 (2) The director shall cause to be collected, in the same manner as provided in subsection (1)
8 of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected
9 pursuant to this subsection shall be credited as provided in ORS 293.250.

10 (3) The director may assign to the collection agency, for collection purposes only, any of the
11 taxes, penalties, interest and moneys due the state.

12 (4) The collection agency may bring such action or take such proceedings, including but not
13 limited to attachment and garnishment proceedings, as may be necessary.

14 **SECTION 20. The amendments to ORS 114.075, 116.083, 116.173, 116.303, 238.445, 305.270,**
15 **305.280, 305.380, 305.385, 305.490, 305.514, 305.565, 305.620, 305.850, 305.992 and 314.430 by**
16 **sections 4 to 19 of this 2005 Act become operative on January 2, 2010.**

17
