

CHAPTER 42

AN ACT

HB 4041

Relating to taxation of Indian tribe property; creating new provisions; amending ORS 307.112, 307.162 and 307.181; and prescribing an effective date.

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

SECTION 1. ORS 307.181 is amended to read:

307.181. (1) Land acquired by an Indian tribe by purchase, gift or without consideration is exempt from taxation if:

(a) The land is located within the ancient tribal boundaries of the tribe; and

(b) Acquisition of the land by the United States in trust status has been requested or is in process.

(2) The exemption under **subsection (1)** of this section ceases if the federal government enters a final administrative determination denying the request for acquisition of the land in trust status and:

(a) The deadlines for all available federal administrative appeals and federal judicial review expire with no appeal or review initiated; or

(b) All federal administrative and judicial proceedings arising from or related to the request for or process of acquisition of the land in trust status that have been initiated are completed without overturning the administrative denial of the request.

(3)(a) **Notwithstanding subsections (1) and (2) of this section, property that is owned exclusively by an eligible Indian tribe or by an entity wholly owned by an eligible Indian tribe, or a portion of the property, is exempt from taxation if the property, or the portion of the property, respectively, is used exclusively for government services.**

(b) **Property described in paragraph (a) of this subsection that may be exempt from taxation as property used exclusively for low income rental housing includes, without limitation, property that:**

(A) **Is held under lease or a lease purchase agreement by an eligible Indian tribe;**

(B)(i) **Is the property of a partnership, non-profit corporation or limited liability company of which an eligible Indian tribe is a general partner, limited partner, director, member, manager or general manager; and**

(ii) **Is leased or rented to low income persons for housing purposes; or**

(C) **Is used exclusively for an activity that qualifies as an affordable housing activity under 25 U.S.C. 4132.**

(c) **Property described in paragraph (a) of this subsection may not be exempt from taxation as property that is used exclusively for low income rental housing unless:**

(A) **For purposes of ORS 307.540 to 307.548, the requirements of ORS 307.543 have been satisfied;**

(B) **The property is offered for rent or is held for the purpose of developing low income rental housing;**

(C) **If occupied, the property is occupied solely by low income persons; and**

(D) **The property is located in a county in which more than 10 percent of the enrolled members of the eligible Indian tribe reside.**

(4) **As used in this section:**

(a) **“Eligible Indian tribe” means the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs Reservation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians or the Klamath Tribes.**

(b) **“Government services” means services provided by an eligible Indian tribe that:**

(A) **Are equivalent to services that a state or local government or the federal government customarily provides to its citizens;**

(B) **Are related to:**

(i) **Tribal administration;**

(ii) **Tribal facilities or tribal health facilities;**

(iii) **Elementary or secondary education or higher education, including community colleges;**

(iv) **Transportation;**

(v) **Fire or police;**

(vi) **Low income rental housing;**

(vii) **Utility services provided to an Indian reservation or to land held in trust by the United States for the benefit of an eligible Indian tribe; or**

(viii) **Cemeteries; and**

(C) **Other than government services related to the uses of property described in subsection (3)(c) of this section, do not generate income.**

(c) **“Low income”:**

(A) **Means income at or below 60 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.**

(B) **For purposes of projects undertaken pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104-330), includes income that qualifies under 24 C.F.R. 5.609.**

(d) **“Utility services” means services related to sanitation, sewer, storm drainage and water.**

SECTION 2. ORS 307.112 is amended to read:

307.112. (1) Real or personal property of a taxable owner held under lease, sublease or lease-purchase agreement by an institution, organization or public body, other than the State of Oregon, granted exemption or the right to claim exemption for any of its property under ORS 307.090, 307.130,

307.136, 307.140, 307.145 [or], 307.147 or **307.181 (3)**, is exempt from taxation if:

(a) The property is used by the lessee or, if the lessee is not in possession of the property, by the entity in possession of the property, in the manner, if any, required by law for the exemption of property owned, leased, subleased or being purchased by it; and

(b) It is expressly agreed within the lease, sublease or lease-purchase agreement that the rent payable by the institution, organization or public body has been established to reflect the savings below market rent resulting from the exemption from taxation.

(2) To obtain the exemption under this section, the lessee or, if the lessee is not in possession of the property, the entity in possession of the property, must file a claim for exemption with the county assessor, verified by the oath or affirmation of the president or other proper officer of the institution or organization, or head official of the public body or legally authorized delegate, showing:

(a) A complete description of the property for which exemption is claimed.

(b) If applicable, all facts relating to the use of the property by the lessee or, if the lessee is not in possession of the property, by the entity in possession of the property.

(c) A true copy of the lease, sublease or lease-purchase agreement covering the property for which exemption is claimed.

(d) Any other information required by the claim form.

(3) If the assessor is not satisfied that the rent stated in the lease, sublease or lease-purchase agreement has been established to reflect the savings below market rent resulting from the tax exemption, before the exemption may be granted the lessor must provide documentary proof, as specified by rule of the Department of Revenue, that the rent has been established to reflect the savings below market rent resulting from the tax exemption.

(4)(a) The claim must be filed on or before April 1 preceding the tax year for which the exemption is claimed, except:

(A) If the lease, sublease or lease-purchase agreement is entered into after March 1 but not later than June 30, the claim must be filed within 30 days after the date the lease, sublease or lease-purchase agreement is entered into if exemption is claimed for that year; or

(B) If a late filing fee is paid in the manner provided in ORS 307.162 (2), the claim may be filed within the time specified in ORS 307.162 (2).

(b) The exemption first applies for the tax year beginning July 1 of the year for which the claim is filed.

(5)(a) An exemption granted under this section continues as long as the use of the property remains unchanged and during the period of the lease, sublease or lease-purchase agreement.

(b) If the use changes, a new claim must be filed as provided in this section.

(c) If the use changes due to sublease of the property or any portion of the property from the tax exempt entity described in subsection (1) of this section to another tax exempt entity, the entity in possession of the property must file a new claim for exemption as provided in this section.

(d) If the lease, sublease or lease-purchase agreement expires before July 1 of any year, the exemption terminates as of January 1 of the same calendar year.

SECTION 3. ORS 307.162 is amended to read:

307.162. (1)(a) Before any real or personal property may be exempted from taxation under ORS 307.115, 307.118, 307.130 to 307.140, 307.145, 307.147, 307.150, 307.160, **307.181 (3)** or 307.580 for any tax year, the institution or organization entitled to claim the exemption must file a claim with the county assessor, on or before April 1 preceding the tax year for which the exemption is claimed. The claim must contain statements, verified by the oath or affirmation of the president or other proper officer of the institution or organization, that:

(A) List all real property claimed to be exempt and show the purpose for which the real property is used; and

(B) Cite the statutes under which exemption for personal property is claimed.

(b) If the ownership of all property included in the claim filed with the county assessor for a prior year remains unchanged, a new claim is not required.

(c) When the property designated in the claim for exemption is acquired after March 1 and before July 1, the claim for that year must be filed within 30 days from the date of acquisition of the property.

(2)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section for the current tax year:

(A) On or before December 31 of the tax year, if the claim is accompanied by a late filing fee of the greater of \$200, or one-tenth of one percent of the real market value as of the most recent assessment date of the property to which the claim pertains.

(B) On or before April 1 of the tax year, if the claim is accompanied by a late filing fee of \$200 and the claimant demonstrates good and sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described in ORS 307.090.

(b)(A) Notwithstanding subsection (1) of this section, a claimant that demonstrates good and sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described in ORS 307.090 may file a claim under this section for the five tax years prior to the current tax year:

(i) Within 60 days after the date on which the county assessor mails notice of additional taxes owing under ORS 311.206 for the property to which the claim filed under this subparagraph pertains; or

(ii) At any time if no notice is mailed.

(B) A claim filed under this paragraph must be accompanied by a late filing fee of the greater of \$200, or one-tenth of one percent of the real market

value as of the most recent assessment date of the property to which the claim pertains, multiplied by the number of prior tax years for which exemption is claimed.

(c) If a claim filed under this subsection is not accompanied by the late filing fee or if the late filing fee is not otherwise paid, an exemption may not be allowed for the tax years sought by the claim. A claim may be filed under this subsection notwithstanding that there are no grounds for hardship as required for late filing under ORS 307.475.

(d) The value of the property used to determine the late filing fee under this subsection and the determination of the county assessor relative to a claim of good and sufficient cause are appealable in the same manner as other acts of the county assessor.

(e) A late filing fee collected under this subsection must be deposited in the county general fund.

(3) As used in this section:

(a) "First-time filer" means a claimant that:

(A) Has never filed a claim for the property that is the subject of the current claim; and

(B) Did not receive notice from the county assessor on or before December 1 of the tax year for which exemption is claimed regarding the potential property tax liability of the property.

(b)(A) "Good and sufficient cause" means an extraordinary circumstance beyond the control of the taxpayer or the taxpayer's agent or representative that causes the failure to file a timely claim.

(B) "Good and sufficient cause" does not include hardship, reliance on misleading information unless the information is provided by an authorized tax official in the course of the official's duties, lack of knowledge, oversight or inadvertence.

(c) "Ownership" means legal and equitable title.

(4)(a) Notwithstanding subsection (1) of this section, if an institution or organization owns property that is exempt from taxation under a provision of law listed in subsection (1) of this section and fails to file a timely claim for exemption under subsection (1) of this section for additions or improvements to the exempt property, the additions or improvements may nevertheless qualify for exemption.

(b) The organization must file a claim for exemption with the county assessor to have the additions or improvements to the exempt property be exempt from taxation. The claim must:

(A) Describe the additions or improvements to the exempt property;

(B) Describe the current use of the property that is the subject of the application;

(C) Identify the tax year and any preceding tax years for which the exemption is sought;

(D) Contain any other information required by the Department of Revenue; and

(E) Be accompanied by a late filing fee equal to the product of the number of tax years for which exemption is sought multiplied by the greater of \$200 or one-tenth of one percent of the real market value as of the most recent assessment date of the property that is the subject of the claim.

(c) Upon the county assessor's receipt of a completed claim and late filing fee, the assessor shall determine for each tax year for which exemption is sought whether the additions or improvements that are the subject of the claim would have qualified for exemption had a timely claim been filed under subsection (1) of this section. Any property that would have qualified for exemption had a timely claim been filed under subsection (1) of this section is exempt from taxation for each tax year for which the property would have qualified.

(d) A claim for exemption under this subsection may be filed only for tax years for which the time for filing a claim under subsections (1) and (2)(a) of this section has expired. A claim filed under this subsection, however, may serve as the claim required under subsection (1) of this section for the current tax year.

(e) A late filing fee collected under this subsection must be deposited in the county general fund.

(5) For each tax year for which an exemption granted pursuant to subsection (2) or (4) of this section applies:

(a) Any tax, or interest attributable thereto, that was paid with respect to the property that is declared exempt from taxation must be refunded. Refunds must be made without interest from the unsegregated tax collections account established under ORS 311.385.

(b) Any tax, or interest attributable thereto, that remains unpaid as of the date the exemption is granted must be abated.

(6) If an institution or organization owns property that is exempt from taxation under a provision of law listed in subsection (1) of this section and changes the use of the property to a use that would not entitle the property to exemption from taxation, the institution or organization must notify the county assessor of the change to a taxable use within 30 days.

SECTION 4. (1) On or before January 1 of each year, an eligible Indian tribe as defined in ORS 307.181 that is granted tax exemption for property, or a portion of property, used exclusively for low income rental housing under ORS 307.181 (3) shall submit a report to the Commission on Indian Services.

(2) The report required under subsection (1) of this section must include:

(a) For each property, or portion of property, the value of the property tax exemption granted under ORS 307.181 (3) for the current property tax year as provided to the tribe by the assessor of the county in which the property is located; and

(b) The percentage of the current occupants of each property who are members of an eligible Indian tribe as defined in ORS 307.181.

SECTION 5. ORS 307.181, as amended by section 1 of this 2012 Act, is amended to read:

307.181. (1) Land acquired by an Indian tribe by purchase, gift or without consideration is exempt from taxation if:

(a) The land is located within the ancient tribal boundaries of the tribe; and

(b) Acquisition of the land by the United States in trust status has been requested or is in process.

(2) The exemption under subsection (1) of this section ceases if the federal government enters a final administrative determination denying the request for acquisition of the land in trust status and:

(a) The deadlines for all available federal administrative appeals and federal judicial review expire with no appeal or review initiated; or

(b) All federal administrative and judicial proceedings arising from or related to the request for or process of acquisition of the land in trust status that have been initiated are completed without overturning the administrative denial of the request.

(3)(a) Notwithstanding subsections (1) and (2) of this section, property that is owned exclusively by an eligible Indian tribe or by an entity wholly owned by an eligible Indian tribe, or a portion of the property, is exempt from taxation if the property, or the portion of the property, respectively, is used exclusively for government services.

(b) Property described in paragraph (a) of this subsection that may be exempt from taxation as property used exclusively for low income rental housing includes, without limitation, property that:

(A) Is held under lease or a lease purchase agreement by an eligible Indian tribe;

(B)(i) Is the property of a partnership, nonprofit corporation or limited liability company of which an eligible Indian tribe is a general partner, limited partner, director, member, manager or general manager; and

(ii) Is leased or rented to low income persons for housing purposes; or

(C) Is used exclusively for an activity that qualifies as an affordable housing activity under 25 U.S.C. 4132.

(c) Property described in paragraph (a) of this subsection may not be exempt from taxation as property that is used exclusively for low income rental housing unless:

(A) All agreements necessary for the construction and operation of the property as low income rental housing are executed before July 1, 2017;

[(A)] **(B)** For purposes of ORS 307.540 to 307.548, the requirements of ORS 307.543 have been satisfied;

[(B)] **(C)** The property is offered for rent or is held for the purpose of developing low income rental housing;

[(C)] **(D)** If occupied, the property is occupied solely by low income persons; and

[(D)] **(E)** The property is located in a county in which more than 10 percent of the enrolled members of the eligible Indian tribe reside.

(4) As used in this section:

(a) "Eligible Indian tribe" means the Burns Paiute Tribe, the Confederated Tribes of Coos,

Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs Reservation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians or the Klamath Tribes.

(b) "Government services" means services provided by an eligible Indian tribe that:

(A) Are equivalent to services that a state or local government or the federal government customarily provides to its citizens;

(B) Are related to:

(i) Tribal administration;

(ii) Tribal facilities or tribal health facilities;

(iii) Elementary or secondary education or higher education, including community colleges;

(iv) Transportation;

(v) Fire or police;

(vi) Low income rental housing;

(vii) Utility services provided to an Indian reservation or to land held in trust by the United States for the benefit of an eligible Indian tribe; or

(viii) Cemeteries; and

(C) Other than government services related to the uses of property described in subsection (3)(c) of this section, do not generate income.

(c) "Low income":

(A) Means income at or below 60 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development.

(B) For purposes of projects undertaken pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104-330), includes income that qualifies under 24 C.F.R. 5.609.

(d) "Utility services" means services related to sanitation, sewer, storm drainage and water.

SECTION 6. (1) The amendments to ORS 307.112, 307.162 and 307.181 by sections 1 to 3 of this 2012 Act apply to property tax years beginning on or after July 1, 2012.

(2) The amendments to ORS 307.181 by section 5 of this 2012 Act apply to property tax years beginning on or after July 1, 2017.

SECTION 7. (1) It is the intention of the amendments to ORS 307.181 by section 5 of this 2012 Act to eliminate the property tax exemption for low income rental housing projects created by the amendments to ORS 307.181 by section 1 of this 2012 Act, only with respect to projects for which all agreements necessary for the construction and operation of the property as low income rental housing are not executed before July 1, 2017.

(2) Projects for which all agreements necessary for the construction and operation of the property as low income rental housing are executed before July 1, 2017, remain eligible on and

after July 1, 2017, for the property tax exemption for low income rental housing created by the amendments to ORS 307.181 by section 1 of this 2012 Act.

SECTION 8. This 2012 Act takes effect on the 91st day after the date on which the 2012 regular

session of the Seventy-sixth Legislative Assembly adjourns sine die.

Approved by the Governor March 16, 2012

Filed in the office of Secretary of State March 19, 2012

Effective date June 4, 2012
