

Senate Bill 31

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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**.

Permits Department of Revenue to implead persons who may be jointly and severally liable for unpaid withholding taxes, resulting in impleaded persons being made party to appeal taken to Oregon Tax Court.

Applies to appeals taken on or after effective date of Act.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 316.207; and prescribing an effective
3 date.

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

5 **SECTION 1.** ORS 316.207 is amended to read:

6 316.207. (1) Every employer who deducts and retains any amount under ORS 316.162 to 316.219
7 shall hold the same in trust for the State of Oregon and for the payment thereof to the Department
8 of Revenue in the manner and at the time provided in ORS 316.162 to 316.219.

9 (2) At any time the employer fails to remit any amount withheld, the department may enforce
10 collection by the issuance of a distraint warrant for the collection of the delinquent amount and all
11 penalties, interest and collection charges accrued thereon. Such warrant shall be issued, recorded
12 and proceeded upon in the same manner and shall have the same force and effect as is prescribed
13 with respect to warrants for the collection of delinquent income taxes.

14 (3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265 (12)
15 and 314.407 (1), the department may issue a notice of liability to any officer, employee or member
16 described in ORS 316.162 (3)(b) of such employer within three years from the time of assessment.
17 Within 30 days from the date the notice of liability is mailed to the officer, employee or member,
18 such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the
19 department in writing of objections to the liability and, if desired, request a conference. Any con-
20 ference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested
21 from a notice of deficiency.

22 (b) After a conference or, if no conference is requested, a determination of the issues considering
23 the written objections, the department shall mail the officer, employee or member a conference let-
24 ter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the con-
25 ference letter is mailed to the officer, employee or member, such officer, employee or member shall
26 pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided
27 for an appeal from a notice of assessment.

28 (c) If neither payment nor written objection to the notice of liability is received by the depart-

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 ment within 30 days after the notice of liability has been mailed, the notice of liability becomes final.
 2 In such event, the officer, employee or member may appeal the notice of liability to the tax court
 3 within 90 days after it became final in the manner provided for an appeal from a notice of assess-
 4 ment.

5 (4)(a) In the case of a failure to file a withholding tax report on the due date, governed by the
 6 provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS
 7 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee
 8 or member described in ORS 316.162 (3)(b) any time within three years after the assessment of an
 9 employer described in ORS 316.162 (3)(a). The time of assessment against such officer, employee or
 10 member shall be 30 days after the date the notice of determination and assessment is mailed. Within
 11 30 days from the date the notice of determination and assessment is mailed to the officer, employee
 12 or member, such officer, employee or member shall pay the assessment, plus penalties and interest,
 13 or advise the department in writing of objections to the assessment, and if desired, request a con-
 14 ference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a confer-
 15 ence requested from a notice of deficiency.

16 (b) After a conference or, if no conference is requested, a determination of the issues considering
 17 the written objections, the department shall mail the officer, employee or member a conference let-
 18 ter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days
 19 from the date the conference letter is mailed to the officer, employee or member, such officer, em-
 20 ployee or member shall pay the assessment, plus penalties and interest, or appeal in the manner
 21 provided for an appeal from a notice of assessment.

22 (c) If neither payment nor written objection to the notice of determination and assessment is
 23 received by the department within 30 days after the notice of determination and assessment has
 24 been mailed, the notice of determination and assessment becomes final. In such event, the officer,
 25 employee or member may appeal the notice of determination and assessment to the tax court within
 26 90 days after it became final in the manner provided for an appeal from a notice of assessment.

27 (5)(a) More than one officer or employee of a corporation may be held jointly and severally lia-
 28 ble for payment of withheld taxes.

29 (b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer
 30 or employee of a corporation may be held jointly and severally liable for payment of withheld taxes,
 31 the department may require any or all of the officers, members or employees who may be held liable
 32 to appear before the department for a joint determination of liability. The department shall notify
 33 each officer, member or employee of the time and place set for the determination of liability.

34 (c) Each person notified of a joint determination under this subsection shall appear and present
 35 such information as is necessary to establish that person's liability or nonliability for payment of
 36 withheld taxes to the department. If any person notified fails to appear, the department shall make
 37 its determination on the basis of all the information and evidence presented. The department's de-
 38 termination shall be binding on all persons notified and required to appear under this subsection.

39 (d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any
 40 person determined to be liable for unpaid withholding taxes under this subsection, each person re-
 41 quired to appear before the department under this subsection shall be impleaded by the plaintiff.
 42 **The department may implead any officer, employee or member who may be held jointly and**
 43 **severally liable for the payment of withheld taxes. Each person impleaded under this para-**
 44 **graph shall be [and] made a party to the action before the tax court and shall make available to**
 45 **the tax court such information as was presented before the department, as well as such other in-**

1 formation as may be presented to the court.

2 **(B) The court may determine that one or more persons impleaded under this paragraph**
 3 **are liable for unpaid withholding taxes without regard to any earlier determination by the**
 4 **department that an impleaded person was not liable for unpaid withholding taxes.**

5 **(C)** If any person required to appear before the court under this subsection fails or refuses to
 6 appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court,
 7 the court shall make its determination on the basis of all the evidence introduced. All such evidence
 8 shall constitute a public record and shall be available to the parties and the court notwithstanding
 9 ORS 314.835, 314.840 or 314.991. The determination of the tax court shall be binding on all persons
 10 made parties to the action under this subsection.

11 (e) Nothing in this section shall be construed to preclude a determination by the department or
 12 the Oregon Tax Court that more than one officer, employee or member are jointly and severally li-
 13 able for unpaid withholding taxes.

14 **SECTION 2. The amendments to ORS 316.207 by section 1 of this 2005 Act apply to ap-**
 15 **peals taken to the Oregon Tax Court on or after the effective date of this 2005 Act.**

16 **SECTION 3. This 2005 Act takes effect on the 91st day after the date on which the reg-**
 17 **ular session of the Seventy-third Legislative Assembly adjourns sine die.**

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