

Enrolled Senate Bill 33

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CHAPTER

AN ACT

Relating to tax penalties; amending ORS 314.400; and prescribing an effective date.

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

SECTION 1. ORS 314.400 is amended to read:

314.400. *[(1) In the case of a failure:]*

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

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

(1) If a taxpayer fails to file a report or return or fails to pay a tax by the date on which the filing or payment is due, the Department of Revenue shall add to the amount required to be shown as tax on the report or return a delinquency penalty of five percent of the amount of the unpaid tax.

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

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

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

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

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

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

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

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

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

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

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

(7) Notwithstanding subsection (1) of this section, the five percent penalty for failure to **file a report or return** or pay *[the]* a tax at the time the tax becomes due *[shall]* **may** not be imposed if:

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

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

(B) The department issues a notice of tax deficiency to the taxpayer under ORS 305.265.

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

[(i) As shown on the return; and]

[(ii) As shown in the records of the department.]

SECTION 2. This 2005 Act takes effect on the 91st day after the date on which the regular session of the Seventy-third Legislative Assembly adjourns sine die.

Passed by Senate February 9, 2005

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Secretary of Senate

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President of Senate

Passed by House June 7, 2005

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Speaker of House

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State