

# Enrolled Senate Bill 283

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Taxation Section)

CHAPTER .....

AN ACT

Relating to taxation; creating new provisions; amending ORS 316.207 and 443.888; and prescribing an effective date.

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

**SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 307.**

**SECTION 2. For purposes of the property tax laws of this state, a limited liability company that is wholly owned by one or more nonprofit corporations shall be an entity that qualifies for an exemption or special assessment if and to the extent that all of the nonprofit corporation owners of the limited liability company would qualify for the exemption or special assessment.**

**SECTION 3. Section 2 of this 2005 Act applies to property tax years beginning on or after July 1, 2006.**

**SECTION 4. ORS 316.207 is amended to read:**

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

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

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

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the

conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

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

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

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

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

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of withheld taxes.

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

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

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

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

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

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

**SECTION 5. The amendments to ORS 316.207 by section 4 of this 2005 Act apply to appeals taken to the Oregon Tax Court on or after the effective date of this 2005 Act.**

**SECTION 6.** ORS 443.888 is amended to read:

443.888. (1)(a) The owner of a long term care facility seeking to have the facility be exempt from ad valorem property taxation under ORS 307.811 shall apply to the Department of Human Services for certification of the facility as an essential community provider long term care facility.

(b) The application shall be made after the close of the calendar year for which the average percentage of residents eligible for medical assistance under Medicaid is to be determined.

(2) The application shall be in the form and shall contain the information prescribed by the department, including but not limited to:

(a) The location of the long term care facility; and

(b) A statement of the number of residents of the long term care facility during the previous calendar year and the number of those residents who were eligible for Medicaid.

(3) The department shall act upon an application within 15 days after the date the application has been filed with the department and all requested information has been provided by the applicant.

(4) The department shall certify a long term care facility as an essential community provider long term care facility if the facility:

(a) Is a nursing facility, assisted living facility or residential care facility and has an average residency rate of [70] 50 percent or more who are eligible for Medicaid; or

(b) Is an adult foster home and has an average residency rate of 60 percent or more who are eligible for Medicaid.

(5) The department shall send the certification to the applicant. The certification shall state the tax year for which the certification is valid.

(6) A certification under this section shall be valid for the tax year beginning the July 1 immediately following the calendar year in which the long term care facility met the Medicaid eligibility residency rate set forth in subsection (4) of this section.

(7) As used in this section, "long term care facility" means a nursing facility, assisted living facility, residential care facility or adult foster home as defined in ORS 443.705.

**SECTION 7. The amendments to ORS 443.888 by section 6 of this 2005 Act apply to certifications issued for tax years beginning on or after July 1, 2005.**

**SECTION 8. 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 24, 2005**

**Repassed by Senate July 27, 2005**

.....  
Secretary of Senate

.....  
President of Senate

**Passed by House July 18, 2005**

.....  
Speaker of House

**Received by Governor:**

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

**Approved:**

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

.....  
Governor

**Filed in Office of Secretary of State:**

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

.....  
Secretary of State