

A-Engrossed
House Bill 2233

Ordered by the House March 27
Including House Amendments dated March 27

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Revenue)

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.

Applies existing provisions for property tax liens against tax-deferred homesteads to security interests in tax-deferred manufactured structures that are treated as personal property for tax purposes.

[Takes effect on 91st day following adjournment sine die.]

A BILL FOR AN ACT

Relating to liens on tax-deferred property; amending ORS 311.673, 311.675, 311.679 and 311.690.

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

SECTION 1. ORS 311.673 is amended to read:

311.673. (1) The Department of Revenue shall have a lien against *[the]* tax-deferred property for *[the]* payment of *[the]* deferred taxes plus interest **on the deferred taxes** *[thereon]* and any fees paid *[to the county clerk]* by the department in connection with the **filing**, recording, release or satisfaction of the lien. The liens for deferred taxes shall attach to the property on July 1 of the year in which the taxes were assessed. The deferred property tax liens shall have the same priority as other real property tax liens except that the lien of mortgages, trust deeds or security interests *[which are]* **that is filed**, recorded or noted on any certificate of title **or in any record maintained by the Department of Consumer and Business Services pursuant to ORS 446.566 to 446.646** prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

(2) The **deferred property tax** lien may be foreclosed by the department as if it were a purchase money mortgage under ORS chapter 88. The court may award reasonable attorney fees to the department if the department prevails in a foreclosure action under this section. The court may award reasonable attorney fees to a defendant who prevails in a foreclosure action under this section if the court determines that the department had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(3) Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes under ORS 311.701.

(4) This section applies only to **deferred property tax** liens arising prior to October 3, 1989.

SECTION 2. ORS 311.675 is amended to read:

311.675. (1) In each county in which there is tax-deferred property, the Department of Revenue shall cause to be recorded in the mortgage records of the county[,] a list of tax-deferred properties

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 [of] that **lie in the** county. The list shall contain a description of the property as listed on the as-
 2 sessment roll together with the name of the owner **as** listed *[thereon]* **on the assessment roll.**

3 (2)(a) *[Except as provided in ORS 311.679,]* The recording of *[the]* tax-deferred properties under
 4 subsection (1) of this section is notice that the Department of **Revenue** claims a lien against those
 5 properties in the amount of the deferred taxes plus interest **on the deferred taxes** together with
 6 any fees paid *[to the county clerk]* **by the department** in connection with the **filing**, recording, re-
 7 lease or satisfaction of the lien. *[, even though the amount of taxes, interest or fees is not listed.]*

8 (b) **If the recording of tax-deferred properties under subsection (1) of this section oc-**
 9 **curred prior to January 1, 1990, the recording is notice that the department claims a lien**
 10 **against those properties in the amount of the deferred taxes plus interest on the deferred**
 11 **taxes together with any fees paid by the department in connection with the filing, recording,**
 12 **release or satisfaction of the lien, whether or not the amount of taxes, interest or fees is**
 13 **listed.**

14 (3)(a) **When an ownership document is issued under ORS 446.566 to 446.646, or issuance**
 15 **of the document is pending, for a tax-deferred manufactured structure assessed as personal**
 16 **property under ORS 308.875, the Department of Revenue shall file with the Department of**
 17 **Consumer and Business Services an application for notation of the deferred property tax lien**
 18 **as a security interest on behalf of the State of Oregon. The Department of Consumer and**
 19 **Business Services shall note the lien as a security interest in the same manner as other se-**
 20 **curity interests in manufactured structures. A lien noted as a security interest in records**
 21 **maintained by the Department of Consumer and Business Services pursuant to ORS 446.566**
 22 **to 446.646 shall have the same legal effect as other security interests in manufactured**
 23 **structures.**

24 (b) **For any other tax-deferred homestead assessed as personal property, the Department**
 25 **of Revenue may file notice of the deferred property tax lien as a security interest on behalf**
 26 **of the State of Oregon with the office of the Secretary of State or with any other designated**
 27 **filing office pursuant to ORS chapter 79.**

28 *[(3)]* (4)(a) Notwithstanding the provisions of ORS 182.040 to 182.060 and 205.320 relating to the
 29 time and manner of payment of fees to the county clerk, the department shall not be required to pay
 30 any filing, indexing or recording fees to the county in connection with the **filing**, recording, release
 31 or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry
 32 is made. The manner of payment of the fees shall be as provided in ORS 205.395 for the payment
 33 of fees for **filing**, recording and making entry of warrants or orders in the County Clerk Lien Re-
 34 cord.

35 (b) **The Department of Revenue shall pay filing fees for any application for notation of**
 36 **the deferred property tax lien as a security interest in tax-deferred properties to the De-**
 37 **partment of Consumer and Business Services as provided in ORS 446.646 or in rules adopted**
 38 **under ORS 446.646.**

39 (c) **If the Department of Revenue files notice of the deferred property tax lien as a se-**
 40 **curity interest on behalf of the State of Oregon with the office of the Secretary of State or**
 41 **with any other designated filing office under subsection (3) of this section, the department**
 42 **shall pay filing fees to the Secretary of State or to the other filing office pursuant to ORS**
 43 **chapter 79.**

44 **SECTION 3.** ORS 311.679 is amended to read:

45 311.679. (1) At the time that the taxpayer elects to defer property taxes under ORS 311.666 to

1 311.701 or if the taxpayer has elected to defer property taxes prior to [January 1, 1990, or between
2 January 1, 1990 and June 30, 1990] **July 1, 1990**, the Department of Revenue shall estimate the
3 amount of property taxes that will be deferred for tax years beginning on or after July 1, 1990, in-
4 terest [thereon] **on the deferred taxes** and any fees paid [to the county clerk] by the department in
5 connection with lien **filing**, recording, release or satisfaction. Thereafter, the department shall have
6 a lien in the amount of the estimate.

7 (2) The lien created under subsection (1) of this section shall attach to the property to which
8 the election to defer relates on July 1 of the tax year of initial deferral or on July 1, 1990, whichever
9 is applicable.

10 (3) The lien created under subsection (1) of this section in the amount of the estimate shall have
11 the same priority as other real property tax liens except that the lien of mortgages, trust deeds or
12 security interests [which are] **that is filed**, recorded or noted on a certificate of title **or in any**
13 **record maintained by the Department of Consumer and Business Services pursuant to ORS**
14 **446.566 to 446.646** prior in time to the attachment of the lien for deferred taxes shall be prior to the
15 liens for deferred taxes.

16 (4) If during the period of tax deferment, the amount of taxes, interest and fees exceeds the es-
17 timate, the Department **of Revenue** shall have a lien for the amount of the excess. The liens for the
18 excess shall attach to the property on July 1 of the tax year in which the excess occurs. The lien
19 for the excess shall have the same priority as other real property tax liens, except that the lien of
20 mortgages, trust deeds or security interests **that is filed**, recorded or noted on any certificate of
21 title **or in any record maintained by the Department of Consumer and Business Services**
22 **pursuant to ORS 446.566 to 446.646** prior in time to the date that the Department **of Revenue**
23 records an amendment to its estimate to reflect its lien for the excess shall be prior to the lien for
24 the excess.

25 (5)(a) [Notwithstanding ORS 311.675 (2),] The notice of lien for deferred taxes recorded as pro-
26 vided in ORS 311.675 (1) and (2) arising on or after October 3, 1989, shall list the amount of the
27 estimate of deferred taxes, interest and fees made by the department under subsection (1) of this
28 section. [and] Any amendment to the notice **of lien** to reflect a lien for excess, as described under
29 subsection (4) of this section, shall list the amount of the excess that the department claims as lien.

30 (b) If notice of lien with respect to any homestead has been **filed or** recorded as provided under
31 ORS 311.675 (1) [and (2)] **to (3)** prior to January 1, 1990, and the lien has not been released or sat-
32 isfied, the department shall cause a further notice of lien to be recorded in the mortgage records
33 of the county. The further notice of lien shall list the amount of the estimate of deferred taxes and
34 interest made by the department under subsection (1) of this section and any amendment to the no-
35 tice to reflect a lien for excess, described under subsection (4) of this section, and shall list the
36 amount of the excess that the department claims as lien.

37 (6) A lien created under this section may be foreclosed by the department as if it were a pur-
38 chase money mortgage under ORS chapter 88. The court may award reasonable attorney fees to the
39 prevailing party in a foreclosure action under this section.

40 (7) Receipts from foreclosure proceedings shall be credited in the same manner as other repay-
41 ments of deferred property taxes under ORS 311.701.

42 (8) By means of voluntary payment made as provided under ORS 311.690, the taxpayer may limit
43 the amount of the lien for deferred taxes created under this section. If the taxpayer desires that the
44 limit be reflected in the records of the county, the taxpayer must request, subject to any rules
45 adopted by the department, that the department cause a partial satisfaction of the lien to be re-

1 corded in the county. Upon receipt of such a request, the department shall cause a partial satisfac-
2 tion, in the amount of the voluntary payment, to be [so] recorded. Nothing in this subsection shall
3 affect the priority of the liens of the department, as originally created under subsections (1) and (4)
4 of this section.

5 (9) Nothing in this section shall affect any lien arising under ORS 311.666 to 311.701 for taxes
6 assessed before January 1, 1990. However, except as provided under this section, no lien for taxes
7 shall arise under ORS 311.666 to 311.701 for taxes assessed after December 31, 1989.

8 (10)(a) Notwithstanding any other provision of this section, a lien arising under this section as
9 the result of a deferral of property taxes on the homestead of a disabled person who is younger than
10 62 years of age during the tax year may not exceed 90 percent of the real market value of the
11 homestead.

12 (b) Property may continue to qualify for property tax deferral under ORS 311.666 to 311.701 even
13 though the amount of property taxes being paid by the department may not increase the amount of
14 the lien arising under this section.

15 (11) This section first applies to liens for deferred taxes arising on or after October 3, 1989.

16 **SECTION 4.** ORS 311.690 is amended to read:

17 311.690. (1) All payments of deferred taxes shall be made to the Department of Revenue.

18 (2) Subject to subsection (3) of this section, all or part of the deferred taxes and accrued interest
19 may at any time be paid to the department by:

20 (a) The taxpayer or the spouse of the taxpayer.

21 (b) The next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer or any
22 person having or claiming a legal or equitable interest in the property.

23 (3) A person listed in subsection (2)(b) of this section may make [such] payments **of deferred**
24 **taxes under this section** only if no objection is made by the taxpayer within 30 days after the
25 department deposits in the mail notice to the taxpayer of the fact that [such] payment **of deferred**
26 **taxes** has been tendered.

27 (4) Any payment made under this section shall be applied first against accrued interest and any
28 remainder against the deferred taxes. [Such] Payment **of deferred taxes** does not affect the deferred
29 tax status of the property. Unless otherwise provided by law, [such] payment **of deferred taxes** does
30 not give the person paying the taxes any interest in the property or any claim against the estate,
31 in the absence of a valid agreement to the contrary.

32 (5) When the deferred taxes and accrued interest are paid in full and the property is no longer
33 subject to deferral, the department shall prepare, **file and record documents necessary to effect**
34 *[and record in the county in which the property is located a]* **a release or** satisfaction of deferred
35 property tax lien.

36