

Senate Bill 176

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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**.

Authorizes Department of Revenue to transfer certain tax liabilities to successor business entity of taxpayer when entity operates substantially same business as taxpayer and other factors are not present. Provides notice, payment and appeal procedures.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to reorganized business entities; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 305.

SECTION 2. (1) As used in this section, "reorganized business entity":

(a) Means a business entity that, while operating substantially the same business as another entity that incurred a liability for taxes, interest or penalties administered by the Department of Revenue, has been converted to a different form of business entity from that of the entity that incurred the liability or has changed ownership from that of the entity that incurred the liability; and

(b) Does not include a business entity that is converted to a different form or that has changed ownership solely because of a transfer of assets or because of a transfer of an interest of an investor who has no right to manage the business entity, including, but not limited to, the interest of:

(A) A person that is solely a minority shareholder in a corporation;

(B) A member of a manager-managed limited liability company; or

(C) A limited partner of a limited partnership that does not participate in the control of the business of the limited partnership.

(2) The department may transfer the liability for taxes, interest or penalties that are administered and collected by the department from the business entity that incurred the liability to a reorganized business entity and may assess those amounts against the reorganized business entity.

(3) Factors the department may consider when determining if a business entity is a reorganized business entity include, but are not limited to, whether the business entity:

(a) Operates from the same physical location as did the taxpayer owing the debt.

(b) Provides the same services or manufactures the same products as did the taxpayer owing the debt.

(c) Has one or more of the same:

(A) Corporate directors or officers as did the taxpayer owing the debt.

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 (B) Owners or holders of a direct or indirect interest in the business entity as did the
2 taxpayer owing the debt.

3 (4) Following the determination to transfer a liability to a reorganized business entity
4 under subsections (2) and (3) of this section and notwithstanding ORS 314.835, 314.840 or
5 314.991, the department shall send a notice of liability to the reorganized business entity
6 stating the amount owed by the reorganized business entity.

7 (5) Within 30 days from the date of notice of liability given under subsection (4) of this
8 section, the reorganized business entity shall:

9 (a) Pay the liability stated in the notice and any other penalty or interest related to that
10 liability; or

11 (b) Advise the department in writing of objections to the notice of liability and, if desired,
12 request a conference. A conference requested under this paragraph shall be governed by
13 those provisions of ORS 305.265 that govern a conference requested from a notice of defi-
14 ciency under ORS 305.265. Notwithstanding ORS 314.835, 314.840 or 314.991, the department
15 may disclose any information to the reorganized business entity that the department would
16 be authorized to disclose to the business entity that incurred the liability.

17 (6) After a determination of the issues raised in written objections made under sub-
18 section (5) of this section or after a conference, if a conference was requested, the depart-
19 ment shall mail the reorganized business entity a letter affirming, canceling or adjusting the
20 notice of liability. If the entity remains liable for an outstanding amount under this section,
21 the letter shall be considered a notice of assessment and, within 90 days from the date the
22 letter is mailed, the entity shall:

23 (a) Pay the amount set forth in the notice of assessment; or

24 (b) Appeal to the Oregon Tax Court in the manner provided for an appeal from a notice
25 of assessment.

26 (7) If neither payment nor written objections to the notice of liability sent under sub-
27 section (4) of this section is received by the department within 30 days after the date of the
28 notice of liability, the notice of liability becomes final. The reorganized business entity may
29 appeal the notice to the tax court within 90 days after the date the notice became final, in
30 the manner provided for an appeal from a notice of assessment.

31 **SECTION 3.** This 2007 Act takes effect on the 91st day after the date on which the reg-
32 ular session of the Seventy-fourth Legislative Assembly adjourns sine die.
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