

## Legislative Fiscal Office

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## Joint Committee on Ways and Means

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**To:** General Government Subcommittee  
**From:** Legislative Fiscal Office  
**Date:** May 8, 2017  
**Subject:** Possible legislation to support DOR collection activities

On May, 4, 2017, the Subcommittee heard testimony from the Department of Revenue, regarding their efforts to collect liquidated debt owed to the state. Three potential areas for legislation arose as part of the discussion: (1) making it a crime to fail to pay tax due; (2) clarifying that publicizing the personal information of delinquent taxpayers on the department's website does not violate disclosure laws; and (3) allowing for the exchange of delinquent taxpayer information between state agencies to ensure that delinquent taxpayers do not receive payments under any contract with the state until the tax debt is paid. Due to time constraints, the following summaries of current law have not been reviewed by Legislative Counsel. If the Subcommittee wishes to pursue any of these issues further, LFO recommends consulting with Legislative Counsel.

### **Criminal Failure to Pay Tax Due**

Under existing law, tax fraud (e.g. filing a false tax return, supplying false information) and tax evasion (e.g. failure to pay tax, failure to file a tax return) are Class C felonies, under ORS 314.075. To be convicted of either of these crimes, the person or business must have had the intent to evade Oregon income tax laws or rules established by the Department of Revenue. ORS 314.075 and ORS 314.991(2).

According to the Oregon Judicial Department, from 2010 through 2015, an average of 3 cases per year have been filed in circuit court with at least one charge referencing the tax fraud/tax evasion statute. Most of these cases involved multiple crimes, including tax evasion. The Judicial Department could not identify whether the Department of Revenue had requested that the district attorney prosecute any of the cases. It is not clear what, if any, additional criminal statutes would be needed by the Department to improve collections.

### **Disclosure Exception for Cyber Shaming**

Existing law provides more than two dozen exceptions to the general prohibition on disclosure of taxpayer information by the Department of Revenue. Most of those exceptions are to facilitate the lawful activities of other state agencies and local governments. ORS 314.835 and ORS 314.840.

There is no explicit statutory exception allowing the department to publish delinquent taxpayer information on the department's website. According to the Department, the Department of Justice advised them that such publication would be allowed for information that was already public. Because recorded liens are public, this advice opened the door to publication of delinquent taxpayer information where a judicial warrant had been issued and a lien recorded with the county clerk.

The Department ran a pilot in early 2016, publishing the names, addresses and amounts owed of 50 individuals and 50 businesses on its website. Taxpayers were selected for the list based on the amount they owed, and ranked one through fifty, with the taxpayer with the largest debt listed first. Prior to posting, taxpayers on the lists were advised by mail that their information would be disclosed. Taxpayers that paid their debt in response to the notice from the Department were removed from the list and their information was not posted.

The Department stated that an evaluation of the pilot is not yet complete and that the Department has not determined whether any delinquent taxpayer lists would be posted on the website going forward. When asked by the Subcommittee if a specific statutory exemption to the disclosure law would be helpful to facilitate posting delinquent taxpayer lists, the Department stated that it would be. The Department did not introduce a legislative concept this session to provide for this specific exemption.

RECOMMENDATION: Legislation could amend ORS 314.840 to provide a specific exception to the disclosure law and authorize the Department to publish delinquent taxpayer lists. Depending on the requirements of the bill, it is unlikely that such legislation would have a fiscal impact on the Department. The Subcommittee may wish to ask the Department to report back to the Subcommittee regarding the results of the 2016 pilot project.

### **Inter-agency information sharing**

The Subcommittee expressed concern that individuals and businesses under contract to provide services to the state were being compensated for their services despite owing a debt to the state. The Secretary of State testified in 2015 that it estimates that a state vendor offset could bring in at least \$1 million per year.

ORS 293.250(3)(b) allows the Department to offset refunds or money due from other state agencies against debts owed to the state. SB 55 (2015) required state agencies to request that contractors and others voluntarily supply their social security number on any document relating to a monetary obligation or transaction with the state. This requirement was an effort to facilitate the exchange of information between state agencies and the Department of Revenue, which could lead to improved debt collection. Supplying the social

security number is optional for the contractor, however. Without a social security number, it is difficult to find a unique identifier that would allow state contractor information to be matched against debts being collected by the Department. Businesses with withholding tax debt frequently close their business and open under a new federal Employer Identification Number, making them difficult to track.

The Department stated that it is pursuing options for offsets against state payments. It is currently with the Department of Administrative Services and with the Oregon Department of Transportation to determine how best to exchange information to improve debt collection. It is not clear when any information exchange might begin.

RECOMMENDATION: No legislation is needed at this time. The Subcommittee may wish to ask the department to report on its progress on this issue during the interim.

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