

# Enrolled Senate Bill 79

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 Governor Kate Brown for Department of Revenue)

CHAPTER .....

## AN ACT

Relating to the Collections Unit of the Department of Revenue; amending ORS 137.118, 156.315, 293.250 and 314.415.

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

**SECTION 1.** ORS 293.250 is amended to read:

293.250. (1) There is created a Collections Unit in the Department of Revenue.

(2) The Department of Revenue may render assistance in the collection of any delinquent account owing to any [*state agency, or to a county pursuant to a judgment obtained under ORS 169.151, assigned by the state agency or county to which the delinquent account is owed to the department for collection. The department may prescribe criteria for the kinds of accounts that may be assigned under this section, including a minimum dollar amount owed.*] **of the following entities, if the account is assigned by the entity to the department for collection:**

- (a) A state agency;
- (b) A public university listed in ORS 352.002, notwithstanding ORS 352.138;
- (c) The Oregon Health and Science University, notwithstanding ORS 353.100;
- (d) A community college or community college district;
- (e) A county, for debts arising pursuant to a judgment obtained under ORS 169.151; or
- (f) The Oregon State Bar, notwithstanding ORS 9.010, for the purpose of collecting assignments to a client security fund established under ORS 9.625.

(3) The Department of Revenue may render assistance in the collection of any delinquent account owing to any of the following entities, if the account is assigned to the department for the limited purpose of collection through setoff against any refunds or sums due to a debtor from the department or any other state agency:

- (a) Any local government, as defined in ORS 174.116; or
- (b) Any special government body, as defined in ORS 174.117.

(4)(a) The Department of Revenue may prescribe criteria for the kinds of accounts for which the department will render assistance under subsections (2) and (3) of this section, including a minimum dollar amount owed.

(b) Nothing in this section requires the department to render assistance in the collection of any delinquent account.

[(3)(a)] (5)(a) Subject to rules prescribed by the Oregon Department of Administrative Services for collection of delinquent accounts owing to [*state agencies or to counties*] **entities listed in subsections (2) and (3) of this section**, the Department of Revenue [*shall*] **may** render assistance in

the collection and shall charge the [state agencies or counties] **entities** separately for the cost of assistance. The charges may not exceed the proceeds of collection credited to the [state agency or county] **entity** for the same biennium. The Department of Revenue may designate a single percentage to retain from the proceeds of collection as a charge for the cost of assistance. If the Department of Revenue finds that accounts assigned to the department for collection by [certain state agencies or counties] **a particular entity** lack sufficient information to properly and efficiently identify the debtor or that the account information must be put into a form usable by the department in order to efficiently provide collection services, the department may establish a separate percentage charge to be retained from collections for [the state agency or county] **that entity**. The charge must reflect the average of the actual cost to provide collection services for all accounts assigned by [that state agency or county] **the entity**.

(b) In providing assistance, the Department of Revenue shall make all reasonable efforts to collect the delinquent accounts [including the setoff of any refunds or sums due to the debtor from the department or any other state agency]. The department may offset any refunds or sums due to the debtor from the department or any other state agency against delinquent accounts assigned [by a county] to the department for collection under this section.

(c) No setoff may be made by the Department of Revenue unless the debt is in a liquidated amount.

(d) At the time any setoff is made, the Department of Revenue shall notify the debtor of the sums due to the debtor from a state agency that are applied against the debtor's delinquent account. The notice must provide that the debtor may, within 30 days and in a manner prescribed by the department, contest the setoff and request a hearing before the department. No issues may be considered at the hearing that were previously litigated or that the debtor failed to raise timely after being given due notice of rights of appeal.

(e) All moneys received by the Department of Revenue in payment of charges made under paragraph (a) of this subsection shall be paid into the State Treasury and deposited in a miscellaneous receipts account for the department.

(f) Net proceeds of collections of delinquent accounts shall be credited to the account or fund of the [state agency or county] **entity** to which the debt was originally owing.

[(4)(a)] **(6)(a)** In providing assistance in the collection of any delinquent account under **subsection (2)** of this section, the Department of Revenue may issue a warrant for the collection of the delinquent account. The warrant may be recorded in the County Clerk Lien Record maintained under ORS 205.130.

(b) A warrant may not be issued under this subsection unless the debt is in a liquidated amount.

(c) The amount of any warrant issued under this subsection shall include the amount of the debt, any added penalties or interest attributable to the delinquent account and any costs associated with recording, indexing or service of the warrant and any satisfaction or release thereof.

(d) A warrant may not be issued under this subsection before the debtor has been notified that the department intends to issue the warrant and of the collection action that may be taken under the warrant.

[(5)] **(7)** Except as prohibited by federal law and notwithstanding any provision of state law, for purposes of collecting debts assigned to the Department of Revenue under ORS 293.231, the Collections Unit created under subsection (1) of this section has access to all data and other information available to the department for any purpose allowed by law.

[(6)] **(8)** Nothing in this section prohibits the collection of:

(a) A child or spousal support obligation as provided in ORS 25.610; or

(b) Criminal judgments that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution.

[(7)] **(9)(a)** As used in this section, "state agency" means any state officer, board, commission, corporation, institution, department or other state organization.

**(b) Notwithstanding ORS 182.460, 284.118, 284.375, 377.836, 421.352, 656.753 and 757.552, "state agency" includes semi-independent state agencies listed in ORS 182.454, the Oregon**

**Tourism Commission, the Oregon Film and Video Office, the Travel Information Council, the Children's Trust Fund of Oregon Foundation, Oregon Corrections Enterprises, the State Accident Insurance Fund Corporation and the Oregon Utility Notification Center.**

**SECTION 2.** ORS 314.415 is amended to read:

314.415. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the department with interest at the rate established under ORS 305.220 for a period beginning 45 days after the due date of the return or on the date the tax was paid, or, in the case of a return filed under ORS 118.100, the date that the return is filed, whichever is later, and ending at the time the refund is made.

(2)(a) The department may not allow or make a refund after three years from the time the return was filed, or two years from the time the tax (or a portion of the tax) was paid, whichever period expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer in compliance with ORS 305.270. In any case, if the original return is not filed within three years of the due date, excluding extensions, of the return, the department may allow or make a refund only of amounts paid within two years from the date of the filing of the claim for refund. If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this subsection, the department may not allow the excess as a credit against any tax occurring on a return filed for a subsequent year.

(b) The department may not make a refund if the tax owed, after offsets [*for all amounts owed the state, or a county pursuant to a judgment obtained under ORS 169.151*], is less than \$1.

(c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a suspension of the running of the periods specified for filing a claim for refund of federal income tax, the period specified in paragraph (a) of this subsection shall also be suspended.

(d) The department may not pay an employee interest on a refund of a tax withheld by an employer if the interest would be for any period prior to the time the employee files a personal income tax return for the tax year involved or for any period prior to the day that is 45 days after the date when the employee's annual return for that year was filed or was due, whichever is later.

(e) The department may not pay interest on a refund of estimated tax paid under ORS 314.505 to 314.525 or 316.557 to 316.589 if the interest would be for any period prior to the time the taxpayer files a tax return for the tax year involved or for any period prior to the day that is 45 days after the date when the tax return for that year was filed or was due, whichever is later.

(f) The amount of the refund, exclusive of interest on the refund, may not exceed the portion of the tax paid during the period preceding the filing of the claim or, if no claim is filed, then during the period preceding the allowance of the refund during which a claim might have been filed. Where there has been an overpayment of any tax imposed, the amount of the overpayment and interest on the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer, and only the balance shall be refunded.

(g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment, the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed from the date of payment to the department. Nothing in this subsection shall require that interest be paid upon any amount for any period for which interest upon the same amount for the same period is required to be paid under ORS 305.419.

(3)(a) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1) or (2) of this section, if, prior to the expiration of the period prescribed in subsection (2) of this section, the department and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed:

(A) The department shall make the refund prior to the expiration of the period agreed upon; and

(B) The department may not make or allow a refund after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the department. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) The department may consent to extend the period during which a refund may be made only if the taxpayer has consented to the assessment of additional tax, if additional taxes are determined upon audit, after the expiration of the applicable period prescribed in ORS 314.410 (1) to (3).

(4)(a) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer, or by a partnership, of the worthlessness of a share of stock in a corporation, of the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the three-year period of limitation prescribed in subsection (2) of this section, the period shall be seven years from the date prescribed by law for the filing of the return for the year with respect to which the claim is made.

(b) If the claim described in paragraph (a) of this subsection is made after the expiration of the three-year period prescribed in subsection (2) of this section, the department may not allow interest with respect to any credit or refund determined to be due upon the claim for the period beginning at the close of the three-year period prescribed in subsection (2) of this section and ending at the expiration of six months after the date on which the claim is filed.

(5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation prescribed in subsection (2) of this section, the period shall be the period that ends three years after the time prescribed by law for filing the return (including extensions) for the taxable year of the net operating loss or net capital loss that results in such carryback. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a net capital loss carryback is otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to closing agreements, the credit or refund may be allowed or made if the claim for credit or refund is filed within the period provided in this subsection. To the extent that the carryback was not an issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has become final, the claimed credit or refund applicable to that carryback may be allowed or made under this subsection.

(b) For purposes of subsection (1) or (2) of this section, if any overpayment of tax results from a carryback of a net operating loss or net capital loss, the overpayment shall be deemed not to have been made prior to the later of:

(A) The due date of the return for the taxable year in which such net operating loss or net capital loss arises;

(B) The date the return for the year in which the net operating loss or net capital loss arises is filed; or

(C) The date of filing of the return for the year to which the net operating loss or net capital loss is carried back.

(6) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or this section, if the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension, or a renewal of an extension, of the period for proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed or credit or refund allowed or made if no claim is filed shall be the period provided within subsections (1) to (5) of this section or six months after the date of the expiration of the agreed period for assessing deficiency in federal income tax, whichever period expires later.

(7) If a joint return is filed, the department may make separate refunds at the request of either spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross

income of each spouse bears to the adjusted gross income of both spouses, or as otherwise determined by the department.

(8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

**SECTION 3.** ORS 137.118 is amended to read:

137.118. (1) Judgments in criminal actions that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution, may be assigned by the state, by a municipal court or by a justice court for collection.

(2)(a) The state may assign a judgment to the Department of Revenue or a private collection agency.

(b) A justice court may assign a judgment to a private collection agency or, in a criminal action, to the Department of Revenue for the purposes described in ORS 156.315.

(c) A municipal court may assign a judgment to:

(A) A private collection agency; or

(B) The Department of Revenue for the purposes described in subsections (6) to (8) of this section, if the judgment was entered in a criminal action and part of the judgment is payable to the State of Oregon.

(d) Nothing in this subsection limits the right of a municipal court or a justice court to assign for collection judgments in matters other than criminal actions.

(3) A municipal or justice court may add to any judgment in a criminal action that includes a monetary obligation a fee for the cost of collection if the court gives the defendant a period of time to pay the obligation after the date of imposition of the sentence or after the date of the hearing or proceeding that results in the imposition of the financial obligation. The fee may not exceed 25 percent of the monetary obligation imposed by the court without the addition of the cost of collection and may not be more than \$250. The fee shall be waived or suspended by the court if the defendant pays the monetary obligation in the manner required by the court.

(4) A state court shall add to any judgment in a criminal action that includes a monetary obligation the fees required by ORS 1.202.

(5) As used in subsections (1) to (5) of this section, "criminal action" has the meaning given that term in ORS 131.005.

(6) If part of a judgment in a criminal action, as described in subsections (1) to (5) of this section, is payable to the State of Oregon, a municipal court may assign the judgment to the Collections Unit in the Department of Revenue for the following purposes:

(a) To determine whether refunds or other sums are owed to the debtor by the department; and

(b) To deduct the amount of debt from any refunds or other sums owed to the debtor by the department.

(7) If the Collections Unit determines that refunds or other sums are owed to the debtor, the department shall deduct the amount of the debt from any refunds or other sums owed to the debtor by the department. After also deducting costs of its actions under subsections (6) to (8) of this section, the department shall remit the amount deducted from refunds or other sums owed to the debtor to the municipal court that assigned the judgment.

(8) A debtor whose account is assigned to the Department of Revenue for setoff under subsections (6) to (8) of this section is entitled to the notice required by ORS 293.250 [(3)(d)] (5)(d).

**SECTION 4.** ORS 156.315 is amended to read:

156.315. (1) A justice court may assign a judgment in a criminal action, as described in ORS 137.118 (1) to (5), to the Collections Unit in the Department of Revenue for the following purposes:

(a) To determine whether refunds or other sums are owed to the debtor by the department; and

(b) To deduct the amount of the debt from any refunds or other sums owed to the debtor by the department.

(2) If the Collections Unit determines that refunds or other sums are owed to the debtor, the department shall deduct the amount of the debt from any refunds or other sums owed to the debtor by the department. After also deducting costs of its actions under this section, the department shall remit the amount deducted from refunds or other sums owed to the debtor to the justice court that assigned the judgment.

(3) A debtor whose account is assigned to the Department of Revenue for setoff under this section is entitled to the notice required by ORS 293.250 [(3)(d)] (5)(d).

**Passed by Senate March 7, 2019**

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 4, 2019**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2019

**Approved:**

.....M.,....., 2019

.....  
Kate Brown, Governor

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

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State