

SENATE AMENDMENTS TO SENATE BILL 79

By COMMITTEE ON FINANCE AND REVENUE

March 4

1 On page 1 of the printed bill, line 2, delete “293.250” and insert “137.118, 156.315, 293.250 and
2 314.415”.

3 Delete lines 4 through 30 and delete page 2 and insert:

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

5 “293.250. (1) There is created a Collections Unit in the Department of Revenue.

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

12 “(a) **A state agency;**

13 “(b) **A public university listed in ORS 352.002, notwithstanding ORS 352.138;**

14 “(c) **The Oregon Health and Science University, notwithstanding ORS 353.100;**

15 “(d) **A community college or community college district;**

16 “(e) **A county, for debts arising pursuant to a judgment obtained under ORS 169.151; or**

17 “(f) **The Oregon State Bar, notwithstanding ORS 9.010, for the purpose of collecting as-**
18 **signments to a client security fund established under ORS 9.625.**

19 “(3) **The Department of Revenue may render assistance in the collection of any delin-**
20 **quent account owing to any of the following entities, if the account is assigned to the de-**
21 **partment for the limited purpose of collection through setoff against any refunds or sums**
22 **due to a debtor from the department or any other state agency:**

23 “(a) **Any local government, as defined in ORS 174.116; or**

24 “(b) **Any special government body, as defined in ORS 174.117.**

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

28 “(b) **Nothing in this section requires the department to render assistance in the col-**
29 **lection of any delinquent account.**

30 “[~~(3)(a)~~] (5)(a) Subject to rules prescribed by the Oregon Department of Administrative Services
31 for collection of delinquent accounts owing to [*state agencies or to counties*] **entities listed in sub-**
32 **sections (2) and (3) of this section**, the Department of Revenue [*shall*] **may** render assistance in
33 the collection and shall charge the [*state agencies or counties*] **entities** separately for the cost of
34 assistance. The charges may not exceed the proceeds of collection credited to the [*state agency or*
35 *county*] **entity** for the same biennium. The Department of Revenue may designate a single percent-

1 age to retain from the proceeds of collection as a charge for the cost of assistance. If the Depart-
2 ment of Revenue finds that accounts assigned to the department for collection by [*certain state*
3 *agencies or counties*] **a particular entity** lack sufficient information to properly and efficiently
4 identify the debtor or that the account information must be put into a form usable by the department
5 in order to efficiently provide collection services, the department may establish a separate percent-
6 age charge to be retained from collections for [*the state agency or county*] **that entity**. The charge
7 must reflect the average of the actual cost to provide collection services for all accounts assigned
8 by [*that state agency or county*] **the entity**.

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

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

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

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

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

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

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

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

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

39 “[*(5)*] **(7)** Except as prohibited by federal law and notwithstanding any provision of state law, for
40 purposes of collecting debts assigned to the Department of Revenue under ORS 293.231, the Col-
41 lections Unit created under subsection (1) of this section has access to all data and other informa-
42 tion available to the department for any purpose allowed by law.

43 “[*(6)*] **(8)** Nothing in this section prohibits the collection of:

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

45 “(b) Criminal judgments that impose monetary obligations, including judgments requiring the

1 payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution.

2 “[(7)] (9)(a) As used in this section, ‘state agency’ means any state officer, board, commission,
3 corporation, institution, department or other state organization.

4 “(b) **Notwithstanding ORS 182.460, 284.118, 284.375, 377.836, 421.352, 656.753 and 757.552,**
5 **‘state agency’ includes semi-independent state agencies listed in ORS 182.454, the Oregon**
6 **Tourism Commission, the Oregon Film and Video Office, the Travel Information Council, the**
7 **Children’s Trust Fund of Oregon Foundation, Oregon Corrections Enterprises, the State**
8 **Accident Insurance Fund Corporation and the Oregon Utility Notification Center.**

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

10 “314.415. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount
11 of the tax due is less than the amount theretofore paid, the excess shall be refunded by the depart-
12 ment with interest at the rate established under ORS 305.220 for a period beginning 45 days after
13 the due date of the return or on the date the tax was paid, or, in the case of a return filed under
14 ORS 118.100, the date that the return is filed, whichever is later, and ending at the time the refund
15 is made.

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

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

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

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

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

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

44 “(g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment,
45 the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the

1 Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount
2 specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded
3 shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed
4 from the date of payment to the department. Nothing in this subsection shall require that interest
5 be paid upon any amount for any period for which interest upon the same amount for the same pe-
6 riod is required to be paid under ORS 305.419.

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

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

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

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

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

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

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

1 under this subsection.

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

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

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

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

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

18 “(7) If a joint return is filed, the department may make separate refunds at the request of either
19 spouse. The separate refunds shall bear the same proportion to the total refund as the adjusted gross
20 income of each spouse bears to the adjusted gross income of both spouses, or as otherwise deter-
21 mined by the department.

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

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

27 “137.118. (1) Judgments in criminal actions that impose monetary obligations, including judg-
28 ments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfei-
29 tures or restitution, may be assigned by the state, by a municipal court or by a justice court for
30 collection.

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

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

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

36 “(A) A private collection agency; or

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

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

42 “(3) A municipal or justice court may add to any judgment in a criminal action that includes a
43 monetary obligation a fee for the cost of collection if the court gives the defendant a period of time
44 to pay the obligation after the date of imposition of the sentence or after the date of the hearing
45 or proceeding that results in the imposition of the financial obligation. The fee may not exceed 25

1 percent of the monetary obligation imposed by the court without the addition of the cost of col-
2 lection and may not be more than \$250. The fee shall be waived or suspended by the court if the
3 defendant pays the monetary obligation in the manner required by the court.

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

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

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

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

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

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

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

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

22 “156.315. (1) A justice court may assign a judgment in a criminal action, as described in ORS
23 137.118 (1) to (5), to the Collections Unit in the Department of Revenue for the following purposes:

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

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

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

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