

2011 LEGISLATION ALERTS

TAXATION

INCOME TAX

KICKER – CREDIT INSTEAD OF CHECK ORS 291.349, 291.351, 305.792 2011 OR LAWS CH 299 (HB 3543)

HB 3543 eliminates the requirement, first adopted in 1995, that the State return kicker refunds to personal income taxpayers in the form of a check. Processing the kicker as checks reportedly cost about \$900,000 in 2007. The credit for personal income taxpayers will be refundable, in contrast to the kicker for corporations, which must be carried forward if it exceeds tax liability for the year.

Effective date: January 1, 2012.

The change is effective for the 2011-13 biennium, meaning that taxpayers will first be affected in late 2013 or early 2014 if a kicker is declared for the 2011-13 biennium.

RECONNECT VARIOUS ORS

2011 OR LAWS CH 7 (SB 301)

SB 301 updates Oregon's references to the Internal Revenue Code (the "Code") to incorporate federal law changes that have occurred since the last reconnect law (SB 1016 [2010]). In general, SB 301 preserves Oregon's "rolling reconnect" law, by which the Code is incorporated as in existence and effect "for the tax year of the taxpayer." The effect of rolling reconnect is to automatically incorporate future

changes that Congress might make, to the extent allowed by the Oregon constitution.

The 2009 Legislature, however, departed from the rolling reconnect system with respect to bonus depreciation, Section 179 expensing, and cancellation of indebtedness, requiring an Oregon addback to income to the extent federal law adopted after December 31, 2008, provided a more generous deduction with respect to those items. In SB 301, the 2011 Legislature has preserved this addback, but only for tax years 2009 and 2010. Thus, for tax years beginning on or after January 1, 2011, the addbacks are eliminated and Oregon returns to full rolling reconnect, to the extent allowed by the Oregon constitution. Among other federal provisions, SB 301 conforms to federal law allowing deductions for health insurance premiums for children through age 26.

Effective date: September 29, 2011.

AMNESTY: INSTALLMENT PAYMENT PLANS 2011 OR LAWS CH 17 (SB 305)

The 2009 amnesty program allowed taxpayers to pay back taxes by entering into a payment plan with the Department of Revenue. However, the 2009 law required all payments to be made no later than May 31, 2011. SB 305 allows the Department to extend the schedule for repayment upon a showing of good cause.

Effective date: September 29, 2011.

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MANDATORY ELECTRONIC FILING
ORS CH 314
2011 OR LAWS CH 24 (HB 2071)

HB 2071 allows the Department of Revenue to adopt rules requiring electronic filing of certain returns if federal returns are required to be filed electronically. The rules will apply to paid tax preparers filing personal income tax returns and to corporations filing corporation excise or income tax returns. The requirement applies to returns filed for tax years beginning on or after January 1, 2011.

Effective date: September 29, 2011.

The amendments apply to tax returns filed for years beginning on or after January 1, 2011.

OFFSET AUTHORITY
ORS 305.612, 314.840
2011 OR LAWS CH 476 (HB 2550)

Existing law authorizes the Department of Revenue to enter into intergovernmental agreements with certain federal authorities to allow Oregon to offset federal tax refunds against liquidated Oregon tax debt, and vice versa. HB 2550 expands that authority so that federal or Oregon tax payments may be offset against liquidated federal or Oregon debt. Thus, for example, a state income tax refund could be reduced by the amount of a liquidated non-tax debt that the taxpayer owes to a federal agency. The legislative history indicates that other existing law prohibits offset of certain benefit payments, including Social Security payments and means-tested payments.

Effective date: September 29, 2011.

PROPERTY TAX

SENIOR AND DISABLED PROPERTY TAX DEFERRAL
ORS CH 311
2011 OR LAWS CH 723 (HB 2543)

HB 2543 substantially amends the existing senior and disabled property tax deferral, which generally allows a qualifying taxpayer to delay paying property taxes, with a lower interest rate (6%) than the 16% rate that normally applies. During the deferral period, the taxes are paid to the counties from state funds allocated through the Department of Revenue.

HB 2543 imposes a wide range of additional requirements for initial and continuing eligibility, including recertification of the participant's income, a ceiling on the

real market value of the property, and a requirement that the participant have lived in the property a certain number of years. The bill converts the interest computation from simple interest to compound interest and provides enhanced measures for collection of the deferred amount.

Effective date: September 29, 2011.

INDUSTRIAL PROPERTY APPEALS
ORS 305.275, 305.403, 309.100
2011 OR LAWS CH 111 (HB 2478)

Current law allows an industrial property taxpayer to elect to appeal an annual assessment either to the county Board of Property Tax Appeals (BOPTA) or directly to the Oregon Tax Court Magistrate Division. A decision of the BOPTA is appealed to the Magistrate Division. Starting with this year's annual appeal cycle, HB 2478 eliminates the election, requiring all industrial property taxpayers to appeal directly to the Magistrate Division. The appeal deadline remains December 31.

Effective date: September 29, 2011.

The amendments apply to appeals for property tax years beginning on or after July 1, 2011.

LATE EXEMPTION CLAIMS
ORS 307.112, 307.162, 307.166
2011 OR LAWS CH 655 (HB 2546)

HB 2546 is the latest in a series of recent relief provisions for organizations that failed to file an application for property tax exemption on time. Notwithstanding the general application deadline of April 1 for the subsequent property tax year, the bill allows the taxpayer to file an application for the five preceding tax years at any time, unless the taxpayer has received an omitted property notice from the county, in which case the taxpayer may apply within 60 days after that notice was mailed. This relief provision applies only if the taxpayer is a first-time filer or a public entity described in ORS 307.090 (which generally will be a municipal corporation holding the property pursuant to a lease), or the taxpayer can show "good and sufficient cause" for failure to apply in a timely manner. The bill requires a late filing fee that is the greater of \$200 or one-tenth of one percent of the most recent real market value, multiplied by the number of years for which exemption is claimed.

Effective date: September 29, 2011.

The amendments apply to property tax years beginning on or after July 1, 2011.

**BONA FIDE PURCHASER
ORS 311.405
2011 OR LAWS CH 113 (HB 2570)**

ORS 311.405 provides limited protection to a bona fide purchaser from additional taxes on property added to the tax roll under the omitted property laws in a calendar year after the purchase. Prior law protected the bona fide purchaser if the purchase occurred anytime during the earlier calendar year. The bill limits that protection; the purchaser now must buy the property after the tax roll has been certified (generally, October 25). If the purchase occurred on or after January 1 but before the tax roll has been certified, the additional taxes may become a lien on the property.

Effective date: September 29, 2011.

**REPAYMENT OF ADDITIONAL TAXES UPON
CORRECTIONS OF ERRORS
2011 OR LAWS CH 43 (SB 302)**

The 2010 Legislature, in HB 3612, Or Laws chapter 36 (2010), provided relief for taxpayers that are required to pay additional taxes for prior years due to retroactive correction of an error in the roll. The 2010 law allows the additional taxes to be repaid one year at a time, starting with the oldest prior year. The 2010 law applied to corrections made on or after May 27, 2010. SB 302 extends the relief retrospectively to corrections made on or after May 27, 2008, and before May 27, 2010.

Effective date: September 29, 2011.

**SCOPE OF APPEAL
ORS CH 305
2011 OR LAWS CH 397 (HB 2572)**

HB 2572 allows a party to an appeal (typically, the county or the Department of Revenue) to ask the tribunal to determine the real market value of all property in the property tax account, even if the party pursuing the appeal (typically, the taxpayer) has placed only a component of the property at issue.

Effective date: September 29, 2011.

**NOTICES AND COMMUNICATIONS
VARIOUS ORS
2011 OR LAWS CH 204 (HB 3368)**

HB 3368 eliminates a number of mailing and publication requirements under current law:

- Assessors will no longer be required to mail hard copies of forms for annual business personal property tax returns to property owners.

- The Department of Revenue is no longer required to publish a newspaper notice announcing that it will review the central assessment rolls each June 15. (The bill retains the existing requirements that the Department provide notice to affected taxpayers by mail and that the Department conduct the review publicly.)

- Local Boards of Property Tax Appeals are no longer required to publish a newspaper notice of the commencement of annual review. (The bill retains the requirement that notice be posted in six “conspicuous locations” in the county.)

- The bill deletes the requirement that counties send notices of omitted property by certified or regular mail, and substitutes the requirement to use first-class mail.

- The bill deletes the requirement that landowners use certified mail to report on the use of specially assessed “open space” or “riparian wildlife” lands.

Effective date: September 29, 2011.

OTHER TAXES

**OREGON ESTATE TAX
ORS CH 118**

2011 OR LAWS CH 526 (HB 2541)

See Estate Planning.

**TAX WARRANT PROCEDURES
VARIOUS ORS
2011 OR LAWS CH 389 (HB 3261)**

Under current law, a tax collection warrant for income or inheritance taxes has two functions: it records the tax debt with the county, thus establishing priority of the debt for collection purposes, and it directs the sheriff to seize and sell assets in order to satisfy the tax debt. HB 3261 is intended to separate these two functions, allowing the Department of Revenue to record the warrant with the county recorder’s office without necessarily also directing the sheriff to seize and sell assets. The change is intended to facilitate collections because the notice to the taxpayer that the warrant is issued often prompts taxpayers to enter into payment plans, rendering the seizure of assets unnecessary.

Effective date: September 29, 2011.

The amendments apply to warrants issued by the Department on or after the effective date.