Enrolled
House Bill 3373

Sponsored by Representative FAHEY; Representatives ALONSO LEON, CAMPOS, DEXTER, HAYDEN, PHAM, SOLLMAN, VALDERRAMA, WILLIAMS

CHAPTER .....

AN ACT

Relating to taxpayers; creating new provisions; amending ORS 20.105 and 305.490; and prescribing an effective date.

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

SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter 305.

SECTION 2. (1) The office of the Taxpayer Advocate is established in the Department of Revenue. The office is subject to all confidentiality and disclosure provisions applicable to the department and shall be responsible for directly assisting taxpayers and their representatives to ensure that taxpayers and their representatives understand and utilize the policies, processes and procedures available for the resolution of problems related to tax programs or debt collection programs administered by the department. The Director of the Department of Revenue shall select the Taxpayer Advocate and the employees of the office, who may include employees of the department and residents of this state with knowledge of taxation.

(2) The office shall assist taxpayers in:

(a) Obtaining easily understandable tax information and information about department policies and procedures, including information on audits, collections and appeals;

(b) Answering questions about preparing and filing returns with the department; and

(c) Locating documents filed with or payments made to the department by taxpayers.

(3) The office may also:

(a) Receive and evaluate complaints of improper, abusive or inefficient service by employees of the department and recommend to the director appropriate action to correct such service;

(b) Identify policies and practices of the department that might be barriers to the equitable treatment of taxpayers and recommend alternatives to the director;

(c) Provide expeditious service to taxpayers whose problems are not resolved through ordinary channels;

(d) Collaborate with department personnel to resolve the most complex and sensitive taxpayer problems and to identify and resolve systemic problems experienced by taxpayers;

(e) Report to the director if, in the determination of the office, the department is administering a law improperly;

(f) Participate and represent taxpayers' interests and concerns in planning meetings, reviewing instructions and formulating department policies and procedures;

(g) Compile data each year on the number and type of taxpayer complaints and evaluate the actions taken to resolve complaints;

(h) Survey taxpayers each year to obtain their evaluation of the quality of service provided by the department;

(i) Issue orders to the department as described in section 3 of this 2021 Act; and

(j) Perform other functions that relate to taxpayer assistance as prescribed by the director.

(4) Actions taken by the office may be reviewed only by the director upon request of the department or a taxpayer. The director may modify action taken by the office.

SECTION 3. (1) As used in this section, "significant hardship" means a circumstance in which:

(a) Adverse action against a taxpayer by the Department of Revenue is imminent;

(b) The department has failed to act to resolve a reported problem with the account of a taxpayer within 90 days; or

(c) Other conditions exist as described by the department by rule.

(2) In addition to any other taxpayer relief provided by law, the Taxpayer Advocate may issue an order to the department to cease any action, take any action or refrain from taking any action with respect to a taxpayer, as allowed by law, if the Taxpayer Advocate determines that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the state's tax laws are being administered by the department. A taxpayer need not make a formal written request prior to the issuance of an order concerning the taxpayer under this section.

(3)(a) The Taxpayer Advocate may issue an order under this section only as an extraordinary remedy in circumstances where the Taxpayer Advocate determines that the department is not following applicable administrative rules or guidance related to department policies or procedures.

(b) An order issued under this section is limited to providing relief related to department policies or procedures and may not address the merits of a taxpayer's tax liability or substitute for informal conference procedures or normal administrative or judicial proceedings for the review of a tax assessment, refund denial, collection action or other department action.

(c) Any order issued by the Taxpayer Advocate under this section may be reviewed by the Director of the Department of Revenue or the deputy director and may be modified or rescinded only by the Taxpayer Advocate, the director or the deputy director. A written explanation of the reasons for any modification or rescission of an order by the director or deputy director shall be provided to the Taxpayer Advocate.

(4) An appeal may not be taken from an order issued by the Taxpayer Advocate under this section or from any modification or rescission of an order by the director or deputy director.

(5) All orders issued under this section, along with any related taxpayer information, are considered particulars of a return, as defined in ORS 314.835, and may not be disclosed by the department, except as otherwise provided in ORS 314.835 or 314.840 or other applicable law.

SECTION 3a. (1) Not later than February 15 of each odd-numbered year, the office of the Taxpayer Advocate shall report, in the manner required by ORS 192.245, to a committee of the Legislative Assembly related to revenue regarding the operation of the office.

(2) The report required under this section shall include, for the two calendar years immediately proceeding:

(a) The number of and description of taxpayer complaints received by the office.

(b) Actions taken to resolve complaints made to the office.

(c) Evaluations by taxpayers of the quality of service provided by the department.

(d) Operational issues or other barriers that office staff perceive as preventing equitable and fair collection of taxes.

(e) Recommendations to policymakers on administrative efficiencies related to Oregon tax law.

(f) Recommendations to policymakers on the effectiveness of the Taxpayer Advocate program in removing obstacles to taxpayer compliance with the tax system.

SECTION 4. The Department of Revenue may adopt rules as it deems necessary to carry out the purposes of sections 2 to 4 this 2021 Act, including rules to further define what constitutes relief related to department policies or procedures and the scope of orders issued under section 3 of this 2021 Act by the Taxpayer Advocate.

SECTION 5. ORS 20.105 is amended to read:

20.105. (1) In any civil action, suit or other proceeding in a circuit court or **in the regular division or the magistrate division of** the Oregon Tax Court, or in any civil appeal to or review by the Court of Appeals or Supreme Court, the court shall award reasonable attorney fees to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense or ground, upon a finding by the court that the party willfully disobeyed a court order or that there was no objectively reasonable basis for asserting the claim, defense or ground for appeal.

(2) All attorney fees paid to any agency of the state under this section shall be deposited to the credit of the agency's appropriation or cash account from which the costs and expenses of the proceeding were paid or incurred. If the agency obtained an Emergency Board allocation to pay costs and expenses of the proceeding, to that extent the attorney fees shall be deposited in the General Fund available for general governmental expenses.

SECTION 6. ORS 305.490 is amended to read:

305.490. (1)(a) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay the filing fee established under ORS 21.135 at the time of filing for each complaint or petition.

(b) In addition to the fee imposed under paragraph (a) of this subsection, plaintiffs or petitioners filing a complaint under ORS 305.501 (5) shall pay the filing fee established under ORS 21.135 at the time of filing the complaint.

(2) Neither the State of Oregon, nor any county, school district, municipal corporation or other public corporation therein, nor any officer of any such public political division or corporation, appearing in the representative capacity of the officer of any public political division or corporation, shall be required to pay the fee prescribed under this section. The party entitled to costs and disbursements on such appeal shall recover from the opponent of the party the amount so paid upon order of the court, as in equity suits in the circuit court.

(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance or estate taxes, **or involving transit taxes imposed on net earnings from self-employment,** the court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees of other experts incurred by the executor or individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation, exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(5) All fees and other moneys received or collected by the clerk by virtue of the office of the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund as miscellaneous receipts.

SECTION 7. (1) Sections 2 to 4 of this 2021 Act become operative January 1, 2022.

(2) The amendments to ORS 20.105 and 305.490 by sections 5 and 6 of this 2021 Act apply to judgments entered on or after the effective date of this 2021 Act.

SECTION 8. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Revenue by section 1 (1), chapter _____, Oregon Laws 2021 (Enrolled Senate Bill 5537), for the biennium beginning July 1, 2021, for administration, is increased by $371,593 for the implementation of this 2021 Act.

SECTION 9. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter _____, Oregon Laws 2021 (Enrolled Senate Bill 5537), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Revenue, for administration, is increased by $200,089 for the implementation of this 2021 Act.

SECTION 10. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 22, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 24, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State