

TITLE 29

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**DEPARTMENT OF REVENUE
(Organization)**

305.005 Definitions. As used in chapter 520, Oregon Laws 1969, unless the context requires otherwise:

(1) "Department" means the Department of Revenue.

(2) "Director" means the Director of the Department of Revenue. [1969 c 520 §2]

305.010 [Formerly 306 010; repealed by 1969 c 520 §49]

305.015 Policy. It is the intent of the Legislative Assembly to place in the Department of Revenue and its director the administration of the revenue and tax laws of this state, except as specifically otherwise provided in such laws. [1969 c 520 §1, 1977 c.870 §1]

305.020 [Formerly 306.020, repealed by 1969 c 520 §49]

305.025 Department of Revenue; organization; planning; seal. (1) The Department of Revenue is established.

(2) The Department of Revenue shall consist of administrative divisions. Each of the administrative divisions of the department shall be headed by an administrator who shall be in the unclassified service under the State Personnel Relations Law and appointed by the Director of the Department of Revenue. Each administrator shall be well qualified by technical training and experience in the functions to be performed.

(3) The Director of the Department of Revenue, from time to time, may alter or amend the organization of the department, including its administrative divisions, as the director deems necessary to achieve the greatest efficiency and economy in its operation.

(4) The director, acting in concert with the chief officers of other state agencies charged with raising revenue, shall use all reasonable means to increase efficiency and economy by coordinating work and sharing resources with other agencies, including but not limited to the mutual use of field officers and field auditors. With respect to such activity the director shall cause to be prepared a report relating to the utilization and coordination of revenue raising functions of the state agencies charged with such responsibility, including but not limited to suggested plans for departmental or governmental reorganization in the revenue raising field. Such report shall be submitted to

the Governor and the Legislative Assembly when it next convenes.

(5) The department shall have an official seal, with the words "Department of Revenue" and "State of Oregon" and such other design as the director may prescribe. The seal shall be used to authenticate all papers and proceedings requiring authentication. [1969 c 520 §§3, 5; 1973 c 402 §2; 1981 c 848 §1]

305.030 [Formerly 306 030, repealed by 1969 c 520 §49]

305.035 Director of Department of Revenue; appointment; confirmation; compensation and expenses; bond. (1) The Department of Revenue shall be under the supervision of the Director of the Department of Revenue who shall be appointed for a term of four years and shall hold his office at the pleasure of the Governor. He shall be skilled and expert in matters of taxation and shall devote his entire time to the performance of the duties imposed upon the department.

(2) The appointment of the director is subject to confirmation by the Senate by the affirmative vote of a majority of the Senators voting on the confirmation, a quorum being present. In case the Governor's choice of a director is not confirmed, the Governor shall make another appointment subject to the confirmation by the Senate as provided in this subsection.

(3) If an appointment to the office of director is made in the interim between legislative sessions, the Senate shall act through the Committee on Executive Appointments provided by ORS 171.562 in the manner provided in that section, and the director so appointed is subject to the confirmation of the Senate when it next convenes.

(4) The director shall receive such salary as may be provided by law. In addition to his salary, the director, subject to the limitations otherwise provided by law, shall be reimbursed for all reasonable expenses necessarily incurred by him in the performance of his official duties. Before entering upon the duties of his office, the director shall give to the state a fidelity bond with one or more corporate sureties, authorized to do business in this state, in the sum fixed by the Governor, the premium for such bond to be paid by the state. [1969 c.520 §4]

305.040 [Formerly 306 040; repealed by 1969 c 520 §49]

305.045 Duties of director. (1) Except as otherwise provided by law, the director shall coordinate all of the activities of the department, and has the power of general supervision over the administration of each division within the department, and the administrative head thereof, and is directly responsible to the Governor therefor.

(2) The director shall provide administrative staff, hearing officers, fiscal, planning and research facilities and services for the agencies within the department. [1969 c 520 §6]

305.050 [Formerly 306.050; repealed by 1969 c 520 §49]

305.055 [Formerly 306.230; repealed by 1969 c 520 §49]

305.057 Delegation of authority.

Whenever a power is granted to the director, the power may be exercised by such officer or employe within the department as designated in writing by the director. Any such designation shall be filed in the office of the Secretary of State. [1969 c 520 §7, 1975 c 605 §15a]

305.060 Offices of department; sessions of department. The Department of Revenue shall hold its regular sessions at the state capital, and shall be furnished with suitable office quarters under ORS 276.004, and necessary printing in the same manner as other state officers. All necessary office equipment and supplies, required by the department, shall be purchased from the appropriation made for the salaries and the general and contingent expenses of the department. The department may hold sessions at any place in this state when deemed necessary to facilitate the discharge of its business. [Formerly 306 060, 1969 c 520 §25, 1969 c 706 §64c]

305.063 Department of Revenue Administration Account; use; limitation. (1) There is established in the General Fund of the State Treasury the Department of Revenue Administration Account. Notwithstanding any other law, such amounts as may be necessary to pay the administrative expenses of the Department of Revenue shall be continuously credited to the Department of Revenue Administration Account from the biennial appropriations, or transferred to such administration account from the accounts or funds of the divisions and other agencies within the department. Such amounts as may be requested quarterly by the director, with the approval of the Executive Department, shall be credited or transferred to the Department of Revenue

Administration Account from the biennial appropriations, accounts or funds of the divisions and other agencies within the department. The Department of Revenue is subject to the allotment system provided for in ORS 291.234 to 291.260.

(2) The amounts credited and transferred to the Department of Revenue Administration Account shall not be greater than the total of any budget approved for the department by the Legislative Assembly and shall be determined by the costs of the administrative, supervisory, legal and review services provided the respective divisions and agencies within the department. All moneys appropriated, credited or transferred to the Department of Revenue Administration Account are appropriated continuously to pay the administrative expenses of the department. [1969 c 520 §48]

305.065 Deputy director; appointment; qualifications. The director, with the approval of the Governor, may designate a deputy director, to serve at his pleasure, with full authority to act for him, but subject to his control. The deputy director shall be skilled and expert in matters of taxation and shall devote his entire time to the performance of his duties in the department. The designation of a deputy director shall be by written order filed with the Secretary of State. [1969 c 520 §§8, 9, 1973 c.402 §3]

305.070 [Formerly 306 070; repealed by 1969 c 520 §49]

305.075 Employes; appointment; duties; compensation and expenses; bond. (1) Subject to any applicable provisions of the State Personnel Relations Law:

(a) The director may appoint and remove such officers, agents and employes as he considers necessary. Such persons shall have the duties and powers the director from time to time prescribes.

(b) The compensation of all such officers, agents and employes shall be fixed by the director.

(2) Subject to and in the manner otherwise provided by law, all officers, agents and employes of the department shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

(3) The director may require those of his officers, agents and employes as he designates to give a bond for the faithful performance of their duties. The bond shall be with a corpo-

rate surety authorized to do business in this state and in the amount determined by the director. The state shall pay the premiums on such bonds. [1969 c 520 §11]

305.080 [Formerly 306.080, repealed by 1969 c 520 §49]

305.083 [1969 c 520 §13; repealed by 1973 c 402 §30]

305.085 Charges for maps, documents or publications. The Department of Revenue is hereby authorized to charge a reasonable sum reflecting its costs, for each copy sold of maps, documents, or publications such as those containing its laws and administrative rules or reports. The proceeds from such sales are to be deposited in the department's miscellaneous receipts account established under the authority of ORS 283.250. [1969 c 479 §3; 1973 c 402 §4]

(Tax Administration)

305.090 Supervisory power of department. The Department of Revenue shall exercise general supervision of the system of taxation throughout the state, and general supervision and control over the administration of the assessment and tax laws and over county assessors and county boards of equalization in the performance of their duties relating to taxation to the end that all taxable property is assessed uniformly according to law and equality of taxation according to law is secured. [Formerly 306 090]

305.100 Power to make rules and regulations and prescribe forms. The Department of Revenue shall:

(1) Make such rules and regulations it deems proper to regulate its own procedure and to effectually carry out the purposes for which it is constituted.

(2) Prescribe all forms of books and blanks used in the assessment and collection of taxes not otherwise prescribed by law and change the forms of blanks and books prescribed by law in case change is necessary. [Formerly 306.100]

305.105 Declaratory rulings by department respecting regulations. The Department of Revenue may, on petition by any interested person, issue a declaratory ruling with respect to the validity or applicability to any person, property or state of facts of any rule or regulation promulgated by it. The department shall prescribe by rule the form,

content and procedure for submission, consideration and disposition of such petitions. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the department and all parties to the proceedings on the state of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the Oregon Tax Court and Supreme Court in the manner provided by ORS 305.445. [Formerly 306.710]

305.110 Duty to construe tax laws; instruction of officers acting under tax laws. The Department of Revenue shall construe the tax and revenue laws of this state whenever requested by any interested person or by any officer acting under such laws and shall instruct such officers as to their duties under such laws. Such officers shall submit all questions arising with them which affect the construction of tax and revenue laws of the state to the department. [Formerly 306.110]

305.115 Determination on petitions and appeals; hearings; hearings officer; summary of evidence; final order. (1) The director or, in the discretion of the director, the deputy director, shall make the final determinations on all petitions and appeals which are to be written into orders subject to appeal to a court of law. The director shall grant a hearing upon the appeal before the director or before a hearings officer appointed by the director to hear the appeal. In the event the hearing is not conducted by the director or deputy director, a summary of the evidence, with recommendations, shall be prepared by the hearings officer and reviewed by the director (or, in the director's discretion, by the deputy director) prior to making the order. If the director proposes to modify the recommendation of the hearings officer, the director shall prepare a statement of the modifications and reasons therefor and shall serve on all parties to the hearing copies of the hearings officer's recommendation, the modified order and the statement of modification. If the modification of the hearings officer's recommendation is based on evidence received by the director outside of the hearings record, before issuing a final order the director shall notify the parties and reopen the hearing for the taking of the new evidence and to allow the parties to respond to the new evidence.

(2) The hearing shall be held at the offices of the Department of Revenue at Salem, Oregon, or may, within the discretion of the department, be held at different places in the

State of Oregon, as designated by the department. The hearing may be adjourned and continued from time to time and place to place as ordered by the department.

(3) Whenever in the conduct of a hearing the department shall deem it appropriate, the department or hearings officer may use the discovery procedures provided for in ORS 305.190, but the issuance of a subpoena shall be subject to ORS 305.420 (5), in addition to ORS 305.190.

(4) The director or deputy, as the case may be, shall make and file an order on each appeal, granting or denying relief or taking such action as considered appropriate. Where the determination of true cash value or the correct valuation of any property subject to special assessment is an issue before the department, the department may determine such value on the basis of the evidence before it, without regard to the value requested in the petition or appeal. Subject to judicial review by the Oregon Tax Court and the Supreme Court, the order shall determine finally all the questions of law and fact arising in the appeal under the tax laws of the State of Oregon. Orders shall be served as provided in ORS 306.805, and the department shall also serve a copy of its order by certified mail upon each intervenor in the appeal and each county board of equalization and public officer affected by the order. The order is binding upon the taxpayer, all county officers and all other persons affected thereby until reversed or modified upon review by the Oregon Tax Court.

(5) In all cases where the department is required by law to determine the tax, the department shall make a determination of the amount of tax due, including any penalty and interest thereon. The order shall state the amount of the tax due, with penalty and interest, either as originally assessed or as redetermined, and shall order the payment of any taxes, interest and penalty found to be due and unpaid or order a refund to the taxpayer of the amount, if any, paid in excess of the tax found to be due, with interest thereon as provided in the revenue and tax laws. Where there has been an overpayment of any tax, the amount of such overpayment and the interest thereon shall be credited against any penalty, interest or tax then due from the taxpayer (or against any other amount the department is authorized by law to collect by offset), and only the balance shall be refunded.

(6) If the person appealing has failed prior to the time of the appeal, without good cause,

to file any return required by law within the time prescribed by law, or has filed a fraudulent return, or, having filed an incorrect return, has failed, after notice, to file a proper return, the department shall not reduce or refund so much of the amount of the tax involved in the hearing as it may find that the taxpayer owes for any other year or years. However, the department shall first notify the taxpayer by actual notice at the time of the hearing on the appeal, or by not less than 30 days' written notice sent to the taxpayer by certified mail, of the amount of tax not to be reduced or refunded and the reasons for the department's proposed action. The taxpayer may request a hearing on the matter within 30 days of such notice, either by a request made at the time of the hearing or by a written request to the department. Thereafter, the department shall set a time and place for the hearing. If the notice by the department is sent more than 30 days prior to the hearing on appeal, the matter shall be heard as a part of the appeal.

(7) Nothing contained in this section or in ORS 305.265 or 305.270 shall preclude the informal disposition of a controversy by stipulation, agreed settlement, consent orders or default, through the holding of an informal conference, or otherwise.

(8) If no appeal is taken to the Oregon Tax Court, all officers having charge of the assessment and tax rolls on which any property assessments appear that are involved in the department's order, shall correct the same in accordance with the department's order, and taxes shall be refunded or additional taxes collected by the proper officers.

(9) If, within the time for an appeal to the Oregon Tax Court from a department order, the department discovers reason to correct an order issued by it, it may correct the order and issue an amended order within such appeal time. The amended order shall be served in the same manner as required for the original order. If an appeal has been taken from the original order to the Oregon Tax Court, the amended order shall be substituted in the tax court appeal for the original order, and the appealing party shall have an additional 60 days from the date of the amended order in which to amend the petition to conform to the amended order. [1969 c 520 §10, 1977 c 870 §8; 1979 c.527 §1, 1979 c 687 §5; 1981 c 139 §6]

305.120 Enforcement of tax laws. (1) The Department of Revenue shall see that revenue officers comply with the tax and revenue laws, that all taxes are collected, that complaint is made against any person violating such laws and that penalties prescribed by such laws are enforced.

(2) The director may call upon the district attorney or Attorney General to institute and conduct prosecutions for violations of the laws in respect to the assessment and taxation of property and the collection of public taxes and revenues. [Formerly 306 140]

305.130 Department as party to actions involving property subject to certain tax liens; complaint and summons. (1) The Department of Revenue may be made a party in any action in any court of this state or of the United States having jurisdiction of the subject matter to quiet title to, to remove a cloud from the title to, or for the foreclosure of a mortgage or other lien upon, any real property or personal property, or both, upon which the State of Oregon has or claims to have a lien under ORS 311.673, 311.771, 314.430, 321.075, 321.346 or 321.450, and the judgment in such action shall be conclusive and binding upon the State of Oregon and such department.

(2) The complaint in such action shall set forth with particularity the nature of any such lien had or claimed by the State of Oregon. The summons in such action, together with a copy of the complaint therein, shall be served on such department in the manner prescribed by ORCP 7 D.(3)(d), and such summons shall require such department to appear and answer the complaint within 60 days from the date of such service. [1961 c.573 §4; 1979 c 284 §134; 1981 c.706 §6]

305.140 Power to release real property from certain tax liens. (1) Any person having an interest in or lien upon any real property may request the Department of Revenue in writing to release such real property from a cloud on the title of or lien on such property existing, created or continued under any one or more of the following:

(a) A warrant provided for in ORS 314.430, 321.075, 321.346 or 321.450; or

(b) The provisions of ORS 311.673, 311.711 or 311.771.

(2) If, upon a request under subsection (1) of this section, the department finds that a sale of such real property would not result in

satisfaction in whole or in part of the taxes due, it shall execute a release of such cloud or lien upon such property, and such release shall be conclusive evidence of the removal and extinguishment of such cloud or lien in respect of such real property.

(3) In addition to the release of cloud or lien provided for in subsection (1) of this section, the department may execute releases on part or all of any real property in the following cases, which releases shall be conclusive evidence of the removal and extinguishment of such cloud or lien:

(a) If the department finds that liability for the amount assessed, together with all interest thereon and penalties and costs in respect thereof, has been satisfied;

(b) If the department finds that the fair market value of that part of the property remaining subject to the cloud or lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property;

(c) If there is supplied to the department a bond, in such form and with such surety as the department considers sufficient, conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of the release; or

(d) If there is paid to the department in partial satisfaction of the amount of the warrant provided for in ORS 314.430, 321.075, 321.346 or 321.450 or the amount of any lien under ORS 311.673, 311.711 or 311.771, an amount not less than the value, as determined by the department, of the lien of the State of Oregon upon the part of the property so to be released. In determining such value the department shall give consideration to the fair market value of the part of the property so to be released and to such liens thereon as have priority to the lien of the State of Oregon.

[1961 c.573 §3 (enacted in lieu of 314.435, 315.635 and 321.085); 1981 c.706 §7]

305.145 Power to waive, reduce or compromise tax, penalty and interest and wage withholding tax liability. (1) The Department of Revenue may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any tax balance of \$10 or less or any part or all of the penalties and interest provided by the laws of the

State of Oregon which are collected by the Department of Revenue.

(2) In the same manner as provided in subsection (1) of this section the department may waive, reduce or compromise any tax liability which accrued prior to December 31, 1971, from a failure to collect, account for or pay over taxes under ORS 316.162 to 316.212 where such taxes are not dischargeable in bankruptcy and the failure is not wilful. [1965 c 293 §1, 1971 c.611 §1]

305.150 Closing agreements. (1) The Department of Revenue is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person or estate for whom he acts, for any taxable period open to adjustment under the pertinent statutes of limitation, in respect of any revenue measure which the department is required to administer.

(2) Such agreement shall be final and conclusive on the date agreed to, and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact, the question, issue or case shall not be reopened as to the matters agreed upon, and, in any action, suit or proceeding, such agreement, or any determination, assessment, collection, refund, abatement or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded. [Formerly 306 720; 1969 c 520 §26]

305.155 Cancellation of uncollectible tax; filing order; releasing liens. (1) If the Department of Revenue determines that:

(a) Any tax imposed by Oregon laws which is collected by the department has been delinquent for seven or more years; and

(b) All reasonable efforts have been made to effect collection; and

(c) The taxpayer cannot be located or is dead; and

(d) The tax is wholly uncollectible;

it shall cancel such tax, including the penalties and interest applicable thereto.

(2) The department may cancel any tax imposed by laws of the State of Oregon which is collected by it or any portion thereof assessed against a person, including any penalty and interest which has not been collected, if the department determines that the administration and collection costs involved would exceed the amount that can reasonably be expected to be recovered.

(3) When taxes are canceled under subsection (1) or (2) of this section, the department shall make an order canceling the tax, penalties and interest. The order shall be permanently filed in the records of the department. Upon making the order, the department also shall cause to be canceled or released any lien of record in the counties which may have been filed and entered therein. [1965 c 293 §2, 1973 c 402 §5]

305.160 Reports from public officers.

The Department of Revenue shall require from any state, county or municipal officer, whose duties pertain to the assessment, apportionment, levy or collection of taxes and public revenues, or the disbursement of public funds, reports and statements in such forms as the department may prescribe, as to any matter deemed material and relevant to the attainment of uniformity in the assessment and collection of taxes and public revenues.

[Formerly 306.160]

305.170 Complaints concerning tax laws; reports and recommendations to Legislative Assembly. The Department of Revenue:

(1) Shall see that complaints concerning the law may be heard, information as to its effects may be collected and all proper suggestions as to amendments may be made.

(2) Shall report to the Legislative Assembly, at each regular session, the total amount of taxes collected in the state for state, county and municipal purposes.

(3) May investigate the tax laws of this and other states and the possible taxable resources of this state for the purpose of recommending to the legislature methods by which a more just and equitable system of taxation may be developed.

(4) Shall recommend to the Legislative Assembly at each regular session such amendments of the Constitution or laws as may seem necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public taxes and revenues. [Formerly 306 170, 1975 c 605 §16]

305.190 Subpenaing and examining witnesses, books and papers; application to tax court for disobedience of subpoena.

(1) The Director of the Department of Revenue, in conformity to the resolutions or rules of the department, may subpoena and examine witnesses, administer oaths and order the production of any books or papers in the hands

of any person, company or corporation, whenever necessary in the prosecution of any inquiries deemed necessary or proper in their official capacity.

(2) If any person disobeys any subpoena of the director, or refuses to testify when required by the director, the department may apply to the Oregon Tax Court for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to appear before the court in the county in which the person resides or has a place of business on such date as the court shall designate in its order and show cause why the person should not comply with the demand of the department. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Upon failure of such person to show cause for noncompliance, the court shall make an order requiring the person to comply with the demand of the department within such time as the court shall direct. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

(3) ORS 305.420 (5) shall apply to the issuance of a subpoena under this section.
[Formerly 306.190; 1977 c.884 §4, 1981 c 139 §7]

305.195 Written interrogatories; contents; time and manner of service; answer; objection; order for answer; demand for information by taxpayer; order for information. (1) The Department of Revenue may serve upon any taxpayer written interrogatories to be answered by the taxpayer served or, if the taxpayer served is a corporation, partnership or association, by any officer or agent, who shall furnish such information as is available to the taxpayer. Interrogatories may be served by the department whenever it deems it necessary for the purpose of determining the tax liability of any taxpayer having income from business activity which is taxable both within and without the state. The request for the interrogatories shall explain the nature of the department's inquiry, the use to be made of the information, and the

rights of appeal provided under subsection (4) of this section. The use of interrogatories shall be available at all times prior to a final order or determination by the department in the matter being investigated.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them. All objections made to written interrogatories must be signed by the attorney for the party making the objection, or by the party if he has no attorney. The taxpayer upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories.

(3) If any taxpayer refuses or fails to answer an interrogatory within the time required, the department may apply to the Oregon Tax Court for an order requiring answer of the interrogatory served. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the taxpayer against whom it is directed to appear before the court on such date as the court shall designate in its order and show cause why the taxpayer should not answer the interrogatory of the department. The order shall require appearance in the county in which the person resides or has a place of business, or if there is no residence or place of business, at the court at Salem, Oregon, or in any event at such place as is agreeable to the parties and the court. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Upon failure of such person to show cause for noncompliance, the court shall make an order requiring the person to comply with the demand of the department within such time as the court shall direct. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

(4) If, after the taxpayer has been served with the department's interrogatories, the taxpayer has reason to believe that he has not been fully informed by the department as to the nature of the department's inquiry or the use by the department of the information supplied, he may, within 30 days after service

upon him, serve upon the department a demand for full information as to such inquiry and use. The department shall answer the demand within 30 days of receipt. If no answer is made by the department, or if answer is made and the answer is deemed unsatisfactory by the taxpayer, he may within 30 days of the department's answer, or 60 days of the demand if no answer has been made, apply to the Oregon Tax Court for an order requiring answer of the department by filing a petition in the manner provided by law for filing a personal income tax appeal to the court. The department shall answer and, after hearing, the court shall make such disposition of the matter as it deems necessary to achieve justice. [1977 c.866 §8]

Note: 305.195 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

305.200 Witness fees and mileage.

Witnesses testifying before the department at its request and on its behalf shall be allowed the same fees and mileage as allowed in criminal causes in the circuit court. The fees and mileage shall be paid by warrant upon the State Treasurer upon the certificate of the director. However, any county or state officer shall receive his actual necessary traveling expenses only. No tender of witness fees or mileage in advance shall be necessary.

[Formerly 306.200; 1969 c 520 §27]

305.210 [Formerly 306.210, repealed by 1981 c 705 §8]

305.215 Dependency deduction conflicting claims; notice procedure; appeal; evidence as public record. (1) Where there are conflicting claims as to a dependency deduction under the personal income tax laws, the department shall notify by certified mail each person claiming the same dependency deduction, and shall set a time and place convenient to each claim in so far as it is practicable, for a joint determination of the conflicting claims. Each person so notified who appears shall bring the information from his or her income tax returns or reports which support his or her claim, together with all records, data or other evidence providing the necessary supporting material to the information shown on the income tax return. All such material shall be available for inspection by the other claimant, notwithstanding any provision of ORS 314.835, 314.840 or 314.991. If either claimant shall fail or refuse to ap-

pear or bring such information in part or in whole, the department shall make its determination on the basis of all the information and evidence supplied. The provisions of this chapter relating to the administration of the personal income tax laws shall apply to the determination.

(2) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.560 by either claimant, each claimant shall make available to the court information from his or her income tax returns or reports supporting that person's claim, together with all evidence or supporting data furnished to or subpoenaed by the Department of Revenue, as well as such other information as may be presented to the court in the manner otherwise provided for in the hearing of cases in the Oregon Tax Court. If either party claimant shall fail or refuse to appear or bring such information in part or in whole, the court shall make its determination on the basis of all the evidence introduced. All such evidence shall constitute a public record and shall be available to the parties and the court notwithstanding any provision of ORS 314.835, 314.840 or 314.991. [1979 c.690 §11]

(Representation Before Department)

305.230 Qualifications of persons representing taxpayer; attorneys to present certain issues; procedure for designating representative. Notwithstanding ORS 9.320:

(1) Any person who is duly qualified to practice law or public accounting in this state or the authorized employe of a taxpayer who is regularly employed by the taxpayer in tax matters may represent the taxpayer before the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(2) Any person who is duly licensed by the State Board of Tax Service Examiners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(3) Any stockholder of an electing small business corporation, as defined in section 1371, Internal Revenue Code of 1954, may represent the corporation in any proceeding before the Department of Revenue in the

same manner as if the stockholder were a partner and the electing small business corporation were a partnership.

(4) Notwithstanding any other subsection of this section, where the representative of a taxpayer is to present an argument on any issue of constitutional or statutory interpretation raised by the taxpayer, the department may require that the issue be presented by an attorney duly qualified to practice law in this state.

(5) No person shall be recognized as representing a taxpayer pursuant to this section unless there is first filed with the department a written authorization, or unless it appears to the satisfaction of the department that the representative does in fact have authority to represent the taxpayer.

(6) A taxpayer represented by someone other than an attorney is bound by all things done by his authorized representative, and may not thereafter claim any proceeding was legally defective because he was not represented by an attorney.

(7) Prior to the holding of a conference or proceeding before the department, written notice shall be given by the department to the taxpayer of the provisions of subsections (4) and (6) of this section. [1969 c 97 §1, 1973 c 681 §3, 1979 c 596 §1]

305.240[1969 c 520 §14, repealed by 1979 c.596 §2]

305.250 [1969 c.520 §12; repealed by 1975 c 705 §12]

305.260 Representation before department by former personnel prohibited. No former officer, clerk or employe of the department shall represent any taxpayer in any claim or controversy pending in the Department of Revenue during his employment therein, nor shall he in any manner or by any means, aid in the prosecution of any such claim, within two years next after he has ceased to be such officer, clerk or employe. [1973 c 402 §25(1)]

**(Tax Deficiencies; Notice;
Administrative Appeals)**

305.265 Deficiency notice by department; payment of deficiency; assessment of deficiency; administrative appeal; interest on deficiency. (1) The provisions of this section shall apply to all reports or returns of tax or tax liability including claims under ORS 310.630 to 310.690 filed with the Department of Revenue under the revenue and tax

laws administered by it, except those filed under ORS chapters 320 and 323.

(2) As soon as practicable after a report or return is filed, the department shall examine or audit it, if required by law or the department deems such examination or audit practicable. If the department discovers from an examination or an audit of a report or return or otherwise that a deficiency exists, it shall compute the tax and give notice to the person filing the return of the deficiency and of the department's intention to assess the deficiency, plus interest and any appropriate penalty. Except as provided in subsection (3) of this section, the notice shall:

(a) State the reason for each adjustment;

(b) Give a reference to the statute, regulation or department ruling upon which the adjustment is based; and

(c) Be certified by the department that the adjustments are made in good faith and not for the purpose of extending the period of assessment.

(3) When the notice of deficiency described in subsection (2) of this section results from the correction of a mathematical or clerical error and states what would have been the correct tax but for the mathematical or clerical error, such notice need state only the reason for each adjustment to the report or return.

(4) With respect to any tax return filed under ORS chapter 314, 316, 317 or 318, deficiencies shall include but not be limited to the assertion of additional tax arising from:

(a) The failure to report properly items or amounts of income subject to or which are the measure of the tax;

(b) The deduction of items or amounts not permitted by law;

(c) Mathematical errors in the return or the amount of tax shown due in the records of the department; or

(d) Improper credits or offsets against the tax claimed in the return.

(5) Within 30 days from the date of mailing of notice of deficiency, the person given notice shall pay the deficiency with interest computed to the date of payment and any penalty proposed. Or within that time the person shall advise the department in writing of objections to the deficiency, and may request a conference with the department, which shall be held prior to the expiration of

the one-year period set forth in subsection (7) of this section.

(6) If a request for a conference is made, the department shall notify the person of a time and place for conference and appoint a conference officer to meet with the person for an informal discussion of the matter. After the conference, the conference officer shall send to the person, by certified mail, the determination of the issues, and the department shall assess any deficiency in the manner set forth in subsection (7) of this section. If no conference is requested and written objections are received, the department shall make a determination of the issues considering such objections, and shall assess any deficiency in the manner provided in subsection (7) of this section. The failure to request or have a conference shall not affect the rights of appeal otherwise provided by law.

(7) If neither payment nor written objection to the deficiency is received by the department within 30 days after the notice of deficiency has been mailed, the department shall assess the deficiency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within one year from the date of the notice of deficiency unless an extension of time is agreed upon as described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

(8) If, prior to the expiration of any period of time prescribed in subsection (7) of this section for giving of notice of assessment, the department and the person consent in writing to the deficiency being assessed after the expiration of such prescribed period, such deficiency may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(9) In the case of a failure to file a report or return on the date prescribed therefor (determined with regard to any extension for filing), the department shall determine the tax according to the best of its information and belief, assess the tax plus appropriate penalty and interest, and give written notice of the determination and assessment to the person required to make the filing. The amount of tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the

tax and by the amount of any credit against the tax which may be lawfully claimed upon the return.

(10) Mailing of notice to the person at the person's last-known address shall constitute the giving of notice as prescribed in this section. In the absence of notice to the department under ORS 119.340 (1) of the existence of a fiduciary relationship, notice of a deficiency or assessment under ORS chapter 119, if mailed to the donor at the donor's last-known address, shall be sufficient even if such donor is deceased or under a legal disability.

(11) If a return is filed with the department accompanied by payment of less than the amount of tax shown on or from the information on the return as due, the difference between the tax and the amount submitted is considered as assessed on the due date of the report or return (determined with regard to any extension of time granted for the filing of the return) or the date the report or return is filed, whichever is later.

(12) Unless specifically provided otherwise in ORS chapter 118, 308 or 321, every deficiency shall bear interest at the rate of one percent per month for each month or fraction of a month computed from the due date of the return to date of payment. If the return was falsely prepared and filed with intent to evade the tax, a penalty equal to 100 percent of the deficiency shall be assessed and collected. All payments received shall be credited first to penalty, then to interest accrued, and then to tax due.

(13) Assessments and billings of taxes shall be final after the expiration of the appeal period specified in ORS 305.280, and payment of the tax shall not give any person any extension of the period within which an appeal may be taken.

(14) Appeal may be taken to the director of the department from any notice of assessment. The provisions of this chapter with respect to appeals to the director shall apply to any deficiency, penalty or interest assessed.

[1977 c 870 §3; 1981 c 724 §3]

305.270 Claim for refund of any tax paid. (1) A person may file with the department a claim for refund of any tax paid to the department and imposed under ORS chapter 118, 119, 308, 310, 314, 316, 317, 318, 321 or 477, or collected pursuant to ORS 305.620, and shown on a report or return filed by the person with the department under such law

within the period specified in subsection (2) of this section.

(2) The claim shall be made on a form prescribed by the department, except that an amended report or return showing a refund due and filed within the time allowed by this subsection for the filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the period specified in ORS 314.415 (1)(b) for taxes imposed under ORS chapters 310, 314, 316, 317 and 318, or collected pursuant to ORS 305.620 (except where any applicable ordinance specifies another period), within three years from the payment of the tax for taxes imposed under ORS chapter 118 or 119 and within two years of the payment of any tax under ORS chapter 308, 321 or 477. If the original report or return required by law to be filed claims an amount to be refunded, any amount properly refundable shall be refunded as provided in ORS 118.260 (6), 119.150, 314.415, 321.145 (2) or 321.485 (2).

(3) Upon receipt of a claim for refund, or original report or return claiming a refund, the department shall either refund the amount requested or send to the claimant a notice of any proposed adjustment to the refund claim, stating the basis upon which the adjustment is made. The claimant may, within 30 days of receipt of such notice, request a conference with the department, which shall be held within one year of the date of the notice. The department shall notify the claimant of a time and place for the conference, and appoint a conference officer to meet with the claimant for an informal discussion of the claim. After the conference, the conference officer shall send to the claimant, by certified mail, a determination of the matter, and include therewith payment of any amount found to be refundable, together with any applicable interest provided by law. If no conference is requested, and the adjustments have not resulted in the finding of a deficiency, the notice of any proposed adjustment shall be final after the period for requesting a conference has expired. Whether or not a conference is requested, if the notice has asserted a deficiency, the department shall consider any objections made by the person denied the refund, make a determination of any issues raised, pay any refunds found due, with applicable interest, or assess any deficiency and give notice thereof. The provisions of ORS 305.265 (7) and (8) shall apply, except as the context requires otherwise. The claimant may

appeal any refund denial or notice of assessment to the director of the department in the manner provided in ORS 305.280. The failure to request or have a conference shall not affect the rights of appeal so provided. All notices and determinations shall set forth rights of appeal. [1977 c 870 §4, 1979 c.691 §1]

305.275 Administrative appeal procedure; parties; manner of appeal; service.

(1) Any person aggrieved by an act or omission of:

(a) The Department of Revenue in its administration of the revenue and tax laws of this state; or

(b) A county board of equalization other than an order of the board; or

(c) A county assessor, including but not limited to the denial of a claim for exemption, the denial of special assessment under ORS 308.370 or other special assessment statute, or the denial of a claim for cancellation of assessment; or

(d) A tax collector,

which affects his property and for which there is no other statutory right of appeal, may appeal to the Director of the Department of Revenue in the manner provided by this section.

(2) A taxpayer or county assessor who is aggrieved by an order of a county board of equalization, may appeal from the order in the manner provided in this section.

(3) Any person having a statutory right of appeal to the department or the director under the revenue and tax laws of the state shall appeal in the manner provided by this section.

(4) Except as provided in ORS 118.350, 118.370 and 305.410, no person shall appeal to the Oregon Tax Court or other court on any matter arising under the revenue and tax laws administered by the department unless he first exhausts the administrative remedies provided him before the department and the director.

(5) All appeals shall be taken by filing a petition with the director in duplicate at Salem, Oregon, which shall constitute the perfection of the appeal. The petition shall state the facts relied upon for relief, a description of any property involved, any statement or proposition of law relied upon, the relief requested, and shall bear the signature of the petitioner or his authorized representative, verified as required by ORS 305.810. In addition, in property tax appeals involving county assessed

property, the department shall serve by certified mail a copy of the petition on the taxpayer or the county assessor, whoever is the nonappealing party. An affidavit showing such service shall be filed in the office of the director. On appeals from orders of county boards of equalization, a copy of the order of the board in all cases, and a statement of the dates of publication of notice of the order, where applicable, shall be made a part of the petition. Any other person desiring to appear in an appeal (other than those involving taxes on or measured by net income or where a matter is made confidential by law) may apply to the director within 30 days of service upon the director of the petition, and if permission is granted by the director, may file with the director a petition verified by the oath of the petitioner or his authorized representative, and serve copies by certified mail on the taxpayer and any official involved in or a party to the appeal. [1977 c 870 §5]

305.280 Time for filing appeals; denial of appeal by director; alternate appeals procedure where permitted by ORS 305.515 to 305.555. (1) An appeal under ORS 305.275 (1) shall be filed within 90 days after the act or omission becomes actually known to the person, but in no event later than one year after the act or omission has occurred.

(2) An appeal under ORS 323.416 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 119, 308, 310, 314, 316, 317, 318, 321, 477 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days from the date of the notice.

(3) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter 321, an appeal to the director or the department under ORS chapter 321 or from an order of a county board of equalization shall be filed within 30 days of the date of the notice of the determination made by the department or date of mailing of the order, date of publication of notice of the order or date of mailing of the notice of the order to the taxpayer, whichever is applicable.

(4) Appeals as to the amount of tax, valuation, apportionment of value or apportionment of tax relating to properties or taxes assessed under ORS 308.505 to 308.665, 308.705 to 308.730 or 308.805 to 308.820 shall be filed not later than the second Monday in June of the year of tax imposition or assessment;

provided that the failure to mail the notice provided for under ORS 308.595 shall extend the time for filing an appeal for 10 days after the second Monday in June.

(5) If the director denies an appeal made pursuant to this section on the grounds that it does not meet the requirements of this section or ORS 305.275 he shall issue a written order rejecting the petition and shall set forth therein the reasons he considered the petition to be defective.

(6) Where permitted under ORS 305.515 to 305.555, appeal may be taken to the small claims division of the Oregon Tax Court instead of to the Department of Revenue. [1977 c 870 §6, 1979 c 687 §1]

305.285 Correction of tax and assessment rolls for subsequent tax years during pendency of appeal. Whenever any property tax matter is appealed to the Department of Revenue, Oregon Tax Court or Supreme Court, and during the pendency of the appeal, no appeal is filed for a subsequent year or years, the taxpayer may, on or before December 15 of the year in which a final determination is made by the last body or tribunal to pass on the matter or within six months of such final determination, whichever is later, request the department to order the officer in charge of the rolls for the intervening years to correct all tax and assessment rolls for those years with respect to the property affected by such final determination. The department may require a hearing and the submission of evidence necessary to determine the correction, if any, that should be made for each intervening year in view of the holding in such final determination. Notwithstanding any time limit in ORS 311.205, the department shall order such correction as it deems necessary. [1977 c 870 §7]

(Income Identification)

305.350 Identification cards for persons 60 years of age or older or certification documents; income designation; application procedure. (1) Having proceeded as required in subsection (3) of this section, the Department of Revenue shall issue identification cards to any Oregon resident 60 years of age or older who has submitted an application to the department.

(2) (a) The identification card shall be of plastic or similar material and have embossed on it the person's name, address, date of birth

and date of issuance and may have on it such other information as the department considers necessary. Only upon a magnetic strip imprinted upon the card for confidential purposes, shall be designated income category and other personal information about the applicant, such as social security number. The card shall not show by color or other visible identification the income category of the applicant other than the information on the magnetic strip.

(b) A cardholder may request a printed certification document for submission in instances where verification of the income category of the cardholder is necessary and equipment to read the magnetic strip is not available. The availability of the certification document shall be made known and may be requested by the applicant on the application form for the identification card.

(3) Upon receipt of an application, the department shall verify the applicant's eligibility for the identification card and determine the applicant's income category using the designation as follows:

(a) "A" for a person with a household income of above \$6,000 per year.

(b) "B" for a person with a household income of \$3,001 to \$6,000.

(c) "C" for a person with a household income of \$1,501 to \$3,000.

(d) "D" for a person with a household income of \$1,500 or less.

(4) An applicant may apply for and be issued a card having on it all the information specified in subsection (2) of this section except bearing no designation of income.

(5) The application form shall be prepared by the department and made readily available at various locations throughout the state. In addition, the application may be made available with or as a part of the Oregon homeowner and renter property tax refund claim form.

(6) As used in this section, "household income" has the same meaning as in ORS 310.630. [1977 c.790 §1]

305.355 Identification cards used to determine benefits under state, local or private programs. The identification cards issued pursuant to ORS 305.350 may be used for determining eligibility for benefits under any state or local program or the program of any private agency or any other benefit to which a person may be entitled because of age or income. [1977 c.790 §2]

305.360 Identification card fees; financing. (1) The identification cards and certification documents identified in ORS 305.350 shall be self-financing in the same manner as is provided in ORS 305.085, with proceeds to be deposited in the miscellaneous receipts account of the Department of Revenue established under the authority of ORS 283.250.

(2) The card shall be priced on the basis of cost of materials and administration with the charge being the actual cost thereof. It is the intention of the Legislative Assembly that the cost be minimized and that if possible it not exceed \$1 for the initial card and 50 cents for a replacement or subsequent card.

(3) Qualified applicants may elect to pay the initial or reissuance charge at the time of application or have the amount deducted from their Oregon homeowner and renter property tax refund claim.

(4) A charge of 50 cents shall be made for each document of certification of income category for use in instances where magnetic strip reading is not available.

(5) The Department of Revenue may contract for the production, fabrication, issuance and distribution of identification cards. [1977 c.790 §3]

305.365 Issuance of new card upon loss, destruction or change of address. (1) If the card is used to qualify the cardholder for any state or other assistance program, then upon change of a person's household income category or address, the cardholder must apply for issuance of a new identification card showing the applicant's most current income category and address.

(2) A cardholder may apply for issuance of a new identification card for any reason, including loss or destruction of the card. [1977 c.790 §4]

OREGON TAX COURT (General)

305.405 Oregon Tax Court. As part of the judicial branch of state government, there is created a court of justice to be known as the Oregon Tax Court. The tax court, in cases within its jurisdiction pursuant to ORS 305.410:

(1) Is a court of record and of general jurisdiction, not limited, special or inferior jurisdiction.

(2) Has the same powers as a circuit court.

(3) Has and may exercise all ordinary and extraordinary legal, equitable and provisional remedies available in the circuit courts, as well as such additional remedies as may be assigned to it. [1961 c 533 §1, 1965 c 6 §1]

305.410 Authority of court in tax cases within its jurisdiction; concurrent jurisdiction to determine priority of property tax liens. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section, and except to the extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

(a) ORS 577.110 to 577.605 relating to beef council contributions.

(b) ORS 576.051 to 576.584 relating to commodity commission assessments.

(c) ORS chapter 477 relating to fire protection assessments.

(d) ORS chapters 731, 732, 733, 734, 737, 743, 744, 746, 748 and 750 relating to insurance company fees and taxes.

(e) ORS chapter 473 relating to liquor taxes.

(f) ORS chapter 583 relating to milk marketing, production or distribution fees.

(g) ORS chapter 767 relating to motor carrier taxes.

(h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes.

(i) ORS title 39 relating to motor vehicle and motor vehicle operators' license fees and boat licenses.

(j) ORS chapter 578 relating to wheat commission assessments.

(k) ORS chapter 462 relating to racing taxes.

(L) ORS chapter 657 relating to unemployment insurance taxes.

(m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.

(n) ORS chapter 579 relating to potato commission assessments.

(o) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relat-

ing to foreclosure of real and personal property tax liens.

(2) The tax court, the circuit courts and district courts shall have concurrent jurisdiction to try actions or suits to determine the priority of property tax liens in relation to other liens.

(3) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or any other court, any matter within the jurisdiction of the tax court.

[1961 c 533 §12, 1965 c 6 §2, 1967 c 359 §688, 1969 c 48 §1, 1971 c 567 §14; 1975 c.365 §1, 1977 c 407 §1]

305.415 Service of papers and process. Except as otherwise provided in ORS 305.405 to 305.555, the mailing by registered or certified mail of any pleading, decision, order, notice or process, other than a subpoena, in respect to proceedings before the court shall be sufficient service thereof. [1961 c 533 §25]

305.418 When mailed complaint considered to be filed. Any complaint required by law to be filed with the Oregon Tax Court which is:

(1) Transmitted through the United States mail, shall be deemed filed (a) on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or (b) on the date it was mailed if there is also mailed to the tax court a declaration of mailing, signed by the appealing party or his attorney and verified by oath or affirmation, subject to penalties for false swearing, in substantially the following form:

DECLARATION OF MAILING

I hereby declare under the penalties for false swearing contained in ORS chapter 162 that on the _____ day of _____, 19____, I deposited a complaint entitled _____, and dated _____, in a sealed envelope, with postage prepaid, in the United States Post Office at _____, Oregon (or other state of mailing), addressed to the Oregon Tax Court, 106 State Library Building, Salem, Oregon 97310 (or current address).

(Signature of appealing party or his attorney)

(2) Lost in transmission through the United States mail, shall be deemed filed on the date it was mailed if the appealing party:

(a) Can establish by competent evidence satisfactory to the tax court that the complaint was deposited on or before the date due for filing in the United States mail and addressed correctly to the court; and

(b) Files with the court a duplicate of the lost complaint, with certified copy as required by ORS 305.560, within 30 days after written notification is given by the court of its failure to receive such complaint, but in no event later than 90 days after the date the complaint was otherwise required to be filed under ORS 305.560. [1975 c 381 §2, 1979 c 689 §3]

Note: 305.418 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 305 but not to any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

305.420 Issuance of subpoenas; administration of oaths; depositions. (1) The judge or the clerk of the court, on the request of any party to the proceeding, or the attorney of the party, shall issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of any returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry at any designated place of hearing in the manner prescribed by law in civil actions in courts of this state.

(2) Any employe of the court designated in writing for the purpose by the judge may administer oaths.

(3) Any party to the proceeding may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state. To that end, the party may compel the attendance of witnesses and production of returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry.

(4) Subpoenas in a proceeding in the small claims division shall be issued only at the discretion of the court; and any such subpoena shall not require the witness to attend for examination at a place outside the county in which the witness resides or is served, unless the residence or place of service of the witness is within 100 miles of the place of examination.

(5) Subpoenas in a proceeding involving the determination of the value of an industrial plant, as defined in ORS 308.408, for purposes of ad valorem property taxation, may be is-

sued as provided in subsection (1) of this section. However, upon petition of the person subpoenaed, the court shall make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding, and if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed. [1961 c 533 §17, 1963 c.304 §1, 1981 c 139 §5]

305.425 Proceedings to be without jury and de novo; issues reviewable; rules of procedure. (1) All proceedings before the court shall be original, independent proceedings and shall be tried without a jury and de novo.

(2) If a statute provides for an appeal to or a review by the court of an order or determination of the Department of Revenue or of any other administrative agency, the proceeding shall be an original proceeding in the nature of a suit in equity to set aside such order or determination. The time within which the statute provides that the proceeding shall be brought is a period of limitations and is not jurisdictional.

(3) In the case of proceedings to set aside an order or determination of the department, except as provided in ORS 305.560 (1), the issues of fact and law shall be restricted to those raised by the parties in the appeal to the department. If the court finds that other issues are important to a full determination of the controversy, it shall remand the whole matter to the department for further determination and the issuance of a new order, unless the parties and the department stipulate to the determination of such other issues without remand to the department. If the court orders the cause remanded to the department, such order shall constitute a final order subject to appeal to the Supreme Court as provided for in ORS 305.445. All hearings and proceedings in the tax court shall be in accordance with the rules of practice and procedure promulgated by the court, which, except with respect to the small claims division, shall conform, as far as practical to the rules of equity practice and procedure in this state. [1961 c 533 §16, 1965 c 6 §3; 1967 c 78 §9; 1973 c 484 §7, 1977 c 870 §29; 1981 s s c 1 §23]

Note: The amendments to 305.425 by section 23, chapter 1, Oregon Laws 1981 (special session), take effect July 1, 1982. See section 26, chapter 1, Oregon Laws 1981 (special session) 305.425 (1979 Replacement Part) is set forth for the users' convenience.

305.425. (1) All proceedings before the court shall be original, independent proceedings and shall be tried without a jury and de novo

(2) If a statute provides for an appeal to or a review by the court of an order or determination of the Department of Revenue or of any other administrative agency, the proceeding shall be an original proceeding in the nature of a suit in equity to set aside such order or determination. The time within which the statute provides that the proceeding shall be brought is a period of limitations and is not jurisdictional

(3) In the case of proceedings to set aside an order or determination of the department, except as provided in ORS 305.560 (1), the issues of fact and law shall be restricted to those raised by the parties in the appeal to the department. If the court finds that other issues are important to a full determination of the controversy, it shall remand the whole matter to the department for further determination and the issuance of a new order, unless the parties and the department stipulate to the determination of such other issues without remand to the department. If the court orders the cause remanded to the department, such order shall constitute a final order subject to appeal to the Supreme Court as provided for in ORS 305.445. All hearings and proceedings in the tax court shall be in accordance with the rules of practice and procedure promulgated by the court, which, except with respect to the small claims division, shall conform, as far as practical to the rules of equity practice and procedure in this state. All pleadings used in the court, including pleadings in the small claims division, shall comply with the rules adopted under ORS 1.002

305.427 Burden of proof in tax court proceedings. In all proceedings before the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. [1965 c 6 §5]

305.430 Hearings to be open to public; report of proceedings; exception; confidential information. (1) Except as provided in subsection (2) of this section, hearings before the tax court shall be open to the public. All proceedings in the court, except those in the small claims division, shall be reported unless waived by the parties with the consent of the court. The expense of reporting shall be paid by the state from the appropriation for the court.

(2) If information is confidential under ORS 308.411 (4) or by court order under ORS 305.420 (5), and is introduced into evidence in any hearing before the tax court, the court first shall make such order or orders as are necessary to protect the confidentiality of the information. [1961 c 533 §19, 1981 c 139 §9, 1981 c 727 §2]

305.435 Decision of court; form and contents; determination of value of property subject to special assessment. The court, except when sitting as the small claims division, shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The court may affirm, reverse, modify or remand any order of the department, and shall grant such other relief, invoke such other remedies and issue such orders in accordance with its decision as shall be appropriate in a court of general jurisdiction. Where the determination of true cash value or the correct valuation of any property subject to special assessment is an issue before the court, the court has jurisdiction to determine such value on the basis of the evidence before it, without regard to the values pled by the parties. [1961 c 533 §20, 1963 c 280 §1, 1965 c 6 §6, 1977 c 870 §30]

305.440 Finality of unappealed decision of tax court; effect of appeal to Supreme Court; action upon final determination of ad valorem tax matter; docketing decree. (1) The decision of the court shall be binding upon all parties until changed, if at all, by the decision of the Supreme Court upon appeal. If no appeal is taken to the Supreme Court, the decision of the court shall constitute a final determination of the matter. If an appeal is taken, the decision of the court shall become final in the same manner as the decision, judgment or decree of the circuit court becomes final when appeal therefrom is taken to the Supreme Court.

(2) Upon the final determination of any ad valorem tax matter, all officers having charge of the rolls on which the assessments involved in such proceeding appears shall correct the same in accordance with such determination, and taxes shall be refunded as provided in ORS 311.806 or additional taxes collected by the proper officers. In the case of an appeal as to properties assessed or taxed under ORS 308.505 to 308.665, 308.705 to 308.730 or 308.805 to 308.820, a certified copy of the decree of the court shall be sufficient warrant for the apportionment, levying and collecting of taxes against the property constituting the subject matter of the appeal and upon the valuation determined by the court. If any reapportionment as between counties is made by the court on appeal, corresponding adjustments shall be made by the tax collectors of the counties affected.

(3) Upon final determination of a tax imposed by ORS chapter 118 or 119, a copy of the decree of the court shall be entered in the judgment docket of the county in which the matter arose. [1961 c 533 §21, 1971 c 567 §15, 1977 c 870 §31]

305.445 Appeals to Supreme Court; reviewing authority and action on appeal.

The sole and exclusive remedy for review of any decision or order of the tax court shall be by appeal to the Supreme Court. Jurisdiction hereby is vested in the Supreme Court to hear and determine all appeals from final decisions and final orders of the tax court, except with respect to the small claims division of the tax court. Such appeals, and the review of final decisions and final orders of the tax court, shall be in accordance with the procedure in equity cases on appeal from a circuit court, but without regard to the sum involved. Upon such appeal and review, the Supreme Court shall have power to affirm, modify or reverse the order or decision of the tax court appealed from, with or without remanding the case for further hearing, as justice may require. [1961 c 533 §22]

305.447 Recovery by taxpayer of certain costs and expenses upon appeal to Supreme Court. If, in an appeal under ORS 305.445 involving taxes upon or measured by net income in which an individual taxpayer is a party or involving gift taxes, the court grants the refund claimed by the taxpayer or denies the additional assessment of taxes claimed by the department to be due from the taxpayer, the court may allow the taxpayer:

(1) Reasonable attorney fees for the appeal under ORS 305.445 and for any prior proceeding in the matter before the department or the tax court or, if prior proceedings in the matter were conducted before the department and the tax court, for both; and

(2) Reasonable expenses as determined by the court in addition to costs and disbursements. Expenses include accountant fees and fees for other experts incurred by the taxpayer in preparing for and conducting the appeal under this section and any prior proceeding in the matter before the department or the tax court or, if prior proceedings in the matter were conducted before the department and the tax court, for both. [1971 c.265 §3; 1977 c 870 §31a]

305.450 Publication of tax court decisions; advance sheets; charges; costs. (1) The tax court shall provide for the publication

of its decisions which are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the court. The publications shall be distributed by the Secretary of State without charge as determined by the court or sold by the Secretary of State at prices determined by the court.

(2) The tax court may also provide for the advance sheet printing of those decisions which will later be printed in permanent reports under subsection (1) of this section. The Department of General Services shall cause to be printed a number of unbound copies of such advance sheets as required by the tax court, containing indexes and other necessary material. The printed advance sheets shall be mailed, without charge, to such state agencies, members of the legislature, courts and public bodies as the presiding judge of the tax court may designate. The clerk of the tax court shall furnish such advance sheets to subscribers at prices determined by the court, payable in advance, keeping a mailing list and record of receipts.

(3) All moneys collected or received under subsection (1) or (2) of this section shall be paid into the General Fund of the State Treasury to be available for the payment of general governmental expenses.

(4) The cost of printing the advance sheets and the reports of the Oregon Tax Court shall be paid out of moneys appropriated to the tax court. [1961 c 533 §23, 1963 c.250 §1, 1967 c.96 §1, 1967 c.398 §2, subsection (4) enacted as 1967 c 398 §9 (3); 1975 c.37 §2, 1977 c 145 §1, 1979 c.876 §3]

305.452 Election and term of judge; vacancy; recommendation of appointees to fill vacancy. (1) The judge of the tax court shall be elected by the legal voters of the state for a term of six years, in the manner provided in ORS chapter 249.

(2) In the event of a vacancy in the office of judge, the vacancy shall be filled by an appointment made by the Governor. The Governor may request the governors of the Oregon State Bar to submit to the Governor the names of five or more eligible persons deemed by them to be particularly experienced in the field of tax law, as an aid to the Governor in making the appointment. [1961 c 533 §2, 3(2), 1979 c 190 §412]

305.455 Qualifications of judge; oath; inapplicability of disqualification-for-prejudice provision. (1) The judge of the tax

court shall be a citizen of the United States and of this state, and shall have been admitted to practice in the Supreme Court of Oregon and have been engaged in this state for at least three years preceding his election or appointment, either in active practice, governmental or private, as an attorney and counselor at law or in the discharge of the duties of a judicial or quasi-judicial office. Before entering upon the duties of his office, the judge shall take and subscribe to an oath or affirmation for the faithful discharge of the duties thereof, and such oath shall be filed in the office of the Secretary of State.

(2) Notwithstanding the provision of any other law, the provisions of ORS 14.250 relating to the disqualification of a judge for prejudice shall not be applicable to any judge serving regularly or temporarily as a judge of the tax court. [1961 c 533 §§3(1), (8)]

305.460 Judge's salary, expenses, retirement. (1) The judge of the tax court shall receive such salary as is provided by law. He shall receive no other allowances for his services except as authorized by this section.

(2) When the judge of the tax court holds court or performs any other official function away from the state capital, his hotel bills and traveling expenses necessarily incurred by him in the performance of that duty shall be paid by the state. Such expenses are to be paid upon the certificate of the judge to the truth of an itemized statement of the expenses. The certificate of expenses is a sufficient voucher upon which the Secretary of State shall audit the claim and draw his warrant upon the State Treasurer for the amount thereof in favor of the tax court judge.

(3) The judge of the Oregon Tax Court shall be subject to the provisions of ORS 1.310 to 1.390 relating to retirement and retirement pay to the same extent and in the same manner as a judge of a circuit court. [1961 c.533 §§4, 5, 1977 c 896 §9]

305.465 [1961 c 533 §6, repealed by 1975 c 706 §10]

305.470 Presiding judge; functions. Whenever more than one judge is serving as a judge of the tax court, the judge elected or appointed under ORS 305.452 shall be the presiding judge. The presiding judge shall assign causes, matters and proceedings and apportion the business of the tax court. [1961 c 533 §7, 1981 s.s c 1 §24]

Note: The amendments to 305.470 by section 24, chapter 1, Oregon Laws 1981 (special session), take effect July 1, 1982. See section 26, chapter 1, Oregon Laws 1981

(special session) 305.470 (1979 Replacement Part) is set forth for the users' convenience

305.470. Whenever more than one judge is serving as a judge of the tax court, the judge senior in continuous service as a judge of the tax court, or if two or more have been in continuous service the same length of time, then the judge senior in age, shall be the presiding judge. The presiding judge shall assign causes, matters and proceedings and apportion the business of the tax court.

305.475 Offices of tax court; location of hearings. The principal office of the tax court shall be in the state capital, but the court may hold hearings in any county seat, with a view to securing reasonable opportunity to taxpayers to appear before the court with as little inconvenience and expense to taxpayers as is practicable. Adequate offices and a courtroom shall be furnished within the capitol group of buildings, as provided in ORS 276.004. The county court or board of county commissioners, upon request of the judge of the tax court, shall provide the court with suitable rooms at the county seat when hearings are held outside the capital city. [1961 c 533 §9, 1969 c 706 §64d]

305.480 State Court Administrator as administrator and clerk; other personnel; expenses; limitation on activities of personnel. (1) The State Court Administrator shall act as court administrator for and clerk of the tax court. Other necessary employes of the court shall be appointed and otherwise governed by applicable provisions of the personnel plan for employes of the courts of this state who are state employes.

(2) The judge and employes of the court shall be reimbursed for all actual and necessary expenses as provided by law.

(3) No employe of the court shall act as attorney, counselor or accountant in the matter of any tax imposed or levied by this state or any of its political subdivisions. [1961 c 533 §11, 1981 c 727 §1]

305.485 Records. The records of the tax court shall include a register, journal and fee book

(1) The register is a book wherein the clerk shall enter, by its title, every suit or proceeding commenced in, or transferred or appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, until the entry of judgment, he shall note therein, according to the date thereof, the filing or return of any paper or process, or the making of any order, rule or other direction in or concerning such suit or proceeding.

(2) The journal is a book wherein the clerk shall enter the proceedings of the court.

(3) The fee book is a book wherein the clerk shall enter, under the title of every cause, against the party to whom the service is rendered, the clerk's fees earned, and whether received or not received.

(4) The files of the court are all papers or process filed with or by the clerk of the court, in any suit or proceeding therein, or before the judge

(5) Separate records shall be kept for the small claims division, in such form and content as the court prescribes. [1961 c 533 §10]

305.490 Filing fees; recovery of certain costs and disbursements; additional recovery for certain taxpayers; disposition of receipts. (1) The plaintiff, upon filing his complaint or petition in the tax court, shall pay to the clerk thereof, in advance, the sum of \$10, except that, in case of petitions filed in the small claims division, the fee shall be \$1.50. A similar fee shall be paid by other parties making an appearance in the proceeding. 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 his representative capacity, shall be required to pay the fee prescribed. The party entitled to costs and disbursements on such appeal shall recover from his opponent the amount so paid upon order of the court, as in equity suits in the circuit court.

(2) If, in any proceeding under this section involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving gift or inheritance taxes, 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 to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements:

(a) Reasonable attorney fees for the proceeding under this section and for the prior proceeding in the matter, if any, before the department; 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 under this

section and the prior proceeding in the matter, if any, before the department.

Payment of attorney fees or reasonable expenses shall be made by the department in the manner provided by law for the payment of income tax refunds.

(3) All fees and other moneys received or collected by the clerk by virtue of his office shall be paid over to the State Treasurer and shall be held by him in the General Fund as miscellaneous receipts. [1961 c 533 §15 (1), (3), 1965 c.6 §7, 1971 c 265 §1, 1977 c 870 §32]

305.495 Fees and expenses of witnesses. Any witness subpoenaed or whose deposition is taken shall receive the same fees and mileage as a witness in a circuit court of this state. Witnesses for the state or its political subdivisions shall be paid from moneys appropriated therefor. Payment of fees and mileage to other witnesses shall be made by the party at whose instance the witness appears or the deposition is taken. [1961 c 533 §18]

305.500 Fees for transcripts or copies of records. The tax court may fix a fee, not in excess of the fees charged and collected by the clerks of the circuit court, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof. [1961 c.533 §§15 (2), 24; 1963 c 423 §3]

305.510 Stockholder representing corporation in tax court proceedings. Notwithstanding ORS 9.320, any stockholder of an electing small business corporation as defined in section 1371, Internal Revenue Code of 1954 may represent the corporation in any proceeding before the Oregon Tax Court in the same manner as if the stockholder were a partner and the electing small business corporation were a partnership. [1973 c.681 §2]

(Small Claims Division)

305.515 Small claims division; jurisdiction. (1) There shall be a division of the Oregon Tax Court known as the small claims division.

(2) Judges of the tax court shall sit as judges of the small claims division.

(3) The small claims division shall have jurisdiction of the following classes of cases upon election by the taxpayer pursuant to ORS 305.530:

(a) A proceeding for refund or to set aside additional taxes assessed or taxes assessed when no return was filed in any case involving taxes imposed under ORS chapters 314, 316, 317 and 318, with respect to any year for which the amount in controversy does not exceed \$500, exclusive of interest and penalties.

(b) A proceeding by a taxpayer in any property tax case in which a taxpayer has the right to appeal to the Department of Revenue and which involves only the question of the true cash value of real or personal property, where the Department of Revenue, board of equalization, assessor or tax collector has determined that either the parcel of land or the total improvements thereon, has a true cash value not in excess of \$35,000 or that such personal property has a true cash value not in excess of \$15,000.

(c) A proceeding for refund or revision of any tax imposed under ORS 321.405 to 321.520 with respect to any year in which the amount of refund or revision claimed does not exceed \$500, exclusive of interest and penalties.

(d) A proceeding for the refund or the revision of taxes imposed by ORS chapter 118 or 119 where the amount in controversy does not exceed \$500, exclusive of interest.

(e) A proceeding for the refund of taxes authorized under ORS 310.630 to 310.690 without limitation to the amount in controversy.

(f) A proceeding by a taxpayer in any case authorized by ORS 321.327 where the amount in controversy does not exceed \$500, exclusive of interest. [1961 c.533 §26; 1965 c.6 §8, 1967 c.78 §11; 1969 c.355 §1, 1971 c.567 c.16; 1973 c.752 §11, 1975 c.705 §3; 1977 c.870 §33; 1977 c.892 §55]

305.520 ORS 305.405 to 305.435 and 305.452 to 305.495 apply to proceedings in small claims division. ORS 305.405 to 305.435 and 305.452 to 305.495 shall apply to proceedings in the small claims division, unless expressly inapplicable thereto or inconsistent with ORS 305.515 to 305.555. [1961 c.533 §34]

305.525 Notice to taxpayer of right to appeal to small claims division. At the same time that a notice of assessment, letter of refund denial or determination or order of the board of equalization is given to any taxpayer, the Department of Revenue or board of equalization, as the case may be, shall in writing also notify the taxpayer of his right to

appeal to the small claims division by filing a petition in prescribed form with the clerk of the court. [1961 c.533 §29, 1977 c.870 §54]

305.530 Election to proceed in small claims division; effect of election. A taxpayer may elect to proceed in the small claims division of the tax court instead of by an appeal to the Department of Revenue in the classes of cases authorized by ORS 305.515. If a taxpayer elects to appeal to the small claims division in a case within one of the classes set forth in ORS 305.515, the election may not be revoked and the taxpayer will have no further right of appeal to the Department of Revenue. In the event the taxpayer elects to file a petition with the department, he shall not thereafter be permitted to proceed in the small claims division. [1961 c.533 §27, 1967 c.78 §10, 1971 c.567 §17; 1975 c.762 §18, 1977 c.870 §14]

305.535 Commencement of proceeding by petition filed by taxpayer. A taxpayer shall commence a proceeding in the small claims division by filing with the clerk of the court a petition, in the form prescribed by the rules of the tax court, which shall state the nature of the taxpayer's claim. Such petition shall be filed within the time for otherwise appealing specified in ORS 305.280, 305.570, 308.280, 308.287, 308.289 and 321.327, for the particular case. [1961 c.533 §28; 1969 c.355 §2; 1977 c.870 §15, 1977 c.892 §57; 1981 c.804 §85]

305.540 Notice to assessor or department of filing of petition; parties; exclusive jurisdiction; appearance as amicus curiae. Upon the filing of a petition by the taxpayer to the small claims division, the clerk of the court shall give notice thereof to the applicable county assessor or the Department of Revenue, as the case may be, and such assessor or the department shall thereafter be deemed a party to the proceeding and, at the hearing on the petition, may appear in opposition thereto. In the event a petition is filed, the small claims division shall thereafter have exclusive jurisdiction over the case. With the permission of the court, the department may appear amicus curiae in any proceeding before the small claims division. [1961 c.533 §30, 1971 c.351 §1]

305.545 Hearings to be informal; evidence; representation of parties. The hearing in the small claims division shall be informal, and the judge may hear such testimony and receive such evidence as he deems necessary or desirable for a just and equitable determination of the case, except that all

testimony shall be given under oath. A party may appear on his own behalf or may be represented or accompanied by an attorney, licensed accountant or such other person as the court may permit to be present and participate in the proceeding before the small claims division. [1961 c 533 §32]

305.550 Dismissal of case on taxpayer's request; effect. At any time prior to entry of judgment, a taxpayer may dismiss a case in the small claims division by notifying the clerk of the court in writing, but such dismissal shall be with prejudice and shall not have the effect of revoking the election specified in ORS 305.530. [1961 c 533 §31, 1971 c 351 §2]

305.555 Judgments. The judgment in the small claims division shall be conclusive upon all parties and may not be appealed, and may include orders to the Department of Revenue, board of equalization and other proper officers to correct an assessment roll or a tax roll, or both, modify or cancel an assessment, pay or allow a refund to take such other action as may be necessary to effectuate the judgment. A judgment shall not be considered as judicial precedent or be given any force or effect in any other case, hearing or proceeding. [1961 c 533 §33]

**(Procedure on Appeal from
Order of Department of
Revenue; Effect of Pendency of
Appeal)**

305.560 Procedure on appeal from order of department; procedure where taxpayer is not appellant; effect of failure to notify person appealing. (1) Except for an order, or portion thereof, denying the discretionary waiver of penalty or interest by the department, an appeal from an order of the department on an appeal taken pursuant to this chapter may be taken by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court at its principal office at Salem, Oregon, within 60 days after a copy of the order or notice of the order has been served upon the appealing party by mail as provided in ORS 306.805 or within six months after notice of the order has been given to him under ORS 306.805 (1)(b). An appeal from an order issued as a result of an appeal under ORS 305.280 (4) may include issues of law which cannot be raised before the department under ORS 308.595 (3). Service upon the department shall be accom-

plished by the clerk of the tax court filing the certified copy of the complaint with the Director of the Department of Revenue. The complaint shall be entitled in the name of the person filing the same as plaintiff and the Department of Revenue as defendant. A copy of the order of the department shall be attached to the original complaint.

(2) The complaint shall state the nature of the plaintiff's interest, the facts showing how the plaintiff is aggrieved and directly affected by the department's order, and the grounds upon which the plaintiff contends the order should be reversed or modified. The complaint shall be entitled in the name of the person filing the same as plaintiff and the Department of Revenue as defendant. A responsive pleading shall be required of the defendant.

(3) In any case in which the taxpayer is not the appealing party, a copy of the complaint shall be served upon him by the appealing party by certified mail within the 60-day period or within six months after notice of this order has been published under ORS 306.805 (1)(b), and an affidavit showing such service shall be filed with the clerk of the tax court. A copy of the order of the department shall be attached to the complaint. The taxpayer shall have the right to appear and be heard.

(4) The tax court, in its discretion, may permit other interested persons to intervene by filing a complaint in such manner and under such conditions as the court may deem appropriate.

(5) If the department fails to notify a person appealing to the director pursuant to this chapter within 12 calendar months following the month in which the appeal is filed of its determination of the appeal, the person may treat the appeal as denied, and bring suit in the tax court by filing an original and one certified copy of a complaint against the department in the court. Such filing in the tax court shall constitute the perfection of the appeal. Service upon the department shall be accomplished in the same manner as provided in subsection (1) of this section. [1977 c 870 §10]

305.565 When collection of taxes, interest or penalties not affected by taking or pendency of appeal; posting of bond. (1) Unless otherwise ordered by the Oregon Tax Court, no proceeding for the collection of any taxes, interest or penalties resulting from an assessment of taxes or additional taxes imposed by ORS chapter 118, 119, 310, 314, 316, 317, 318 or this chapter shall be stayed by the

taking or pendency of any appeal to the director or department, or from an order of the department or the Oregon Tax Court, if the department believes that collection of the tax will be jeopardized by delay.

(2) No proceeding for the apportionment, levy or collection of taxes on any property shall be stayed by the taking or pendency of any appeal to the director or the department, or from an order of the department or the Oregon Tax Court, unless the assessor, tax collector or board of equalization, either as a party to the suit or an intervenor, requests a stay and it appears to the satisfaction of the court that a substantial public interest requires the issuance of a stay.

(3) The tax court may, as a condition of a stay, require the posting of a bond sufficient to guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed. [1977 c.870 §11]

305.570 Standing to appeal to Tax Court; perfection of appeal; small claims alternative procedure permissible. Any taxpayer, county assessor, county board of equalization or county tax collector aggrieved by and directly affected by an order of the Department of Revenue, and any taxpayer whose property is affected by an order of the Department of Revenue made to a county assessor, county board of equalization or county tax collector under the authority contained in ORS 305.090 or 306.111, may appeal to the Oregon Tax Court, and appeal shall be perfected in the manner provided in ORS 305.560. Also, a taxpayer may utilize the alternative procedure respecting appeals to the small claims division of the Oregon Tax Court as provided in ORS 305.515 to 305.555. [1977 c 870 §13]

305.575 Authority of Tax Court to determine deficiency. In an appeal to the Oregon Tax Court from an assessment made under ORS 305.265, the tax court has jurisdiction to determine the correct amount of deficiency, even if the amount so determined is greater or less than the amount of the assessment determined by the order of the department, and even if determined upon grounds other or different from those asserted by the department, provided that claim for such additional tax on other or different grounds is asserted by the department before or at the hearing or any rehearing of the case before the tax court. In the event such other or dif-

ferent grounds are asserted by the department, the opposing party shall be allowed additional time, not less than 10 days, within which to amend or otherwise plead thereto, which additional time, however, may be waived by stipulation of the parties. The order of the tax court shall be sufficient for the collection by the department of the entire amount found by the court to be owing and due. [1977 c 870 §21]

INTERGOVERNMENTAL TAX RELATIONS (Federal and Other States)

305.605 Application of tax laws within federal areas in state. Where not inconsistent with the Constitution and laws of the United States, notwithstanding any provision of any other statute of this state, the laws of this state relating to the imposition and collection of taxes shall apply with respect to any property located, any sale, use or transaction occurring, any income arising, or any person residing within any federal area situated within the exterior boundaries of this state. [Formerly 306.240]

305.610 Reciprocal recognition of tax liability; actions in other states for Oregon taxes. (1) The courts of Oregon shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this state. The officials of such other state may bring action in the courts of this state for the collection of such taxes. The certificate of the Secretary of State of such other state that such officials have the authority to collect the taxes sought to be collected by such action shall be conclusive proof of that authority

(2) The Attorney General of Oregon, and collection agencies when employed as provided by ORS 767.875, are empowered to bring action in the courts of other states to collect taxes legally due the State of Oregon.

(3) As used in this section, "taxes" includes:

(a) Tax assessments lawfully made whether they are based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise.

(b) Penalties lawfully imposed pursuant to a taxing statute.

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(4) The Oregon Tax Court shall not have jurisdiction over actions brought pursuant to this section. [Formerly 306 250, subsection (4) enacted as 1961 c 533 §54, 1967 c 178 §4]

305.615 Apportionment of moneys received from United States in lieu of property taxes. The Department of Revenue shall apportion annually to the state and counties any moneys received by the state from the United States, or any agency thereof, as payments in lieu of ad valorem property taxes. Such moneys shall be apportioned in the same amounts and to the same governmental divisions as the taxes in lieu of which the payments are made would be apportioned if they were levied. [Formerly 306 180]

(Local)

305.620 Collection and distribution of local taxes on income and sales; deduction of costs prior to distribution; court review of orders; appeals. (1) Any state agency or department may enter into agreements with political subdivisions of this state for the collection, enforcement, administration and distribution of local taxes imposed upon or measured by gross or net income or wages and local general sales and use taxes.

(2) The department or agency shall prescribe the rules by which the agreements entered into under subsection (1) of this section are administered.

(3) The department or agency shall prescribe the rules by which the taxes described by subsection (1) of this section are administered, collected, enforced and distributed.

(4) Costs incurred by the department or agency in the administration, enforcement, collection and distribution of taxes under the agreements entered into under subsection (1) of this section shall be first deducted from the taxes collected before distribution is made to the political subdivision which is a party to the agreement.

(5) The Oregon Tax Court shall have exclusive jurisdiction to review orders relating to the collection, enforcement, administration and distribution of local taxes under agreements entered into under subsection (1) of this section.

(6) An appeal from an order may be taken by the taxpayer by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court at its principal office at the state capital, Salem, Oregon, within 60 days after the order of the department or agency is sent to the taxpayer. The filing of the complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service upon the department or agency shall be accomplished by the clerk of the tax court filing the certified copy of the complaint with the administrative head of the department or agency. The complaint shall be entitled in the name of the person filing as plaintiff and the department or agency as defendant. A copy of the order of the department or agency shall be attached to the original complaint. All procedures shall be in accordance with ORS 305.415 to 305.447, 305.475 and 305.490 to 305.500.

(7) The provisions of subsections (5) and (6) of this section shall apply to all appeals filed after January 1, 1974. [1967 c.550 §§12, 13, 14, 15, 1969 c 574 §5, 1971 c 261 §1, 1971 c 600 §3, 1973 c 98 §1]

305.625 State and political subdivisions are employers for purpose of withholding city or county income tax. If the ordinances of any city or county in this state provide for the collection of an income tax, in whole or in part, by imposing on employers generally the duty of withholding sums from the compensation of individuals employed within the boundaries of the city or county and making returns of such sums to the authorities of such cities or counties, then the State of Oregon or any political subdivision is considered to be an employer as to its employes who come within the jurisdictional limits of the ordinance of the city or county. [1969 c 574 §1]

305.630 Compliance with city or county income tax ordinance required. The head of each branch, department or agency of the government of the State of Oregon or a political subdivision (whether executive, legislative or judicial) shall comply with requirements of such city or county ordinance in the case of employes of such branch, department or agency who are subject to such tax and whose regular place of employment is within the city or county, pursuant to an agreement made under ORS 305.620. [1969 c 574 §2]

305.635 Rate of withholding to be designated by city or county; forms. The city or county shall designate clearly the rate of withholding to be used by the State of Oregon or political subdivision and shall provide forms acceptable to the state or political subdivision to be used in reporting and remitting taxes withheld pursuant to the agreement. [1969 c 574 §3]

305.640 Discrimination among employers prohibited. Nothing in ORS 305.620 to 305.640 consents to the application of any law that has the effect of imposing more burdensome requirements on the State of Oregon or a political subdivision than it imposes on other employers, or that has the effect of subjecting the State of Oregon or a political subdivision, or any of its officers or employees, to any penalty or liability by reason of ORS 305.620 to 305.640. [1969 c 574 §4]

MULTISTATE TAX COMPACT

305.655 Multistate Tax Compact. The Multistate Tax Compact is hereby enacted into law and entered into on behalf of this state with all other jurisdictions legally joining therein in a form substantially as follows:

ARTICLE I. PURPOSES

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental

unit or agency or person acting as a business entity in more than one state.

4 "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS

1. Taxpayer option, state and local taxes. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

2. Taxpayer option, short form. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

3. Coverage. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax

purposes, the subdivision or local taxing district in which the relevant tax return is filed

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property

was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denomina-

tor of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

1. Tax credit. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

2. Exemption certificates, vendors may rely. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE
COMMISSION

1. Organization and management. (a)

The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The Attorney General of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such Attorneys General, designees or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its Executive Committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The commission shall appoint an Executive Director who shall serve at its pleasure, and it shall fix his duties and compensation. The Executive Director shall be secretary of the commission. The commission shall make provision for the bond-

ing of such of its officers and employes as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the Executive Director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(L) The commission annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

2. Committees. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an Executive Committee of seven members, including the Chairman, Vice Chairman, Treasurer and four other members elected annually by the commission. The Executive Committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities.

Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

3. Powers. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

4. Finance. (a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part

with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this Article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the

issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION

1. Whenever the commission finds a need for settling disputes concerning apportionment and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employes of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employe or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine

witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employe of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[1967 c 242 §1]

305.660 Director of department to represent state; alternate. The Director of the Department of Revenue shall constitute the member of the Multistate Tax Commission who shall represent Oregon on such multistate commission. If, at any time and for any reason, the director is unable to carry out any duty or activity required of a member of the Multistate Tax Commission, he shall be represented by an alternate appointed by him. The director shall at all times maintain on file with the Multistate Tax Commission written notification of the designation and identity of the alternate. [1967 c 242 §3; 1969 c 520 §28]

305.665 Appointment of consultants from political subdivisions imposing taxes having multistate impact. The Governor of Oregon shall appoint one person from the City of Portland, and from time to time one person from any other municipality or political subdivision imposing any tax defined in Article II of the Multistate Tax Compact, to consult regularly with the Director of the Department of Revenue of Oregon, or his alternate, in accordance with Article VI, section 1 (b) of the compact. [1967 c 242 §4]

305.670 [1967 c 242 §5, repealed by 1979 c.691 §7]

305.675 Application of compact provisions relating to interstate audits. Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to this state. [1967 c 242 §6]

305.685 Multistate Tax Commission Revolving Account. (1) There is created in the General Fund of the State Treasury the Multistate Tax Commission Revolving Account. Notwithstanding any other law, all moneys received by the Department of Revenue as a result of audits performed by the Multistate Tax Commission shall be deposited in the Multistate Tax Commission Revolving Account and are continuously appropriated. As of June 30 of each year, all moneys in excess of \$50,000 in this account shall be forwarded to the State Treasurer for deposit as miscellaneous revenues of the General Fund of the State of Oregon.

(2) The Department of Revenue may transfer \$5,000 from the funds appropriated in section 1 of chapter 187, Oregon Laws 1975, to the Multistate Tax Commission Revolving Account. Such funds are continuously appropriated for reimbursement to the Multistate Tax Commission for out-of-state corporation audits made for the State of Oregon. [1975 c 187 §4]

305.755 [Formerly 306 260, repealed by 1969 c 166 §8 and 1969 c 520 §49]

REFUNDS

305.760 Paying over funds to treasurer and writing checks for refunds. In lieu of the procedure provided in certain revenue laws for the retaining of a working balance by the Department of Revenue from which refunds may be made, the Department of Revenue may, in accordance with the requirement of the Secretary of State, pay over all funds received under any of the revenue laws to the State Treasurer and write refund checks upon the State Treasurer for refunds authorized by law. [Formerly 306 270]

305.765 Refund of taxes adjudged invalid. Whenever, in a proceeding involving the validity of any law whereby taxes assessed or imposed have been collected and received by the state, acting through any department or agency thereof, and paid into the State Treasury, if the court of last resort holds the law or any part thereof invalid, and the time limited for any further proceeding to sustain the validity of the law, or the part thereof

affected, has expired, and if there is no other statute authorizing refund thereof, all taxes collected and paid under the law or part thereof invalidated, in or after the year in which the action attacking the validity of the same was instituted, shall be refunded and repaid in the manner provided in ORS 305.770 to 305.785. [Formerly 306 280]

305.770 Report of taxpayers paying invalid tax; issuance and payment of warrants. The department or agency of the state charged with the duty of administering the law so invalidated, either wholly or in part, shall prepare a detailed report, listing by name, address and amount of payment each taxpayer who paid an invalid tax under the law. The Executive Department shall issue a warrant in favor of each taxpayer listed therein, in the amount so reported, and shall forward the warrant to the taxpayer at the address shown in the report. The State Treasurer shall pay the warrants from the General Fund in the usual manner when and as presented. Warrants refunding invalid taxes shall be payable to the taxpayers named in the report required by this section or to their heirs, administrators, executors or assigns. [Formerly 306 290, 1975 c 614 §8]

305.775 Interest on amount of refund in certain cases. If an appeal from or petition for certiorari to review a decision of the Supreme Court of Oregon, holding a tax law or any part thereof invalid, is taken to the Supreme Court of the United States and that court does not reverse or modify the decision of the Supreme Court of Oregon, the refund of the invalid taxes shall include interest on the amount paid at the rate of six percent from the date of the last decision of the Supreme Court of Oregon in the matter to the date of filing with the Secretary of State of the report and list of taxpayers entitled to the refunds as required by ORS 305.770. [Formerly 306 300]

305.780 Taxes due prior to year in which suit brought. Nothing contained in ORS 305.770 to 305.785 authorizes the refunding of any tax collected and paid under an invalidated tax law, or invalidated part thereof, where the tax as provided in such law became due and payable in any year prior to the year in which the suit or action seeking the invalidation of the law or part thereof was instituted. [Formerly 306 310]

305.785 Appropriation. There hereby is appropriated out of the moneys in the General Fund in the State Treasury, not otherwise appropriated, the amounts necessary to carry out ORS 305.770 to 305.785, not exceeding the amounts paid to and received by the State of Oregon, together with interest thereon as provided in ORS 305.775, under and by virtue of the law or laws, or parts thereof, declared to be invalid. [Formerly 306 320]

305.790 Manner of payment of certain costs and expenses. Payment of any attorney fees or reasonable expenses under ORS 305.447 or 305.490 shall be made by the department in the manner provided by law for the payment of income tax refunds. [1971 c 265 §5]

MISCELLANEOUS PROVISIONS

305.805 Repeal of intangibles income tax law not to affect accrued taxes. The repeal of the Intangibles Income Tax Act of 1931, as amended, shall not affect the assessment and collection of any tax, penalty or interest accruing prior to January 1, 1939, under the Intangibles Income Tax Act of 1931, as amended, and such amounts shall be assessed and collected in accordance with the provisions of that Act notwithstanding its repeal. [Formerly 306 340]

305.810 Verification of return, statement or document filed under tax laws. Any return, statement or other document required to be filed under any provision of the laws administered by the Department of Revenue shall contain or be verified by a written declaration that it is made under penalties for false swearing. Such declaration shall be in lieu of any oath otherwise required. [Formerly 306 410]

305.815 False return, statement or document prohibited. No person shall willfully make and subscribe any return, statement or other document, which contains or is verified by a written declaration that it is made under penalties for false swearing, which he does not believe to be true and correct as to every material matter. [Formerly 306 420]

305.820 Date when writing or remittance deemed received by tax officials. (1) Any writing or remittance required by law to be filed with or made to the Department of

Revenue, county board of equalization, county assessor or tax collector (designated in this section as the "addressee") which is.

(a) Transmitted through the United States mail, shall be deemed filed or received on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or on the date it was mailed if proof satisfactory to the addressee establishes that the actual mailing occurred on an earlier date.

(b) Lost in transmission through the United States mail, shall be deemed filed and received on the date it was mailed if the sender:

(A) Can establish by competent evidence satisfactory to the addressee that the writing or remittance was deposited on or before the date due for filing in the United States mail and addressed correctly to the addressee; and

(B) Files with the addressee a duplicate of the lost writing or remittance within 30 days after written notification is given by the addressee of its failure to receive such writing or remittance.

(2) Whenever any writing or remittance is required by law to be filed or made on a day which falls on a Saturday, or on a Sunday or any legal holiday, the time specified shall be extended to include the next business day.

(3) As used in this section, "writing or remittance" includes, but is not limited to, "report," "tax return," "claim for credit," "claim for refund," "statement," "notice of appeal," "petition for review," "notice of election," "documentary proof," a claim for exemption, a claim for deferral, a return of property, a claim for cancellation of an assessment, an application for a special assessment, and remittances. [Formerly 306 440, 1965 c 344 §27]

305.830 Collection of fines, penalties and forfeitures; disbursement. (1) The Department of Revenue shall collect and disburse to the state agency entitled thereto fines, penalties and forfeitures due or owing the State of Oregon, and in carrying out such duties shall have access to the records and dockets of all courts charged with the duty to remit fines, penalties and forfeitures to the Department of Revenue.

(2) The cost of all examinations, investigations and searches, and of all traveling and other expenses in connection therewith, are to be apportioned among the state agencies entitled to the funds.

(3) The Department of Revenue may institute legal proceedings in the name of the

State of Oregon, upon his relation or otherwise without joinder of any other party, to effect collection of any fine, penalty or forfeiture due the state and may charge the net cost of the proceedings to the department in whose behalf suit or action was instituted.

(4) All judicial, municipal and county officers shall cooperate with the Department of Revenue with respect to the collections, searches and investigations and shall furnish the Department of Revenue with any information contained in any of the records under their respective custodies relating thereto.

(5) The State Police Department shall cooperate in the investigation of fines, penalties and forfeitures. [Formerly 178 080]

305.840 Forms furnished by county assessors; assessor not liable when taxpayer fails to receive mailed form.

Whenever any provision of law provides for a form to be supplied, furnished, or provided by a county assessor, the requirement means that the county assessor shall make the form available to a taxpayer at the office of the county assessor. In such cases there is no requirement that the county assessor mail the form to the taxpayer unless the statute specifically provides for such mailing. Where a taxpayer requests the assessor to mail the form to him, or when the assessor voluntarily mails the form, the assessor does not undertake the responsibility for actual receipt by the taxpayer of the form, and no estoppel applies against the assessor if the taxpayer does not receive the form. [1973 c 402 §15]

305.845 Remedies exclusive. The remedies provided in this chapter shall be exclusive and no person, county officer or board shall maintain any suit, action or special proceeding in any court of this state with respect to the assessment and taxation of property or the collection of any tax thereon on any grounds, including fraud, where it shall appear that such remedies were available. [1977 c 870 §12]

305.850 Use of collection agency. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Director of Revenue may engage the services of a collection agency to collect outside the borders of the State of Oregon any taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by ORS chapters 118, 119, 310, 314, 316, 317, 318, 320, 321 and 323 and any other tax laws ad-

ministered by the Department of Revenue. The director may engage the services of a collection agency by entering into an agreement to pay reasonable charges on a contingent fee or other basis.

(2) The director may assign to the collection agency, for out of state collection purposes only, any of the taxes, penalties, interest and moneys due the state.

(3) The collection agency may bring such action or take such proceedings, including but not limited to attachment and garnishment proceedings, as may be necessary. [1981 c 705 §6]

Note: 305 850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 305 or any series therein by legislative action See the preface to Oregon Revised Statutes for further explanation

PENALTIES

305.990 Penalties. (1) Any person who wilfully presents or furnishes to the Department of Revenue any statement required under ORS 305.160, which statement is false or fraudulent, is guilty of perjury and upon conviction shall be punished as provided by law therefor.

(2) Any person who gives testimony before the Director of the Department of Revenue which is false or fraudulent, is guilty of perjury and upon conviction shall be punished as provided by law therefor.

(3) Any public officer who neglects or refuses to perform any of the duties imposed on him by law as to the assessment, levying or collection of taxes shall be punished, upon conviction, by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding one year.

(4) Violation of ORS 305 815 is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment for not more than one year in the county jail, or both.

(5) Violation of ORS 305.260 is punishable, upon conviction, as a Class A misdemeanor, as provided in ORS chapter 161. If the offender is an officer or employe of the state he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

(6) Any person making a false statement, known to be false, for purposes of securing an identification card pursuant to ORS 305.350

to 305.365, failing to comply with ORS 305.365 (1), loaning to any other person or permitting use by any other person of an identification card issued to him under ORS 305.350 to 305.365 or using the identification card issued to another person under ORS 305.350 to 305.365 shall be subject to a maxi-

mum fine of \$100. [Formerly 306.990, 1973 c 402 §6, subsection (5) enacted as 1973 c 402 §25(2), subsection (6) enacted as 1977 c 790 §5]
