

## Chapter 316 — Personal Income Tax

2001 EDITION

### GENERAL PROVISIONS

- 316.002 Short title
- 316.003 Goals
- 316.007 Policy
- 316.012 Terms have same meaning as in federal laws
- 316.013 Determination of federal adjusted gross income
- 316.014 Determination of net operating loss, carryback and carryforward
- 316.018 Application of Payment-in-kind Tax Treatment Act of 1983
- 316.022 General definitions
- 316.024 Application of federal law to determination of taxable income
- 316.027 “Resident” defined
- 316.032 Department to administer law; policy as to federal conflicts and technical corrections
- 316.037 Imposition and rate of tax
- 316.042 Amount of tax where joint return used
- 316.045 Tax rate imposed on certain long-term capital gain from farming; requirements
- 316.047 Transitional provision to prevent doubling income or deductions
- 316.048 Taxable income of resident
- 316.054 Social Security benefits to be subtracted from federal taxable income
- 316.056 Interest or dividends on municipal obligations subtracted from federal taxable income
- 316.074 Exemption for service in Vietnam on missing status
- 316.076 Deduction for physician in medically disadvantaged area

### CREDITS

- 316.078 Tax credit for dependent care expenses necessary for employment
- 316.079 Credit for certain disabilities
- 316.082 Credit for taxes paid another state
- 316.083 Exception to ORS 316.844
- 316.085 Personal exemption credit
- 316.087 Credit for the elderly or permanently and totally disabled
- 316.095 Credit for sewage treatment works connection costs

- 316.099 Credit for early intervention services for disabled child
- 316.102 Credit for political contributions
- 316.109 Credit for tax by another jurisdiction on sale of residential property
- 316.116 Credit for alternative energy device, energy efficient appliance, alternative fuel vehicle or alternative fuel device

#### TAXATION OF NONRESIDENTS

- 316.117 Proration between Oregon income and other income for nonresidents, part-year residents and trusts
- 316.118 Pro rata share of S corporation income of nonresident shareholder
- 316.119 Proration of part-year resident's income between Oregon income and other income
- 316.122 Separate or joint determination of income for husband and wife
- 316.124 Determination of adjusted gross income of nonresident partner
- 316.127 Income of nonresident from Oregon sources
- 316.130 Determination of taxable income of full-year nonresident
- 316.131 Credit allowed to nonresident for taxes paid to state of residence

#### ADDITIONAL CREDITS

(Rural Medical Practice)

- 316.143 Credit available to persons providing rural medical care and affiliated with certain rural hospitals
- 316.144 Additional providers who may qualify for credit
- 316.146 Credit for medical staff at type C hospital

(Costs in Lieu of Nursing Home Care)

- 316.147 Definitions for ORS 316.147 to 316.149
- 316.148 Credit for expenses in lieu of nursing home care; limitation
- 316.149 Evidence of eligibility for credit

(Mobile Homes; Moving Expense)

- 316.153 Credit for involuntary moving of mobile home

(Retirement Income)

- 316.157 Credit for retirement income
- 316.158 Effect upon ORS 316.157 of determination of invalidity; severability
- 316.159 Subtraction for certain retirement distributions contributed to retirement plan during period of nonresidency; substantiation rules

#### COLLECTION OF TAX AT SOURCE OF PAYMENT

- 316.162 Definitions for ORS 316.162 to 316.212

- 316.164 When surety bond or letter of credit required of employer; enforcement
- 316.167 Withholding of tax required; elective provisions for agricultural employees; liability of supplier of funds to employer for taxes
- 316.168 Employer required to file combined quarterly tax report
- 316.169 Circumstances in which person other than employer required to withhold tax
- 316.171 Application of tax and report to administration of tax laws
- 316.172 Tax withholding tables to be prepared by department
- 316.177 Reliance on withholding statement; penalty for statement without reasonable basis
- 316.182 Exemption certificate
- 316.187 Amount withheld is in payment of employee's tax
- 316.189 Withholding of state income taxes from certain periodic payments
- 316.191 Withholding taxes at time and in manner other than required by federal law; rules
- 316.193 Withholding of state income taxes from federal retired pay for members of uniformed services
- 316.194 Withholding from lottery prize payments
- 316.196 Withholding of state income taxes from federal retirement pay for civil service annuitant
- 316.197 Payment to department by employer; interest on delinquent payments
- 316.198 Payment by electronic funds transfer; phase-in; rules
- 316.202 Reports by employer; waiver; penalty for failure to report; rules
- 316.207 Liability for tax; warrant for collection; conference; appeal
- 316.209 Applicability of ORS 316.162 to 316.212 when services performed by qualified real estate broker or direct seller
- 316.212 Application of penalties, misdemeanors and jeopardy assessment; employer as taxpayer
- 316.216 Alternate methods of filing, reporting and calculating liability for nonresident employer and employee in state temporarily

## ESTATES AND TRUSTS

(Generally)

- 316.267 Application of chapter to estates and certain trusts
- 316.272 Computation and payment on estate or trust
- 316.277 Associations taxable as corporations exempt from chapter
- 316.279 Treatment of business trusts and business trusts income

(Resident Estates and Trusts)

- 316.282 Definitions; rulemaking authority

316.287 “Fiduciary adjustment” defined; shares proportioned

316.292 Credit for taxes paid another state

316.298 Accumulation distribution credit

(Nonresident Estates and Trusts)

316.302 “Nonresident estate or trust” defined

316.307 Income of nonresident estate or trust

316.312 Determination of Oregon share of income

316.317 Credit to beneficiary for accumulation distribution

#### RETURNS; PAYMENTS; REFUNDS

316.362 Persons required to make returns

316.363 Returns; instructions

316.364 Flesch Reading Ease Score form instructions

316.367 Joint return by husband and wife

316.368 When joint return liability divided; showing of marital status and hardship

316.369 Circumstances where one spouse relieved of joint return liability

316.372 Minor to file return; unpaid tax assessable against parent; when parent may file for minor

316.377 Individual under disability

316.382 Returns by fiduciaries

316.387 Election for final tax determination by personal representative; period for assessment of deficiency; discharge of personal representative from personal liability for tax

316.392 Notice of qualification of receiver and others

316.417 Date return considered made or advance payment made

316.457 Department may require copy of federal return

316.462 Change of election

316.472 Tax treatment of common trust fund; information return required

316.490 Refund as contribution to Alzheimer’s Disease Research Fund

316.493 Refund as contribution for prevention of child abuse and neglect

#### DISTRIBUTION OF REVENUE

316.502 Distribution of revenue to General Fund; working balance

#### PAYMENT OF ESTIMATED TAXES

316.557 Definition of “estimated tax”

- 316.559 Application of ORS 316.557 to 316.589 to estates and trusts
- 316.563 When declaration of estimated tax required; exception; effect of short tax year; content; amendment
- 316.567 Joint declaration of husband and wife; liability; effect on nonjoint returns
- 316.569 When declaration required of nonresident
- 316.573 When individual not required to file declaration
- 316.577 Date of filing declaration
- 316.579 Amount of estimated tax to be paid with declaration; installment schedule; prepayment of installment
- 316.583 Effect of payment of estimated tax or installment; credit for overpayment of prior year taxes
- 316.587 Effect of underpayment of estimated tax; computation of underpayment; interest; when not imposed
- 316.588 When interest on underpayment not imposed
- 316.589 Application to short tax years and tax years beginning on other than January 1

## MODIFICATIONS OF TAXABLE INCOME

(Generally)

- 316.680 Modification of taxable income
- 316.681 Interest or dividends to benefit self-employed or individual retirement accounts
- 316.683 State exempt-interest dividends
- 316.685 Federal income tax deductions; accrual method of accounting required; adjustment for federal earned income credit
- 316.687 Amount in excess of standard deduction for child, if child's income included on parent's federal return; limitation
- 316.690 Foreign income taxes
- 316.695 Additional modifications of taxable income
- 316.697 Fiduciary adjustment
- 316.707 Computation of depreciation of property under federal law; applicability
- 316.716 Differences in basis on federal and state return
- 316.729 Applicability of certain federal law
- 316.737 Amount specially taxed under federal law to be included in computation of state taxable income
- 316.738 Modification of taxable income when deferred gain is recognized as result of out-of-state disposition of property
- 316.744 Cash payments for energy conservation

(Additional Personal Exemption Credits)

- 316.752 Definitions for ORS 316.752 to 316.771
- 316.758 Additional personal exemption credit for severely disabled persons

316.765 Additional personal exemption credit for spouse of severely disabled person; conditions

316.771 Proof of status for exemption credit

(Exemptions)

316.777 Income derived from sources within federally recognized Indian country exempt from tax

316.778 Small city business development exemption

316.783 Amounts received for condemnation of Indian tribal lands

316.785 Income derived from exercise of Indian fishing rights

316.787 Payments to Japanese and Aleuts under Civil Liberties Act of 1988

316.789 Persian Gulf Desert Shield active military service

(Additional Modifications of Taxable Income)

316.806 Definitions for ORS 316.806 to 316.818

316.812 Certain traveling expenses

316.818 Proof of expenses

316.824 Definitions for ORS 316.824 and 316.832

316.832 Travel expenses for loggers

316.834 Underground storage tank pollution prevention or essential services grant

316.838 Art object donation

316.844 Special computation of gain or loss where farm use value used

316.846 Scholarship awards used for housing expenses

316.848 Individual development accounts

316.852 Qualified donations and sales to educational institutions

DEFERRAL OF REINVESTED GAIN

316.871 Definitions for ORS 316.872

316.872 Deferral of gain on sale of small business securities

316.873 Definitions for ORS 316.873 to 316.884

316.874 Deferral of gain from sale of capital asset; reinvestment of gain; disposition of interest or asset in which gain reinvested

316.876 Gain that may not be deferred under ORS 316.873 to 316.884

316.877 Declaration of intent to reinvest in qualified business interest, qualified investment fund or qualified business asset required for deferral of gain

316.878 Basis of qualified business interest, qualified investment fund or qualified business asset in which gain reinvested

316.879 Events causing deferral of gain to cease; recognition of deferred gain

- 316.881 Sale or disposition of reinvestment interest; period for assessment of deficiency; failure to reinvest after declaration filed
- 316.882 Death or disability; election of successor related party to continue deferral; basis upon death if deferral not continued
- 316.883 Rules for ORS 316.873 to 316.884; adoption by Department of Revenue
- 316.884 Deferral of gain for tax years beginning in 1996; applicability of ORS 316.873 to 316.884; modifications
- 316.970 Effect of chapter 493, Oregon Laws 1969

## PENALTIES

- 316.992 Penalty for filing incorrect return that is based on frivolous position or is intended to delay or impede administration; appeal

## GENERAL PROVISIONS

**316.002 Short title.** This chapter may be cited as the Personal Income Tax Act of 1969. [1969 c.493 §1; 1995 c.79 §164]

**316.003 Goals.** (1) The goals of the Legislative Assembly are to achieve for Oregon's citizens a tax system which recognizes:

- (a) Fairness and equity as its basic values; and
- (b) That the total tax system should use seven guiding principles as measures by which to evaluate tax proposals.

(2) Those guiding principles are:

- (a) Ability to pay;
- (b) Fairness;
- (c) Efficiency;
- (d) Even distribution;
- (e) The tax system should be equitable where the minimum aspects of a fair system are:
  - (A) That it shields genuine subsistence income from taxation;
  - (B) That it is not regressive; and
  - (C) That it imposes approximately the same tax burden on all households earning the same income;
- (f) Adequacy; and
- (g) Flexibility.

(3) To meet those goals of Oregon's tax system, any tax must be considered in conjunction with the effects of all other taxes on Oregonians. [1991 c.457 §1a]

**Note:** 316.003 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**316.005** [1953 c.304 §1; repealed by 1969 c.493 §99]

**316.007 Policy.** It is the intent of the Legislative Assembly, by the adoption of this chapter, insofar as possible, to make the Oregon personal income tax law identical in effect to the provisions of the federal Internal Revenue Code relating to the measurement of taxable income of individuals, estates and trusts, modified as necessary by the state's jurisdiction to tax and the revenue needs of the state; to achieve this result by the application of the various provisions of the federal Internal Revenue Code relating to the definition of income, exceptions and exclusions therefrom, deductions (business and personal), accounting methods, taxation of trusts, estates and partnerships, basis, depreciation and other pertinent provisions relating to gross income as defined therein, modified as provided in this chapter, resulting in a final amount called "taxable income"; and to impose a tax on residents of this state measured by taxable income wherever derived and to impose a tax on the income of nonresidents that is ascribable to sources within this state. [1969 c.493 §2; 1971 s.s. c.4 §1; 1987 c.293 §1; 1989 c.625 §1]

**316.010** [1953 c.304 §2; 1953 c.552 §1; repealed by 1969 c.493 §99]

**316.012 Terms have same meaning as in federal laws.** Any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter. Any reference in this chapter to the laws of the United States or to the Internal Revenue Code means:

- (1) In the case of a reference relating to the definition of the income on, in respect to or by which the tax imposed by this

chapter is imposed or measured, the laws of the United States relating to income taxes or the Internal Revenue Code as they are in effect and applicable for the tax year of the taxpayer, except where the Legislative Assembly has specifically provided otherwise; or

(2) In the case of a reference for any other purpose, as these laws are amended and in effect on December 31, 2000, except where the Legislative Assembly has specifically provided otherwise. [1969 c.493 §3; 1971 s.s. c.4 §2; 1975 c.672 §3; 1983 c.162 §59; 1985 c.802 §1; 1987 c.293 §2; 1989 c.625 §2; 1991 c.457 §1; 1993 c.726 §27; 1995 c.556 §1; 1997 c.839 §1; 1999 c.224 §7; 2001 c.660 §35]

**316.013 Determination of federal adjusted gross income.** Unless the context requires otherwise and notwithstanding ORS 316.012, whenever, in the calculation of Oregon taxable income, reference to the taxpayer's federal adjusted gross income is required to be made, the taxpayer's federal adjusted gross income shall be as determined under the provisions of the Internal Revenue Code as they may be in effect for the tax year of the taxpayer without any of the additions, subtractions or other modifications or adjustments required under this chapter and other laws of this state applicable to personal income taxation. [1985 c.802 §3a; 1999 c.580 §3]

**316.014 Determination of net operating loss, carryback and carryforward.** (1) In the computation of state taxable income the net operating loss, net operating loss carryback and net operating loss carryforward shall be the same as that contained in the Internal Revenue Code as it exists at the close of the tax year for which the return is filed and shall not be adjusted for any changes or modifications contained in this chapter or by the case law of this state.

(2) In the case of a nonresident, the net operating loss deduction, net operating loss carryback and net operating loss carryforward shall be that described in subsection (1) of this section which is attributable to Oregon sources.

(3) If any provision in ORS 316.047 or 316.127 appears to require an adjustment to a net operating loss, net operating loss carryback or net operating loss carryforward contrary to the provisions of this section, that adjustment shall not be made. [1985 c.802 §18; 1997 c.839 §2]

**316.015** [1953 c.304 §3; 1953 c.552 §2; 1959 c.211 §3; 1959 c.593 §1 (referred and rejected); 1963 c.627 §2 (referred and rejected); repealed by 1969 c.493 §99; amended by 1969 c.520 §41]

**316.016** [1973 c.119 §2; repealed by 1975 c.672 §8]

**316.017** [1969 c.493 §3a; repealed by 1969 c.493 §3b]

**316.018 Application of Payment-in-kind Tax Treatment Act of 1983.** The Payment-in-kind Tax Treatment Act of 1983 (P.L. 98-4, as amended by section 1061 of P.L. 98-369) shall apply for purposes of determining Oregon taxable income under this chapter, notwithstanding that the Act is not part of the Internal Revenue Code. [1985 c.802 §42]

**316.019** [1985 c.802 §46; repealed by 1997 c.839 §69]

**316.020** [1953 c.304 §4; repealed by 1969 c.493 §99]

**316.021** [1985 c.802 §58; 1987 c.293 §3; renumbered 314.029 in 1993]

**316.022 General definitions.** As used in this chapter, unless the context requires otherwise:

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

(2) "Director" means the Director of the Department of Revenue.

(3) "Individual" means a natural person, including aliens and minors.

(4) A "nonresident" means an individual who is not a resident of this state.

(5) "Part-year resident" means an individual taxpayer who changes status during a tax year from resident to nonresident or from nonresident to resident.

(6) "Taxable income" means the taxable income as defined in subsection (a) or (b), section 63 of the Internal Revenue Code, with such additions, subtractions and adjustments as are prescribed by this chapter.

(7) "Taxpayer" means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by this chapter, or any employer required by this chapter to withhold personal income taxes from the compensation of employees for remittance to the state. [1969 c.493 §§4,5,6,7,9 and 1969 c.520 §42b; 1985 c.141 §2; 1987 c.293 §4]

**316.023** [1987 c.293 §§71,72,73; renumbered 314.033 in 1993]

**316.024 Application of federal law to determination of taxable income.** Section 243 of the Tax Reform Act of 1986 (P.L. 99-514) shall not apply for purposes of determining taxable income under this chapter. [1987 c.293 §12a]

**316.025** [1953 c.304 §5; repealed by 1957 c.632 §1 (314.075 and 314.080 enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

**316.027 “Resident” defined.** (1) For purposes of this chapter, unless the context requires otherwise:

(a) “Resident” or “resident of this state” means:

(A) An individual who is domiciled in this state unless the individual:

(i) Maintains no permanent place of abode in this state;

(ii) Does maintain a permanent place of abode elsewhere; and

(iii) Spends in the aggregate not more than 30 days in the taxable year in this state; or

(B) An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in this state unless the individual proves that the individual is in the state only for a temporary or transitory purpose.

(b) “Resident” or “resident of this state” does not include:

(A) An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;

(B) A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in this state; or

(C) A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.

(2) For purposes of subsection (1)(a)(B) of this section, a fraction of a calendar day shall be counted as a whole day. [1969 c.493 §8; 1987 c.158 §49; 1995 c.79 §165; 1999 c.1096 §1]

**316.030** [1953 c.304 §6; repealed by 1957 c.632 §1 (314.075 and 314.080 enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

**316.032 Department to administer law; policy as to federal conflicts and technical corrections.** (1) The Department of Revenue shall administer and enforce this chapter.

(2) Insofar as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall follow the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer.

(3) When portions of the Internal Revenue Code incorporated by reference as provided in ORS 316.007 or 316.012 refer to rules or regulations prescribed by the Secretary of the Treasury, then such rules or regulations shall be regarded as rules adopted by the department under and in accordance with the provisions of this chapter, whenever they are prescribed or amended.

(4)(a) When portions of the Internal Revenue Code incorporated by reference as provided in ORS 316.007 or 316.012 are later corrected by an Act or a Title within an Act of the United States Congress designated as an Act or Title making technical corrections, then notwithstanding the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided in ORS 316.007 or 316.012 and shall take effect, unless otherwise indicated by the Act or Title (in which case the provisions shall take effect as indicated in the Act or Title), as if originally included in the provisions of the Act being technically corrected. If, on account of this subsection, any adjustment is required to an Oregon return that would otherwise be prevented by operation of law or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135.

(b) As used in this subsection, “Act or Title” includes any subtitle, division or other part of an Act or Title. [1969 c.493 §10; 1985 c.802 §1a; 1987 c.293 §5; 1997 c.839 §3]

**316.035** [1953 c.304 §117; repealed by 1969 c.493 §99 and 1969 c.520 §49]

**316.037 Imposition and rate of tax.** (1)(a) A tax is imposed for each taxable year on the entire taxable income of every resident of this state. The amount of the tax shall be determined in accordance with the following table:

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If taxable income is:	The tax is:
Not over \$2,000 .....	5% of taxable income
Over \$2,000 but not over \$5,000.....	\$100 plus 7%

of the excess  
over \$2,000

Over \$5,000..... \$310 plus 9%  
of the excess  
over \$5,000

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(b) For tax years beginning in each calendar year, the Department of Revenue shall adopt a table which shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

(A) The minimum and maximum dollar amounts for each rate bracket for which a tax is imposed shall be increased by the cost-of-living adjustment for the calendar year.

(B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this paragraph shall not be changed.

(C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the rate brackets, shall be adjusted.

(c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged index for the second quarter of the calendar year 1992.

(d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50, the increase shall be rounded to the next lowest multiple of \$50.

(2) A tax is imposed for each taxable year upon the entire taxable income of every part-year resident of this state. The amount of the tax shall be computed under subsection (1) of this section as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources within this state.

(3) A tax is imposed for each taxable year on the taxable income of every full-year nonresident that is derived from sources within this state. The amount of the tax shall be determined in accordance with the table set forth in subsection (1) of this section. [1969 c.493 §11; 1975 c.674 §1; 1977 c.872 §1; 1979 c.649 §1; 1983 c.684 §23; 1985 c.141 §1; 1987 c.293 §6; 1991 c.457 §1b; 2001 c.660 §11]

**Note:** Section 13, chapter 660, Oregon Laws 2001, provides:

**Sec. 13.** The amendments to ORS 315.262, 316.037 and 316.085 by sections 10 to 12 of this 2001 Act apply to tax years beginning on or after January 1, 2002. [2001 c.660 §13]

**316.040** [1953 c.304 §7; repealed by 1969 c.493 §99]

**316.042 Amount of tax where joint return used.** In the case of a joint return of husband and wife, pursuant to ORS 316.122 or pursuant to ORS 316.367, the tax imposed by ORS 316.037 shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section, a return of a head of household or a surviving spouse, as defined in subsections (a) and (b) of section 2 of the Internal Revenue Code, shall be treated as a joint return of husband and wife. [1969 c.493 §12; 1975 c.674 §2; 1987 c.293 §7; 1987 c.647 §10]

**316.045 Tax rate imposed on certain long-term capital gain from farming; requirements.** (1) As used in this section:

(a) "Farming" means:

(A) Raising, harvesting and selling crops;

(B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

(C) Dairying and selling dairy products;

(D) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

(E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(F) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

(G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land employed in activities described in this subsection; or

(H) Any other agricultural or horticultural activity or animal husbandry, or any combination of these activities, except that "farming" does not include growing and harvesting trees of a marketable species other than growing and harvesting cultured Christmas trees or certain hardwood timber described in ORS 321.267 (1)(e) or 321.415 (5).

(b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue Code.

(2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

- (a) The gain is:
    - (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned at least a 10 percent ownership interest; or
    - (B) Section 1231 gain.
  - (b) The property that was sold or exchanged consisted of:
    - (A) Ownership interests in a corporation, partnership or other entity that is engaged in the trade or business of farming; or
    - (B) Property that is predominantly used in the trade or business of farming.
  - (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of the Internal Revenue Code.
  - (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's ownership interests in a trade or business that is engaged in farming or a substantially complete termination of all of the taxpayer's ownership interests in property that is employed in the trade or business of farming. Ownership of a farm dwelling or farm homesite does not constitute ownership of property employed in the trade or business of farming.
- (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of property described in subsection (2)(b) of this section and in part from the sale or exchange of all other property, the net long-term capital gain that is subject to tax under this section shall be determined as follows:
- (a) Compute the net long-term capital gain derived from all property described in subsection (2)(b) of this section that was sold or exchanged during the tax year.
  - (b) Compute the net capital gain or loss from the sale or exchange of all other property during the tax year.
  - (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection.
  - (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain that is subject to tax under subsection (2) of this section shall be the amount determined under paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection. [2001 c.545 §2]

**Note:** Section 6, chapter 545, Oregon Laws 2001, provides:

**Sec. 6.** Sections 2 and 4 of this 2001 Act [316.045 and 317.063] and the amendments to ORS 318.020 by section 5 of this 2001 Act apply to net long-term capital gain incurred from the sale or exchange of property in tax years beginning on or after January 1, 2002. [2001 c.545 §6]

**316.047 Transitional provision to prevent doubling income or deductions.** If any provision of the Internal Revenue Code or of this chapter requires that any amount be added to or deducted from federal gross income or the net income taxable under this chapter that previously had been added to or deducted from net income taxable under the Oregon law in effect prior to the taxpayer's taxable year as to which this chapter is first effective, then, in such event, appropriate adjustment shall be made to the net income for the year or years subject to this chapter so as to prohibit the double taxation or the double deduction of any such amount that previously had entered into the computation of taxable income. Differences such as the difference in basis of property used by the taxpayer for federal and Oregon income tax returns and on account of the treatment of operating losses shall be resolved by application of this principle. However, the Department of Revenue, in its audit of a return, shall not apply any adjustment under this section which, in its opinion, if applied would result in an increase or decrease of tax liability of less than \$25. [1969 c.493 §13; 1987 c.293 §8]

**316.048 Taxable income of resident.** The entire taxable income of a resident of this state is the federal taxable income of the resident as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter and other laws of this state applicable to personal income taxation. [Formerly 316.062; 1999 c.580 §4]

**316.049** [1977 c.755 §2; renumbered 316.777]

**316.050** [1977 c.553 §2; renumbered 316.783]

**316.051** [1977 c.390 §2; renumbered 316.788]

**316.052** [1977 c.390 §3; 1979 c.691 §2; renumbered 316.794]

**316.053** [1977 c.390 §4; renumbered 316.799]

**316.054 Social Security benefits to be subtracted from federal taxable income.** In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any Social Security benefits, as defined in section 86 of the Internal Revenue Code (Title II social security or tier 1 railroad retirement benefits) included in gross income for federal income tax purposes under section 86 of the Internal Revenue Code. [1985 c.154 §2; 1997 c.839 §4]

**316.055** [1953 c.304 §8; 1953 c.552 §3; 1957 s.s. c.15 §1; 1963 c.627 §3 (referred and rejected); repealed by 1969 c.493]

§99]

**316.056 Interest or dividends on municipal obligations subtracted from federal taxable income.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the interest or dividends on obligations of counties, cities, districts, ports or other public or municipal corporations or political subdivisions of this state, to the extent includable in gross income for federal income tax purposes. However, the amount subtracted under this section shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this section, and by any expenses incurred in the production of interest or dividend income described in this section. [1987 c.293 §23b; 1989 c.988 §1]

**316.057** [1977 c.872 §8; renumbered 316.806]

**316.058** [1977 c.872 §9; renumbered 316.812]

**316.059** [1977 c.872 §10; renumbered 316.818]

**316.060** [1953 c.304 §9; 1955 c.596 §1; part derived from 1955 c.596 §4; 1957 c.586 §1; 1957 s.s. c.15 §2; 1959 c.593 §2 (referred and rejected); 1963 c.627 §4 (referred and rejected); 1963 c.627 §4 (referred and rejected); repealed by 1969 c.493 §99; amended by 1969 c.520 §42]

**316.061** [1979 c.887 §2; renumbered 316.824]

**316.062** [1969 c.493 §14; renumbered 316.048]

**316.063** [1979 c.887 §§3,4; renumbered 316.832]

**316.064** [1979 c.707 §2; renumbered 316.838]

**316.065** [1953 c.304 §10; repealed by 1959 c.593 §14 (referred and rejected); repealed by 1963 c.627 §23 (referred and rejected); repealed by 1969 c.493 §99]

**316.066** [1973 c.753 §2; repealed by 1979 c.414 §7]

**316.067** [1969 c.493 §15; 1971 c.686 §12; 1971 c.736 §1; 1973 c.1 §1; 1973 c.88 §1; 1973 c.402 §18; 1973 c.753 §3; 1977 c.784 §1; 1979 c.414 §5; 1979 c.436 §1; 1979 c.579 §7; 1983 c.381 §1; renumbered 316.680]

**316.068** [1975 c.672 §§2,2a,10b,13; subsection (7) enacted as 1975 c.650 §2; 1977 c.795 §10; 1977 c.872 §12; 1978 c.9 §1; 1979 c.240 §1; 1979 c.436 §6; 1981 c.679 §1; 1981 c.896 §1; 1983 c.684 §6; renumbered 316.695]

**316.069** [1981 c.778 §34; renumbered 316.744]

**316.070** [1953 c.304 §13; repealed by 1969 c.493 §99]

**316.071** [1981 c.801 §2; renumbered 316.690]

**316.072** [1969 c.467 §6; 1979 c.376 §1; 1981 c.705 §1; renumbered 316.685]

**316.073** [1975 c.672 §12; repealed by 1991 c.457 §24]

**316.074 Exemption for service in Vietnam on missing status.** (1) Any compensation or gratuity received from any source by any individual by reason of civilian or military service on and after February 28, 1961, during the Vietnam conflict, for any month during any part of which such individual is in a missing status as a result of that conflict, is exempt from tax under this chapter. Any such compensation or gratuity is exempt from tax without regard to:

- (a) The identity of the recipient of the compensation or gratuity;
- (b) The death of the individual whose service in a missing status results in payment of the compensation or the gratuity; or
- (c) A date of death established for the individual whose service in a missing status results in payment of the compensation or the gratuity.

(2) As used in this section:

- (a) "Compensation" does not include any pension or retirement allowance.
- (b) "Missing status" means the status of an individual who is carried or determined to be in a status of missing; missing in action; interned in a foreign country; captured, beleaguered or besieged by a hostile force; or detained in a foreign country

against the will of the individual. "Missing status" does not include the status of an individual for a period during which the individual is officially determined to be absent from a post of duty without authority.

(3) In addition to the income tax relief provided by this section, any provision in the laws of the United States or in the Internal Revenue Code providing income tax relief for returning prisoners of war, persons in a missing status, their spouses, heirs, devisees or executors shall apply to the measurement of the taxable income of individuals, estates and trusts. [1973 c.475 §§2,3; 1975 c.672 §4; 1997 c.839 §5]

**316.075** [1953 c.304 §11; 1953 c.522 §4; 1959 c.593 §3 (referred and rejected); 1963 c.627 §5 (referred and rejected); repealed by 1969 c.493 §99]

**316.076 Deduction for physician in medically disadvantaged area.** (1) Any person who becomes licensed under ORS chapter 677 on or after January 1, 1974, and prior to January 1, 1982, and enters the practice of medicine in any medically disadvantaged area of this state may deduct as an expense from income earned from the practice of medicine an amount equal to the annual expense incurred for each year in attending medical school, including tuition, fees, living expenses and other actual and necessary expenses, but not to exceed \$10,000 for any year.

(2) In order to qualify for the exemption granted by subsection (1) of this section, the person must apply to the Department of Revenue on or before April 15, following the first tax year for which the deduction is claimed on a form prescribed by the department and accompanied by evidence from the Board of Medical Examiners for the State of Oregon that the area in which the person is practicing was medically disadvantaged when the physician entered practice there.

(3) The deduction authorized by subsection (1) of this section shall be applicable for four tax years. [1973 c.644 §6; 1979 c.699 §1]

**316.077** [1969 c.493 §16; renumbered 316.697]

## CREDITS

**316.078 Tax credit for dependent care expenses necessary for employment.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to a percentage of employment-related expenses allowable pursuant to section 21 of the Internal Revenue Code, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code. The percentage shall be determined on the basis of federal taxable income, as defined in section 63 of the Internal Revenue Code and as reflected on the federal return, whether or not a joint return, of the taxpayer for the taxable year, in accordance with the following table:

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If federal taxable income is:	The percentage is:
Not over \$5,000.....	30%
Over \$5,000 but not over \$10,000.....	15%
Over \$10,000 but not over \$15,000.....	8%
Over \$15,000 but not over \$25,000.....	6%
Over \$25,000 but not over \$35,000.....	5%
Over \$35,000 but not over \$45,000.....	4%
Over \$45,000.....	0%

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(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be

carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. [1975 c.672 §15a; 1977 c.872 §3; 1979 c.691 §4; 1983 c.684 §9; 1985 c.802 §4; 1987 c.293 §10; 1989 c.625 §7; 1989 c.1047 §11; 1991 c.457 §2; 1993 c.726 §28; 1997 c.839 §6; 1999 c.90 §8; 2001 c.660 §36]

**316.079 Credit for certain disabilities.** A \$50 credit, against income taxes owed, shall be allowed a taxpayer who as of the close of the taxable year has suffered a permanent and complete loss of function of both legs or both arms or one leg and one arm as certified to by a public health officer. The certificate shall be in a form prescribed by the Department of Revenue and shall be filed with the first return in which the credit is claimed. [1973 c.120 §2]

**316.080** [1953 c.304 §12; renumbered 316.475]

**316.081** [1973 c.503 §15; 1975 c.705 §11; 1981 c.502 §1; renumbered 316.844]

**316.082 Credit for taxes paid another state.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, or on an Oregon S corporation or Oregon partnership of which the individual is a member (to the extent of the individual's pro rata share of the S corporation or distributive share of the partnership), for the tax year by another state on income derived from sources therein and that is also subject to tax under this chapter.

(2) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the modified adjusted gross income of the taxpayer derived from sources in the other state bears to the entire modified adjusted gross income of the taxpayer.

(3) The Department of Revenue shall provide by rule the procedure for obtaining credit provided by this section and the proof required. The requirement of proof may be waived partially, conditionally or absolutely, as provided under ORS 315.063.

(4) No credit allowed under this section or ORS 316.292 shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax upon which the credit is based is restored to income on the Oregon return.

(5) Credit shall not be allowed under this section for income taxes paid to a state that allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence. It is the purpose of this subsection to avoid duplicative taxation through use of a nonresident, rather than a resident, credit for taxes paid or payable to another state.

(6) The Department of Revenue may adopt rules under this section that provide a credit against the tax imposed by this chapter when the department considers the credit necessary to avoid taxation of the same income by this state and another state.

(7) As used in this section:

(a) "Modified adjusted gross income" means federal adjusted gross income as modified by this chapter and the other laws of this state applicable to personal income taxation.

(b) "Oregon partnership" means an entity that is treated as a partnership for Oregon excise and income tax purposes.

(c) "Oregon S corporation" means a corporation that has elected S corporation status for Oregon excise and income tax purposes.

(d) "State" means a state, district, territory or possession of the United States.

(8) For purposes of this section:

(a) A direct tax imposed upon income of an Oregon S corporation is an income tax imposed on the Oregon S corporation.

(b) An excise tax that is measured by income of an Oregon S corporation is an income tax imposed on the Oregon S corporation.

(c) An excise tax is measured by income only if the statute imposing the excise tax provides that the base for the excise tax:

(A) Includes revenue from sales and from services rendered, and income from investments; and

(B) Permits a deduction for the cost of goods sold and the cost of services rendered. [1969 c.493 §17; 1981 c.801 §3; 1987 c.647 §11; 1991 c.838 §6; 1993 c.726 §28a; 1995 c.54 §7; 1999 c.74 §5; 2001 c.9 §1]

**Note:** Section 3, chapter 9, Oregon Laws 2001, provides:

**Sec. 3.** The amendments to ORS 316.082 and 316.131 by sections 1 and 2 of this 2001 Act apply to:

(1) Tax years beginning on or after January 1, 2001;

(2) Any tax year for which the Department of Revenue may issue a notice of deficiency or a refund on the effective date of this 2001 Act [October 6, 2001]; and

(3) Any tax year for which a proceeding is pending before the Regular Division or Magistrate Division of the Oregon Tax Court on the effective date of this 2001 Act. [2001 c.9 §3]

**316.083 Exception to ORS 316.844.** ORS 316.844 shall not apply in any case in which a carryover basis for certain property acquired from a decedent dying after December 31, 1976, is provided by section 1014 of the Internal Revenue Code.

[1977 c.666 §35; 1995 c.556 §2]

**316.084** [1981 c.720 §16; 1983 c.684 §10; 1991 c.877 §1; repealed by 1993 c.730 §9 (315.134 enacted in lieu of 316.084, 317.133 and 318.080)]

**316.085 Personal exemption credit.** (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due under this chapter. The credit shall equal \$90 multiplied by the number of personal exemptions allowed under section 151 of the Internal Revenue Code.

(b) In the case of an individual with respect to whom a credit under paragraph (a) of this subsection is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to such individual for such individual's taxable year is zero.

(2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section computed in the same manner and subject to the same limitations as the credit allowed to a resident of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) The Department of Revenue shall recompute the dollar amount of the personal exemption credit allowed for state personal income tax purposes. The computation shall be as follows:

(a) Divide the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year by the monthly averaged index for the first six months of 1986.

(b) Recompute the dollar amount of the personal exemption credit by multiplying \$90 by the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the amount obtained under this paragraph to the nearest \$1.

(4) As used in this section, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(5) For purposes of determining if a personal exemption credit or an additional personal exemption credit is allowable under this chapter or determining the number of personal exemption credits allowed, section 151(d)(3) of the Internal Revenue Code shall be disregarded. [1985 c.345 §§2,3; 1987 c.293 §13; 1991 c.457 §2a; 1997 c.839 §8; 1999 c.90 §9; 2001 c.660 §12]

**Note:** See note under 316.037.

**316.086** [1979 c.733 §2; 1983 c.684 §11; 1989 c.880 §12; repealed by 1995 c.746 §22]

**316.087 Credit for the elderly or permanently and totally disabled.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to 40 percent of the credit for the elderly or the permanently and totally disabled allowable pursuant to section 22 of the Internal Revenue Code, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code.

(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(5) No credit shall be allowed under this section for the taxable year if the taxpayer claims the credit allowed under ORS 316.157. [1969 c.493 §18; 1971 c.736 §2; 1977 c.872 §4; 1979 c.691 §5; 1983 c.684 §12; 1985 c.802 §5; 1987 c.293 §14; 1987 c.545 §1; 1989 c.625 §8; 1991 c.457 §3; 1991 c.823 §2; 1993 c.726 §29; 1997 c.839 §9; 1999 c.90 §10; 2001 c.660 §37]

**316.088** [1977 c.811 §2; 1979 c.534 §1; 1981 c.894 §1; 1983 c.684 §13; 1989 c.648 §64; repealed by 1991 c.877 §41]

**316.089** [1977 c.852 §2; 1979 c.622 §2; 1985 c.521 §3; repealed by 1993 c.730 §15 (315.154 enacted in lieu of 316.089)]

**316.091** [1977 c.852 §3; 1979 c.622 §3; 1985 c.630 §1; repealed by 1993 c.730 §17 (315.156 enacted in lieu of 316.091, 317.148 and 318.104)]

**316.092** [1969 c.493 §19; repealed by 1973 c.402 §30]

**316.093** [1977 c.839 §8; 1979 c.412 §5a; repealed by 1987 c.769 §20]

**316.094** [1979 c.578 §7; 1985 c.749 §1; 1987 c.605 §1; 1989 c.887 §1; 1991 c.714 §6; 1991 c.877 §2; repealed by 1993 c.730 §7 (315.104 enacted in lieu of 316.094, 317.102 and 318.110)]

**316.095 Credit for sewage treatment works connection costs.** (1) A resident individual shall be allowed a credit of \$800 against the taxes otherwise due under this chapter, for installing or connecting to a sewage treatment works if:

- (a) Required by an order issued, before July 1, 1989, under ORS 454.275 to 454.380 or ORS chapters 468, 468A and 468B;
- (b) Required by a rule adopted, before July 1, 1989, by the Environmental Quality Commission;
- (c) Required by, installed or connected pursuant to the terms of an intergovernmental agreement, entered into before July 1, 1989, between a local governing body and the Environmental Quality Commission; or
- (d) Required by an order from the Assistant Director for Health under ORS 222.840 to 222.915 or 431.705 to 431.760 issued after January 1, 1988, and before July 1, 1995.

(2) To qualify for the credit under this section:

- (a) Subject to subsection (4) of this section, the credit must be claimed for the year in which the connection is made or the costs are incurred. The credit applies to installations or connections made on or after January 1, 1985.
- (b) The taxpayer who is allowed the credit must be the person who actually expended funds for construction or installation of the project.
- (c) The treatment works must be required by an order or rule of the Environmental Quality Commission, required by, installed or connected consistent with an intergovernmental agreement between a local governing body and the Environmental Quality Commission or required by an order or finding from the Assistant Director for Health under ORS 222.840 to 222.915 or 431.705 to 431.760.

(d) The residence connected to the treatment works must be the principal residence of, and owned by, the taxpayer claiming the credit.

(3) The credit allowed in any one year shall not exceed one-fifth of the total amount of the credit granted under this section per qualifying residence or the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

(6) The tax claim for tax credit shall be substantiated by submission, with the tax return, of receipt of payment by the taxpayer. For purposes of this subsection, "receipt of payment" means a canceled check or an actual receipt for payment issued by the installing or constructing entity and issued on the date the payment is or was actually acknowledged. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063.

(7) This section applies for costs actually incurred for installing or connecting to a sewage treatment works pursuant to an order, rule or intergovernmental agreement of the Environmental Quality Commission under ORS 454.275 to 454.380 or ORS chapters 468, 468A and 468B. [1987 c.890 §§2,3; 1989 c.953 §1; 1991 c.781 §1; 1995 c.54 §8]

**316.096** [1987 c.591 §13; 1989 c.381 §§8,11,14; 1991 c.877 §§3,4,5; 1991 c.916 §§14,16,17; 1993 c.18 §§77,78,79; repealed by 1997 c.170 §33]

**316.097** [See 316.480; 1973 c.831 §8; 1977 c.795 §11; 1977 c.866 §10; 1979 c.691 §6; 1981 c.408 §1; 1983 c.637 §6; 1987 c.596 §2; 1989 c.802 §2; 1991 c.877 §6; repealed by 1993 c.730 §29 (315.304 enacted in lieu of 316.097 and 317.116)]

**316.098** [1985 c.438 §2; 1991 c.877 §9; repealed by 1993 c.730 §13 (315.148 enacted in lieu of 316.098, 317.150 and 318.102)]

**316.099 Credit for early intervention services for disabled child.** (1) As used in this section, unless the context requires otherwise:

- (a) "Early intervention services" means programs of treatment and habilitation designed to address a child's developmental deficits in sensory, motor, communication, self-help and socialization areas.
- (b) "Disabled child" means a child from the age of identification of the disability to the age of 18 who has been determined eligible for early intervention services or is diagnosed for the purposes of special education as being mentally retarded,

multidisabled, visually impaired, hearing impaired, deaf-blind, orthopedically impaired or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in accordance with State Board of Education rules.

(c) "Special education" means specially designed instruction to meet the unique needs of a disabled child, including regular classroom instruction, instruction in physical education, home instruction and instruction in hospitals, institutions and special schools.

(2) The State Board of Education shall adopt rules further defining "disabled child" for purposes of this section. A diagnosis obtained for the purposes of entitlement to special education or early intervention services shall serve as the basis for a claim for the additional credit allowed under subsection (3) of this section.

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent child of the taxpayer, there shall be allowed an additional personal exemption credit for a disabled child if the child is a disabled child at the close of the tax year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the dependent child for state personal income tax purposes for the tax year.

(4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section may claim the credit on the personal income tax return. However, the claim shall be substantiated by any proof of entitlement to the credit as may be required by the state board by rule. [1985 c.531 §2; 1987 c.293 §15; 1989 c.224 §50a; 1989 c.491 §1; 1993 c.777 §7; 1993 c.813 §6; 1999 c.989 §29; 2001 c.114 §35]

**316.102 Credit for political contributions.** (1) A credit against taxes shall be allowed for voluntary contributions in money made in the taxable year:

(a) To a major political party qualified under ORS 248.006 or to a committee thereof or to a minor political party qualified under ORS 248.008 or to a committee thereof.

(b) To or for the use of a person who must be a candidate for nomination or election to a federal, state or local elective office in any primary election, general election or special election in this state. The person must, in the calendar year in which the contribution is made, either be listed on a primary election, general election or special election ballot in this state or have filed in this state one of the following:

- (A) A prospective petition;
- (B) A declaration of candidacy;
- (C) A certificate of nomination; or
- (D) A designation of a principal campaign committee.

(c) To a political committee, as defined in ORS 260.005, if the political committee has certified the name of its treasurer to the filing officer, as defined in ORS 260.005, in the manner provided in ORS chapter 260.

(2) The credit allowed by subsection (1) of this section shall be the lesser of:

(a) The total contribution, not to exceed \$50 on a separate return; the total contribution, not to exceed \$100 on a joint return; or

(b) The tax liability of the taxpayer.

(3) The claim for tax credit shall be substantiated by submission, with the tax return, of official receipts of the candidate, agent, political party or committee thereof or political committee to whom contribution was made. [1969 c.432 §2; 1973 c.119 §3; 1975 c.177 §1; 1977 c.268 §1; 1979 c.190 §413; 1985 c.802 §6; 1987 c.293 §16; 1989 c.986 §1; 1993 c.797 §27; 1995 c.1 §19; 1995 c.712 §104; 1999 c.999 §27]

**316.103** [1985 c.684 §12; 1989 c.765 §1; 1989 c.958 §10; 1991 c.877 §7; repealed by 1993 c.730 §31 (315.324 enacted in lieu of 316.103 and 317.106)]

**316.104** [1987 c.911 §8b; 1991 c.877 §8; repealed by 1993 c.730 §37 (315.504 enacted in lieu of 316.104 and 317.140)]

**316.105** [1953 c.304 §14; 1953 c.552 §5; repealed by 1969 c.493 §99]

**316.106** [1967 c.274 §7; repealed by 1969 c.493 §99]

**316.107** [1969 c.493 §20; 1973 c.402 §19; 1985 c.802 §7; repealed by 1993 c.730 §3 (315.054 enacted in lieu of 316.107)]

**316.108** [1967 c.118 §2; repealed by 1969 c.493 §99]

**316.109 Credit for tax by another jurisdiction on sale of residential property.** (1) If gain on the sale of residential property is taxed under this chapter, the adjusted basis of the property for purposes of this chapter shall be the same as its adjusted basis for federal income tax purposes.

(2) A credit against the tax otherwise due under this chapter shall be allowed to the taxpayer for the amount of any taxes imposed on the taxpayer by another state of the United States, a foreign country or the District of Columbia which tax is attributable to gain that is subject to tax as described in subsection (1) of this section.

(3) The amount of the credit allowed under subsection (2) of this section may not exceed the amount of the gain taxed by the other taxing jurisdiction multiplied by eight percent.

(4) The Department of Revenue shall provide by rule the procedure for obtaining credit provided by subsection (2) of this section and the proof required. The requirement of proof may be waived partially, conditionally or absolutely, as provided under ORS 315.063.

(5) Any credit allowed under subsection (2) of this section may not be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction for Oregon personal income tax purposes, unless the tax is restored to income on the Oregon return. [1979 c.579 §2; 1981 c.705 §2; 1995 c.54 §10; 2001 c.114 §36]

**316.110** [1953 c.304 §15; 1953 c.552 §6; 1957 c.582 §1; 1961 c.506 §1; 1963 c.253 §1; repealed by 1969 c.493 §99]

**316.111** [1965 c.360 §2; repealed by 1969 c.493 §99]

**316.112** [1959 c.211 §2; 1963 c.627 §5 (referred and rejected); repealed by 1969 c.493 §99]

**316.113** [1967 c.61 §2; repealed by 1969 c.493 §99]

**316.114** [1967 c.449 §2; repealed by 1969 c.493 §99]

**316.115** [1953 c.304 §16; 1959 c.555 §1; subsection (4) derived from 1959 c.555 §2; repealed by 1969 c.493 §99]

**316.116 Credit for alternative energy device, energy efficient appliance, alternative fuel vehicle or alternative fuel device.** (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred for construction or installation of an alternative energy device in a dwelling.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related equipment.

(2)(a) Except in the case of an alternative fuel device, the credit shall be based upon the first year energy yield of the alternative energy device that qualifies under ORS 469.160 to 469.180. The amount of the credit shall be the same whether for collective or noncollective investment.

(b) The credit allowed under this section for each dwelling shall not exceed the lesser of:

(A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1990, and before January 1, 1996.

(B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1996, and before January 1, 1998.

(C) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998.

(c) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed under this section shall be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to:

(A) \$1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.

(B) \$1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.

(C) \$1,500 for tax years beginning on or after January 1, 1998.

(d) For an alternative fuel device, the credit allowed under this section is 25 percent of the cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed in service on or after January 1, 1998.

(3)(a) In the case of a credit for an alternative energy device that is an energy efficient appliance, the credit allowed to a resident individual under this section shall equal:

(A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999; and

(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000 for each tax year beginning on or after January 1, 1999.

(b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient appliance shall not exceed 25 percent of the cost of the appliance.

(4) To qualify for a credit under this section, all of the following are required:

(a) The alternative energy device must be purchased, constructed, installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

(b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the contract purchaser and must:

(A) Use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence; or

(B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant who uses the dwelling or

dwellings as a principal or secondary residence, unless the basis for the credit is the installation of an energy efficient appliance. If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(c) In the case of an alternative fuel device, if the device is a fueling station necessary to operate an alternative fuel vehicle, unless the verification form and certificate are transferred as authorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling station in the dwelling. If the alternative energy device is an alternative fuel vehicle, the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the alternative energy device is related equipment, the credit may be claimed by the owner or contract purchaser.

(d) The credit must be claimed for the tax year in which the alternative energy device was purchased if the system is operational by April 1 of the next following tax year.

(5) The credit provided by this section shall not affect the computation of basis under this chapter.

(6) The credit allowed under this section in any one year shall not exceed the tax liability of the taxpayer.

(7) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(8) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(11) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in a separate principal residence may claim the tax credit in the same amount as permitted a single person.

(12) As used in this section, unless the context requires otherwise:

(a) "Collective investment" means an investment by two or more taxpayers for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(b) "First year energy yield" has the meaning given in ORS 469.160.

(c) "Noncollective investment" means an investment by an individual taxpayer for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(13) As used in this section, "taxpayer" includes a transferee of a verification form under ORS 469.170 (8).

(14) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit allowed under subsection (1) of this section plus any similar credit allowed for federal income tax purposes shall not exceed the cost to the taxpayer for the acquisition, construction and installation of the alternative energy device. [1977 c.196 §8; 1979 c.670 §2; 1981 c.894 §3; 1983 c.684 §14; 1983 c.768 §1; 1987 c.492 §1; 1989 c.626 §6; 1989 c.880 §§9,11; 1995 c.746 §19; 1997 c.325 §41; 1997 c.534 §3; 1999 c.21 §41; 1999 c.623 §1]

## TAXATION OF NONRESIDENTS

### **316.117 Proration between Oregon income and other income for nonresidents, part-year residents and trusts.** (1)

Except as provided under subsection (2) of this section, the proportion for making a proration for nonresident taxpayers of the standard deduction or itemized deductions, the personal exemption credits and any accrued federal or foreign income taxes, or for part-year resident taxpayers of the amount of the tax, between Oregon source income and income from all other sources is the federal adjusted gross income of the taxpayer from Oregon sources divided by the taxpayer's federal adjusted gross income from all sources. If the numerator of the fraction described in this subsection is greater than the denominator, the proportion of 100 percent shall be used in the proration required by this section. As used in this subsection, "federal adjusted gross income" means the federal adjusted gross income of the taxpayer with the additions, subtractions and other modifications to federal taxable income that relate to adjusted gross income for personal income tax purposes.

(2) For part-year resident trusts, the proration made under this section shall be made by reference to the taxable income of the fiduciary. [1969 c.493 §21; 1971 c.672 §1; 1973 c.269 §1; 1975 c.672 §5; 1977 c.872 §5; 1981 c.801 §4; 1983 c.684 §15; 1985 c.141 §5; 1987 c.293 §17; 1999 c.580 §5]

**316.118 Pro rata share of S corporation income of nonresident shareholder.** (1) The pro rata share of S corporation income of a nonresident shareholder constitutes income or loss derived from or connected with sources in this state as provided in ORS 316.127 (5).

(2) In determining the pro rata share of S corporation income of a nonresident shareholder, there shall be included only that

part derived from or connected with sources in this state of the shareholder's distributive share of items of S corporation income, gain, loss and deduction (or item thereof) entering into the federal adjusted gross income of the shareholder, as such part is determined under rules adopted by the Department of Revenue in accordance with the general rules under ORS 316.127.

(3) Any modifications, additions or subtractions to federal taxable income described in this chapter that relates to an item of S corporation income, gain, loss or deduction (or item thereof) shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes of the item to which the modification, addition or subtraction relates, but limited to the portion of such item derived from or connected with sources in this state.

(4) A nonresident shareholder's pro rata share of items of income, gain, loss or deduction (or item thereof) shall be determined under ORS 314.734 (1). The character of shareholder items for a nonresident shareholder shall be determined under ORS 314.734 (2). [1989 c.625 §52; 1991 c.877 §11]

**316.119 Proration of part-year resident's income between Oregon income and other income.** For purposes of ORS 316.117, the adjusted gross income of a part-year resident from Oregon sources is the sum of the following:

(1) For the portion of the year in which the taxpayer was a resident of Oregon, the taxpayer's entire adjusted gross income.

(2) For the portion of the year in which the taxpayer was a nonresident, the taxpayer's adjusted gross income derived from sources within this state as determined under ORS 316.127. [1993 c.726 §31]

**316.122 Separate or joint determination of income for husband and wife.** (1) If the federal taxable income of husband and wife (one being a part-year resident and the other a nonresident) is determined on a joint federal return, their taxable income in this state shall be separately determined, unless they elect to file a joint return, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (3).

(2) If the federal taxable income of husband and wife (one being a full-year resident and the other a part-year resident) is determined on a joint federal return, their taxable income in this state shall be separately determined, unless they elect to file a joint return, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (2).

(3) If the federal taxable income of husband and wife (one being a full-year resident and the other a nonresident) is determined on a joint federal return, their taxable income in the state shall be separately determined, unless they elect to file a joint return, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (3).

(4) For purposes of computing the tax of a husband and wife under this section, if one of the spouses is a full-year resident individual, then as used in ORS 316.037 (2) or (3), that spouse's taxable income derived from Oregon sources is that spouse's entire federal taxable income, defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter and other laws of this state applicable to personal income taxation.

(5) The provisions of ORS 316.367 with respect to joint returns apply if both husband and wife are part-year residents or full-year nonresidents. [1969 c.493 §22; 1985 c.802 §8; 1987 c.647 §3; 1999 c.580 §6]

**316.124 Determination of adjusted gross income of nonresident partner.** (1) In determining the adjusted gross income of a nonresident partner of any partnership, there shall be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss and deduction (or item thereof) entering into the federal adjusted gross income of the partner, as such part is determined under rules adopted by the Department of Revenue in accordance with the general rules in ORS 316.127.

(2) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this state, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(b) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than the proportionate share of the partner, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Any modification to federal taxable income described in this chapter that relates to an item of partnership income, gain, loss or deduction (or item thereof) shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

(4) The department may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

(5) A nonresident partner's distributive share of items of income, gain, loss or deduction (or item thereof) shall be determined under ORS 314.714 (2). The character of partnership items for a nonresident partner shall be determined under ORS 314.714 (1). [1989 c.625 §32 (enacted in lieu of 316.352)]

**316.125** [1953 c.304 §17; repealed by 1969 c.493 §99]

**316.127 Income of nonresident from Oregon sources.** (1) The adjusted gross income of a nonresident derived from sources within this state is the sum of the following:

(a) The net amount of items of income, gain, loss and deduction entering into the nonresident's federal adjusted gross income that are derived from or connected with sources in this state including (A) any distributive share of partnership income and deductions and (B) any share of estate or trust income and deductions; and

(b) The portion of the modifications, additions or subtractions to federal taxable income provided in this chapter and other laws of this state that relate to adjusted gross income derived from sources in this state for personal income tax purposes, including any modifications attributable to the nonresident as a partner.

(2) Items of income, gain, loss and deduction derived from or connected with sources within this state are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state;

(b) A business, trade, profession or occupation carried on in this state; and

(c) A taxable lottery prize awarded by the Oregon State Lottery, including a taxable lottery prize awarded by a multistate lottery association of which the Oregon State Lottery is a member if the ticket upon which the prize is awarded was sold in this state.

(3) Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, constitutes income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources in this state, under regulations to be prescribed by the Department of Revenue, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) Notwithstanding subsection (3) of this section:

(a) The income of an S corporation for federal income tax purposes derived from or connected with sources in this state constitutes income derived from sources within this state for a nonresident individual who is a shareholder of the S corporation; and

(b) A net operating loss of an S corporation derived from or connected with sources in this state constitutes a loss or deduction connected with sources in this state for a nonresident individual who is a shareholder of the S corporation.

(6) If a business, trade, profession or occupation is carried on partly within and partly without this state, the determination of net income derived from or connected with sources within this state shall be made by apportionment and allocation under ORS 314.605 to 314.675.

(7) Compensation paid by the United States for service in the Armed Forces of the United States performed by a nonresident does not constitute income derived from sources within this state.

(8) Compensation paid to a nonresident for services performed by the nonresident at a hydroelectric facility does not constitute income derived from sources within this state if the hydroelectric facility:

(a) Is owned by the United States;

(b) Is located on the Columbia River; and

(c) Contains portions located within both this state and another state.

(9)(a) Retirement income received by a nonresident does not constitute income derived from sources within this state unless the individual is domiciled in this state.

(b) As used in this section, "retirement income" means retirement income as that term is defined in 4 U.S.C. 114, as amended and in effect for the tax period.

(10) Compensation paid to a nonresident does not constitute income derived from sources within this state if the individual:

(a) Is engaged on a vessel to perform assigned duties in more than one state as a pilot licensed under 46 U.S.C. 7101 or licensed or authorized under the laws of a state; or

(b) Performs regularly assigned duties while engaged as a master, officer or member of a crew on a vessel operating on the navigable waters of more than one state. [1969 c.493 §23; 1971 c.672 §2; 1973 c.269 §2; 1975 c.705 §4; 1983 c.684 §15a; 1989 c.625 §9; 1997 c.654 §6; 1997 c.839 §10; 1999 c.143 §4; 1999 c.556 §1; 1999 c.580 §7; 2001 c.77 §§1,4; 2001 c.114 §37]

**Note:** Sections 2, 3 and 5, chapter 77, Oregon Laws 2001, provide:

**Sec. 2.** The amendments to ORS 316.127 by section 1 of this 2001 Act apply to tax years beginning on or after January 1, 1986. [2001 c.77 §2]

**Sec. 3.** (1) Any assessment of tax made by the Department of Revenue for a tax year beginning on or after January 1, 1986, that was based on compensation described in ORS 316.127 (10) and that remains unpaid on the effective date of this 2001 Act [October 6, 2001] shall be canceled.

(2) A taxpayer may file a claim for refund of any amount of tax paid on compensation described in ORS 316.127 (10), plus any associated penalty and interest, if the tax was paid for a tax year beginning on or after January 1, 1986. A claim for refund under this subsection must be filed within the time period prescribed in ORS 314.415 (1)(b) or before January 1, 2003, whichever is later. [2001 c.77 §3]

**Sec. 5.** The amendments to ORS 316.127 by section 4 of this 2001 Act apply to tax years beginning on or after January 1, 1997. [2001 c.77 §5]

**316.130 Determination of taxable income of full-year nonresident.** (1) The taxable income for a full-year nonresident individual is adjusted gross income attributable to sources within this state determined under ORS 316.127, with the modifications (except those provided under subsection (2) of this section) as otherwise provided under this chapter and other laws of this state applicable to personal income taxation, less the deductions allowed under subsection (2) of this section.

(2)(a) A full-year nonresident individual shall be allowed the deduction for a standard deduction or itemized deductions allowable to a resident under ORS 316.695 (1) in the proportion provided in ORS 316.117.

(b) A full-year nonresident individual shall be allowed to deduct the amount of any accrued federal income taxes and foreign country income taxes as provided in ORS 316.690 in the proportion provided in ORS 316.117.

(c)(A) A full-year nonresident individual shall be allowed to deduct the amount of any alimony or separate maintenance payments paid during such individual's taxable year in the proportion provided in ORS 316.117 except that in determining the proportion the taxpayer's adjusted gross income shall not include a deduction for alimony. For purposes of this paragraph, "alimony or separate maintenance payment" has the meaning given the phrase in section 215 of the Internal Revenue Code.

(B) No deduction shall be allowed under this paragraph if the alimony or separate maintenance payment is not includible in the gross income of the nonresident individual for federal income tax purposes under section 682 of the Internal Revenue Code.

(3)(a) A full-year nonresident who is a self-employed individual shall be allowed to deduct that individual's contributions to a qualified plan, deductible on that individual's federal income tax return pursuant to section 401 of the Internal Revenue Code, in the proportion that the individual's earned income from Oregon sources bears to the individual's earned income from all sources. "Earned income" has the meaning given in section 401(c)(2) of the Internal Revenue Code. If the numerator of the fraction described in this paragraph is greater than the denominator, the proration of 100 percent shall be used.

(b) A full-year nonresident shall be allowed to deduct that individual's qualified retirement contributions, deductible on that individual's federal income tax return pursuant to section 219 of the Internal Revenue Code, in the proportion that the individual's compensation from Oregon sources bears to the individual's compensation from all sources. "Compensation" has the meaning given in section 219(f)(1) of the Internal Revenue Code.

(c) A full-year nonresident individual shall be allowed to deduct the aggregate amounts paid in cash to a medical savings account, deductible on the individual's federal income tax return pursuant to section 220 of the Internal Revenue Code, in the proportion that the individual's compensation from Oregon sources bears to the individual's compensation from all sources. Distributions from a medical savings account, if excluded from income for federal income tax purposes, shall be excluded for Oregon income tax purposes. Distributions from a medical savings account, if included in income for federal tax purposes, shall be included in income for Oregon tax purposes to the extent that an exclusion has been allowed for contributions to the medical savings account for Oregon tax purposes in a previous year. [1985 c.141 §4; 1987 c.293 §18; 1987 c.647 §12; 1989 c.626 §7; 1997 c.839 §11a; 1999 c.580 §8]

**316.131 Credit allowed to nonresident for taxes paid to state of residence.** (1) A nonresident shall be allowed a credit against the taxes otherwise due under this chapter for income taxes imposed by and paid to the state of residence (not including any preference, alternative or minimum tax) on income taxable under this chapter, subject to the following conditions:

(a) The credit shall be allowed only if the state of residence either:

(A) Does not tax the income of residents of this state derived from sources within that state; or

(B) Allows residents of this state a credit against income taxes imposed by that state on income for tax paid or payable under this chapter.

(b) The credit shall not be allowed for taxes paid to a state that allows its residents a credit against the taxes imposed by that state for income tax paid or payable under this chapter irrespective of whether its residents are allowed a credit against the taxes imposed by this chapter for income taxes paid to that state.

(c) Credit shall be allowed only for the proportion of the taxes paid to the state of residence (not including preference, alternative or minimum taxes) as the adjusted gross income taxable under this chapter and also subject to taxes in the state of residence bears to the entire adjusted gross income upon which the taxes paid to the state of residence are imposed.

(d) The credit shall not exceed the proportion of the tax payable under this chapter that the modified adjusted gross income subject to tax in the state of residence and also taxable under this chapter bears to the entire modified adjusted gross income of the taxpayer.

(2) For purposes of this section, the amount of income taxes paid to another state includes the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued that were paid by an S corporation.

(3) As used in this section:

(a) "Modified adjusted gross income" means federal adjusted gross income as modified by this chapter and the other laws of this state applicable to personal income taxation.

(b) "State" means a state, district, territory or possession of the United States. [1991 c.838 §5; 2001 c.9 §2]

**Note:** See note under 316.082.

**316.132** [1987 c.682 §3; 1991 c.877 §12; 1991 c.929 §1; repealed by 1993 c.730 §23 (315.208 enacted in lieu of 316.132, 317.114 and 318.160)]

**316.133** [1991 c.928 §2; repealed by 1993 c.730 §25 (315.234 enacted in lieu of 316.133 and 317.134)]

**316.134** [1987 c.682 §2; 1989 c.625 §10; 1991 c.457 §6; 1991 c.877 §13; repealed by 1993 c.730 §21 (315.204 enacted in lieu of 316.134, 317.135 and 318.175)]

**316.135** [1979 c.554 §2; renumbered 316.752]

**316.136** [1979 c.554 §3; renumbered 316.758]

**316.137** [1979 c.554 §4; renumbered 316.765]

**316.138** [1979 c.554 §5; renumbered 316.771]

**316.139** [1989 c.924 §2; 1991 c.858 §10; 1991 c.877 §14; repealed by 1993 c.730 §11 (315.138 enacted in lieu of 316.139 and 317.145)]

**316.140** [1979 c.512 §12; 1981 c.894 §10; 1991 c.877 §15; repealed by 1993 c.730 §33 (315.354 enacted in lieu of 316.140 and 317.104)]

**316.141** [1979 c.512 §15; 1981 c.894 §11; 1989 c.765 §2; 1991 c.457 §7; repealed by 1993 c.730 §35 (315.356 enacted in lieu of 316.141, 316.142 and 317.103)]

**316.142** [1979 c.512 §16, 17; 1981 c.894 §12; 1989 c.765 §3; repealed by 1993 c.730 §35 (315.356 enacted in lieu of 316.141, 316.142 and 317.103)]

#### ADDITIONAL CREDITS

(Rural Medical Practice)

**316.143 Credit available to persons providing rural medical care and affiliated with certain rural hospitals.** (1) A resident or nonresident individual certified as eligible under ORS 442.563, licensed under ORS chapter 677, who is engaged in the practice of medicine, and who has a rural practice that amounts to 60 percent of the individual's practice, shall be allowed an annual credit against taxes otherwise due under this chapter in the sum of \$5,000 during the time in which the individual retains such practice and membership if the individual is actively practicing in and is a member of the medical staff of one of the following hospitals:

(a) A type A hospital designated as such by the Office of Rural Health;

(b) A type B hospital designated as such by the Office of Rural Health if the hospital is:

(A) Not within the boundaries of a metropolitan statistical area;

(B) Located 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area; or

(C) Located in a county with a population of less than 75,000;

(c) A type C rural hospital, if the Office of Rural Health makes the findings required by ORS 316.146; or

(d) A rural critical access hospital.

(2) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117. If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) For purposes of this section, an "individual's practice" shall be determined on the basis of actual time spent in practice each week in hours or days, whichever is considered by the Office of Rural Health to be more appropriate. In the case of a shareholder of a corporation or a member of a partnership, only the time of the individual shareholder or partner shall be considered and the full amount of the credit shall be allowed to each shareholder or partner who qualifies in an individual capacity.

(4) As used in this section:

(a) "Type A hospital," "type B hospital" and "type C hospital" have the meaning for those terms provided in ORS 442.470.

(b) "Rural critical access hospital" means a facility that meets the criteria set forth in 42 U.S.C. 1395i-4 (c)(2)(B) and that has been designated a critical access hospital by the Office of Rural Health and the Department of Human Services. [1989 c.893 §2; 1991 c.877 §16; 1995 c.746 §36; 1999 c.459 §1; 2001 c.509 §12]

**Note:** Section 13, chapter 509, Oregon Laws 2001, provides:

**Sec. 13.** The amendments to ORS 316.143 by section 12 of this 2001 Act apply to tax years beginning on or after January 1, 2002. [2001 c.509 §13]

**316.144 Additional providers who may qualify for credit.** A resident or nonresident individual who is certified as eligible under ORS 442.561, 442.562, 442.563 or 442.564, and is licensed as a physician or podiatric physician and surgeon under ORS chapter 677, licensed as a physician assistant under ORS chapter 677, licensed as a nurse practitioner under ORS chapter 678, licensed as a certified registered nurse anesthetist under ORS chapter 678, licensed as a dentist under ORS chapter 679 or licensed as an optometrist under ORS 683.010 to 683.335 is entitled to the tax credit described in ORS 316.143 even if not a member of the hospital medical staff if the Office of Rural Health certifies that the individual:

- (1) Has a rural practice that amounts to 60 percent of the individual's practice; and
- (2) If a physician or a physician assistant, can cause a patient to be admitted to the hospital; and
- (3) If a certified registered nurse anesthetist, is employed by or has a contractual relationship with one of the hospitals described in ORS 316.143 (1); and
- (4) If an optometrist, has consulting privileges with a hospital listed in ORS 316.143 (1). This subsection does not apply to an optometrist who qualifies as a "frontier rural practitioner," as defined by the Office of Rural Health. [1989 c.893 §3; 1991 c.877 §17; 1995 c.746 §38; 1997 c.787 §3; 1999 c.459 §6; 1999 c.582 §10]

**316.145** [1979 c.561 §4; renumbered 316.849]

**316.146 Credit for medical staff at type C hospital.** A member of the medical staff of a type C hospital who meets the requirements of ORS 316.144 (1) and (2) is entitled to the tax credit described in ORS 316.143 if:

- (1) The hospital is isolated due to geographic conditions, complies with rules relating to emergency response and is subject to such other special factors as the Office of Rural Health may prescribe; and
- (2) The hospital is designated by the Office of Rural Health as being subject to particular problems in recruiting and retaining medical staff and is located in an area that is medically underserved. [1989 c.893 §6a; 1991 c.877 §18; 1999 c.291 §31]

(Costs in Lieu of Nursing Home Care)

**316.147 Definitions for ORS 316.147 to 316.149.** As used in ORS 316.147 to 316.149, unless the context requires otherwise:

- (1) "Eligible taxpayer" includes any individual who must pay taxes otherwise imposed by this chapter and:
  - (a) Who pays or incurs expenses for the care of a "qualified individual," as defined in subsection (2) of this section, through a payment method determined by rule of the Department of Revenue; and
  - (b) Who has a "household income," as defined by ORS 310.630, for the taxable year, not to exceed the maximum amount of household income allowed in ORS 310.640 (1989 Edition) for a homeowner or renter refund.
- (2) "Qualified individual" includes an individual at least 60 years of age on the date that the expenses described in subsection (1)(a) of this section are paid or incurred by the eligible taxpayer:
  - (a) Whose household income, as defined by ORS 310.630, does not exceed \$7,500 for the calendar year in which the taxable year of the taxpayer begins;
  - (b) Who is eligible for home care services under Oregon Project Independence provided by the Department of Human Services;
  - (c) Who is certified by the Department of Human Services; and
  - (d) Whose care or any portion thereof is not paid for under ORS chapter 414. [1979 c.494 §2; 1991 c.786 §5; 1997 c.170 §28]

**316.148 Credit for expenses in lieu of nursing home care; limitation.** (1) A credit against the taxes otherwise due under this chapter shall be allowed to an eligible taxpayer with respect to food, clothing, medical care and transportation expenses paid or incurred by the taxpayer during the taxable year on behalf of a qualified individual in order that the qualified individual is not placed or maintained in a nursing home unnecessarily. The amount of the credit shall be \$250 or eight percent of the expenses paid or incurred during the taxable year, whichever is less.

(2) No credit shall be allowed under this section for expenses paid or incurred for any period of time in which the qualified individual is a resident in a nursing home or is receiving aid from Oregon Project Independence. [1979 c.494 §3]

**316.149 Evidence of eligibility for credit.** Evidence of payments made or expenses incurred that form the basis of the credit allowed under ORS 316.147 to 316.149 shall be submitted to the Department of Revenue in accordance with any rules adopted by the department relative to the submission of evidence of such payments. [1979 c.494 §4]

**316.150** [1979 c.414 §2; renumbered 316.854]

**316.151** [1991 c.859 §4; repealed by 1993 c.730 §27 (315.254 enacted in lieu of 316.151, 317.141 and 318.085)]

**316.152** [1991 c.916 §13; repealed by 1997 c.170 §33]

(Mobile Homes; Moving Expense)

**316.153 Credit for involuntary moving of mobile home.** (1) As used in this section:

(a) "Involuntary move" means a move forced on an owner due to the termination of the owner's rental agreement for a facility space resulting from the closure of the facility, or portion of the facility, as defined in ORS 90.100.

(b) "Mobile home" has the meaning given "manufactured dwelling" in ORS 446.003, and includes only a mobile home with a fair market value of \$50,000 or less on the date that the mobile home is involuntarily moved.

(c) "Qualified individual" means an individual who:

(A) Owns and occupies as a principal residence, on the date of the involuntary move, a mobile home involuntarily moved; and

(B) Has a federal adjusted gross income, as described under ORS 316.013, of \$30,000 or less for the tax year in which the mobile home is involuntarily moved.

(2) A qualified individual is allowed a credit against the taxes otherwise due under this chapter. The amount of the credit is the lesser of:

(a) \$1,500; or

(b) The actual cost of moving and setting up the mobile home after subtracting any payments or reimbursements received by the qualified individual under ORS 90.630 (5) and (6).

(3)(a) One-third of the total amount of credit allowed under this section must be claimed by the qualified individual for the tax year in which the mobile home is involuntarily moved and one-third of the credit in each of the two tax years immediately following.

(b) Any credit which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(c) The credit allowed to a qualified individual is available for only one involuntary move of a mobile home.

(d) If the taxpayer is married at the close of the tax year, the credit shall be allowed to only one taxpayer if the spouses file separate returns for the tax year. Marital status shall be determined as provided under section 21 (e)(3) and (4) of the Internal Revenue Code. [1991 c.846 §2; 1995 c.556 §3; 1995 c.559 §54; 1997 c.839 §12; 1999 c.90 §11; 1999 c.676 §27; 2001 c.596 §50; 2001 c.660 §38]

**Note:** Section 3, chapter 846, Oregon Laws 1991, provides:

**Sec. 3.** ORS 316.153 applies to tax years beginning on or after January 1, 1992, and on or before December 31, 2001. [1991 c.846 §3; 1995 c.746 §45]

**316.154** [1989 c.963 §2; 1991 c.766 §3; 1991 c.877 §10; repealed by 1993 c.730 §19 (315.164 enacted in lieu of 316.154 and 317.146)]

**316.155** [1991 c.652 §8; repealed by 1993 c.730 §39 (315.604 enacted in lieu of 316.155 and 317.149)]

(Retirement Income)

**316.157 Credit for retirement income.** (1) In the case of an eligible individual, there shall be allowed as a credit against the taxes otherwise due under this chapter for the taxable year an amount equal to the lesser of the tax liability of the taxpayer or nine percent of net pension income.

(2) For purposes of this section:

(a) "Eligible individual" means any individual who is receiving pension income and who has attained the following age before the close of the taxable year:

(A) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, the individual must attain 58 years of age before the close of the taxable year.

(B) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, the individual must attain 59 years of age before the close of the taxable year.

(C) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, the individual must attain 60 years of age before the close of the taxable year.

(D) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, the individual must attain 61 years of age before the close of the taxable year.

(E) For taxable years beginning on or after January 1, 1999, the individual must attain 62 years of age before the close of the taxable year.

(b) "Household income" has that meaning given in ORS 310.630 except that "household income" shall not include Social Security benefits received by the taxpayer or the spouse of the taxpayer.

(c) "Net pension income" means:

(A) For eligible individuals filing a joint return, the lesser of the pension income of the eligible individuals received during the taxable year or the excess, if any, of \$15,000 over the sum of the following amounts:

(i) Any Social Security benefits received by the eligible individual, or by the spouse of the individual, during the taxable year; and

(ii) The excess, if any, of household income over \$30,000.

(B) For an eligible individual filing a return other than a joint return, the lesser of the pension income of the eligible individual received during the taxable year or the excess, if any, of \$7,500 over the sum of the following amounts:

(i) Any Social Security benefits received by the eligible individual during the taxable year; and

(ii) The excess, if any, of household income over \$15,000.

(d) "Pension income" means income included in Oregon taxable income from:

(A) Distributions from or pursuant to an employee pension benefit plan, as defined in section 3(2) of the Employee Retirement Income Security Act of 1974, which satisfies the requirements of section 401 of the Internal Revenue Code;

(B) Distributions from or pursuant to a public retirement system of this state or a political subdivision of this state, or a public retirement system created by an Act of this state or a political subdivision of this state, or the public retirement system of any other state or local government;

(C) Distributions from or pursuant to a federal retirement system created by the federal government for any officer or employee of the United States, including any person retired from service in the United States Civil Service, the Armed Forces of the United States or any agency or subdivision thereof;

(D) Distributions or withdrawals from or pursuant to an eligible deferred compensation plan which satisfies the requirements of section 457 of the Internal Revenue Code;

(E) Distributions or withdrawals from or pursuant to an individual retirement account, annuity or trust or simplified employee pension which satisfies the requirements of section 408 of the Internal Revenue Code; and

(F) Distributions or withdrawals from or pursuant to an employee annuity, including custodial accounts treated as annuities, subject to section 403 (a) or (b) of the Internal Revenue Code.

(e) "Social Security benefits" means Social Security benefits, as defined in section 86 of the Internal Revenue Code (Title II Social Security or tier 1 railroad retirement benefits).

(3) If a change in the taxable year of the eligible individual occurs as described in ORS 314.085, or if the Department of Revenue terminates the tax year of the eligible individual under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.085.

(4) If a change in the status of the eligible individual from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with subsection (1) of this section. [1991 c.823 §5; 1997 c.839 §13; 1999 c.90 §12; 2001 c.660 §39]

**316.158 Effect upon ORS 316.157 of determination of invalidity; severability.** (1) It is the intent of the Legislative Assembly that no part of ORS 316.157 be the law if any part of ORS 316.157 is held to be invalid or unconstitutional. However, no amended return or payment of additional taxes shall be required for any year prior to the year in which any part of ORS 316.157 is held to be invalid or unconstitutional by a court of last resort.

(2) Except as provided in subsection (1) of this section, it is the intent of the Legislative Assembly that the provisions of ORS 238.445, 310.635, 316.087, 316.157, 316.158, 316.680 and 316.695 be severable as provided in ORS 174.040. [1991 c.823 §9]

**Note:** 316.158 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**316.159 Subtraction for certain retirement distributions contributed to retirement plan during period of nonresidency; substantiation rules.** (1)(a) In addition to other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income of a resident individual the distributions received by the individual from a plan or trust described under subsection (2) of this section to the extent that:

(A) The distributions consist of contributions made in a tax period during which the individual was a nonresident; and

(B) The distributions consist of contributions made in a tax period for which no deduction, exclusion or exemption for the contributions was allowed or allowable to the individual for purposes of a state personal net income tax imposed during the period by the state of which the individual was a resident; and

(C) No deduction, exclusion, subtraction or other tax benefit has been allowed for the distributions by another state before the individual becomes a resident of this state.

(b) For purposes of this section, if any distributions (lump sum or periodic) received by a resident individual from a plan or trust described in subsection (2) of this section meet the requirements of paragraph (a) of this subsection, then for purposes of the subtraction allowed by this section, those distributions shall be considered to be the distributions first received by the individual after the individual has become a resident of this state.

(c) For purposes of ORS 316.082 (credit for taxes paid to another state), any distributions received by a resident individual from a plan or trust described in subsection (2) of this section which meet the requirements of paragraph (a) of this subsection shall be considered income subject to tax under this chapter notwithstanding the exclusion under this section.

(2) A plan or trust is described in this section if:

(a) The plan or trust is an individual retirement account described in section 408 of the Internal Revenue Code;

(b) The trust forms part of a pension or profit-sharing plan that provides contributions or benefits for employees, some or all of whom are owner-employees, as defined under section 401(c)(3) of the Internal Revenue Code;

(c) The plan or trust is an annuity contract purchased on behalf of an employee of a charitable organization or public school as described under section 403(b) of the Internal Revenue Code; or

(d) The plan or trust is an eligible deferred compensation plan established and maintained by an employer that is a state or local government, a political subdivision thereof, or a tax exempt organization, on behalf of an employee of the employer, as described under section 457 of the Internal Revenue Code.

(3) The following contributions are not contributions to which the subtraction under subsection (1) of this section is accorded:

(a) Contributions made during a tax period, or portion thereof, for which the taxpayer was a nonresident required to file an Oregon return, to the extent that a deduction or exclusion was allowable under this chapter for those contributions; or

(b) Contributions for which the taxpayer was allowed a credit for taxes paid to another state under ORS 316.082.

(4) A subtraction shall not be allowed under this section for interest or other income arising from investment of contributions made to a plan or trust described in subsection (2) of this section.

(5) For purposes of the subtraction allowed under subsection (1) of this section:

(a) Distributions received by the taxpayer from a plan or trust described in subsection (2) of this section shall be considered to initially consist of a recovery of contributions.

(b) Once the distributions equal the cumulative contributions, all further distributions shall constitute interest or other income arising from investment of the contributions.

(6) The Department of Revenue may adopt rules requiring substantiation of the contributions and tax treatment upon which the subtraction under this section is based. Failure to provide substantiation as required under the rules shall result in denial of the subtraction otherwise allowed under this section. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063. [1991 c.838 §2; 1995 c.54 §11; 1995 c.815 §6]

**316.160** [1953 c.304 §18; 1965 c.26 §3; repealed by 1969 c.493 §99]

## COLLECTION OF TAX AT SOURCE OF PAYMENT

**316.162 Definitions for ORS 316.162 to 316.212.** As used in ORS 316.162 to 316.212:

(1) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under ORS 316.182, except that if no such certificate is in effect, the number of withholding exemptions claimed is considered to be zero.

(2) "Wages" means remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash, except that "wages" does not include remuneration paid:

(a) For active service in the Armed Forces of the United States as to which no withholding is required by the Internal Revenue Code.

(b) To an employee of a common carrier to the extent that 49 U.S.C. 14503 and 40116 prohibit the remuneration from withholding for state income taxes.

(c) For domestic service in a private home, a local college club or a local chapter of a college fraternity or sorority.

(d) For casual labor not in the course of the employer's trade or business.

(e) To an employee whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops if the total amount paid to such employee is less than \$300 annually.

(f) To seamen who are exempt from garnishment, attachment or execution under title 46 of the United States Code.

(g) To persons temporarily employed as emergency forest fire fighters.

(h) To employees' trusts exempt from tax under provisions of the federal Internal Revenue Code.

(i) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of religious duties required by such order, which duties are not commercial in nature.

(j) For services performed by an independent contractor, as that term is defined in ORS 670.600.

(k) When the remuneration is exempt from taxation under this chapter.

(3) "Employer" means:

(a) A person who is in such relation to another person that the person may control the work of that other person and direct the manner in which it is to be done; or

(b) An officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the acts required of employers by ORS 316.167, 316.182, 316.197, 316.202 and 316.207.

[1969 c.493 §24; 1971 c.690 §1; 1973 c.229 §1; 1977 c.604 §1; 1981 c.705 §3; 1985 c.87 §3; 1989 c.762 §2; 1997 c.839 §15;

**316.164 When surety bond or letter of credit required of employer; enforcement.** (1) Except as provided in subsection (3) of this section, if the Department of Revenue makes the findings required under subsection (2) of this section, the department may require any employer subject to ORS 316.162 to 316.212, except the state or its political subdivisions, to post a surety bond, or irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, with the department, to secure future payment of amounts required to be withheld and paid over to the department under ORS 316.162 to 316.212. The bond or letter of credit shall be in an amount equal to the amounts required to be withheld upon the wages paid or estimated to be paid by the employer for a period of four calendar quarters. The bond or letter of credit shall be in a form acceptable to the department. Posting of the bond or letter of credit shall not relieve the employer from withholding and paying over amounts based on wages paid by the employer under any provision of ORS 316.162 to 316.212. The department may, in its discretion, at any time apply such bond or letter of credit or part thereof to the delinquencies or indebtedness of the employer arising under any provision of ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted. Appeal of an action of the department under this section shall not relieve an employer of the requirement during the pendency of the appeal.

(2) Before requiring an employer to post a bond or irrevocable letter of credit under subsection (1) of this section, the department shall determine that the employer has failed to make payment to the department of amounts required to be withheld and paid over under any provision of ORS 316.162 to 316.212 for at least three calendar quarters, and the total amount of delinquent payments exceeds \$2,500, exclusive of interest or penalties. For purposes of this subsection, a payment shall not be considered delinquent if the employer's liability to withhold is subject to appeal to the tax court.

(3) The department shall not require a bond or irrevocable letter of credit to be posted under this section if the employer elects to notify the department of the times of payment of wages to the employees of the employer, and, notwithstanding ORS 316.197, to pay over amounts withheld within three banking days after the dates the wages were paid.

(4) Before requiring an employer to post a bond or irrevocable letter of credit or make payment of amounts required to be withheld in the manner prescribed in subsection (3) of this section, the department shall attempt to obtain payment of delinquent amounts through other methods of collection, however, the department is not required to seize or sell real or personal property in order to comply with the requirements of this subsection.

(5) Any bond or irrevocable letter of credit required under subsection (1) of this section shall become the sole property of the department and shall be held by the department to guarantee payment of withholding taxes by the employer. The bond or letter of credit shall be held for the benefit of the State of Oregon, subject only to the provisions of subsection (6) of this section. The bond or letter of credit shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution.

(6) If an employer ceases to be an employer subject to ORS 316.162 to 316.212, the department shall, upon receipt of all payments due from the employer for withheld amounts, cancel any bond or irrevocable letter of credit given under this section. Such bonds or letters of credit held for the benefit of the State of Oregon shall first be applied to any indebtedness or deficiencies due from the employer under ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted before any return is made to the employer. The employer shall have no interest in such bond or letter of credit prior to full compliance with this section and all provisions of ORS 316.162 to 316.212.

(7) If an employer required to post a bond or irrevocable letter of credit or make payment of amounts withheld in the manner prescribed under this section makes full payment of all delinquent amounts due and owing at the time the bond, letter of credit or accelerated payment schedule was required and makes payment of amounts due under ORS 316.162 to 316.212 and files returns required in connection with those payments in a timely manner for the succeeding four calendar quarters, the department shall release the employer from the requirement to post the bond or letter of credit or make accelerated payments of amounts withheld.

(8) If any employer fails to comply with subsections (1) to (7) of this section, the Oregon Tax Court, upon commencement of an action by the department for that purpose, may order the employer to post the required bond or irrevocable letter of credit or make accelerated payments of amounts withheld. The employer's failure to obey an order of the court is punishable by contempt. If the Oregon Tax Court determines that an order of compliance enforceable by contempt proceedings will not assure the payment of withheld taxes by the employer, the court may enjoin the employer from further employing individuals in this state or continuing in business therein until the employer has complied with subsections (1) to (7) of this section. [1985 c.406 §§2,3; 1991 c.331 §143; 1995 c.650 §36; 1997 c.631 §§453,454]

**316.165** [1953 c.304 §19; repealed by 1969 c.493 §99]

**316.167 Withholding of tax required; elective provisions for agricultural employees; liability of supplier of funds to employer for taxes.** (1) Every employer at the time of the payment of wages to any employee shall deduct and retain from such wages an amount determined, at the employer's election, either (a) by a "percentage method" withholding table or (b) by "wage bracket" withholding tables, prepared and furnished under the rules and regulations of the Department of Revenue. However, in the case of wages paid to an employee whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops, the employer may elect to withhold two percent of the total wages paid without regard to any withholding exemptions.

(2) Except in the case of an agricultural employee, the amount withheld shall be computed on the basis of the total amount

of the wages and the number of withholding exemptions claimed by the employee, without deduction for any amount withheld.

(3) If a lender, surety or other person who supplies funds to or for the account of an employer for the purpose of paying wages of the employees of such employer has actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the tax required to be deducted and withheld, such lender, surety or other person shall be liable to the State of Oregon in a sum equal to the taxes together with interest which are not timely paid over to the department. Such liability shall be limited to the principal amount supplied by such lender, surety or other person, and any amounts so paid to the department shall be credited against the liability of the employer.

(4) With the approval of the Oregon Department of Administrative Services, the department may enter into contracts with banking institutions including but not limited to Federal Reserve Banks, incorporated banks, trust companies, domestic building and loan associations, savings and loan associations or credit unions authorizing them to receive as financial agents of the department any tax required to be withheld and paid to the department.

[1969 c.493 §25; 1975 c.394 §1; 1977 c.604 §2; 1982 s.s.1 c.1 §1]

**316.168 Employer required to file combined quarterly tax report.** (1) Except as otherwise provided by law, every employer subject to the provisions of ORS 316.162 to 316.212, 656.506 and ORS chapter 657, or a payroll-based tax imposed by a mass transit district and administered by the Department of Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report upon a form prescribed by the department.

(2) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing, as provided in ORS 305.820.

(a) The report shall be accompanied by payment of any tax or assessment due and a combined tax and assessment payment coupon prescribed by the department. The employer shall indicate on the coupon the amount of the total payment and the portions of the payment to be paid to each of the tax or assessment programs.

(b) The Department of Revenue shall credit the payment to the tax or assessment programs in the amounts indicated by the employer on the coupon and shall promptly remit the payments to the appropriate taxing or assessing body.

(c) If the employer fails to allocate the payment on the coupon, the department shall allocate the payment to the proper tax or assessment programs on the basis of the percentage the payment bears to the total amount due.

(d) The Department of Revenue shall distribute copies of the combined quarterly tax and assessment report and the necessary tax or assessment payment information to each of the agencies charged with the administration of a tax or assessment covered by the report.

(e) The Department of Revenue, the Employment Department and the Department of Consumer and Business Services shall develop a system of account numbers and assign to each employer a single account number representing all of the tax and assessment programs included in the combined quarterly tax and assessment report. [1989 c.901 §2; 1993 c.760 §2]

**316.169 Circumstances in which person other than employer required to withhold tax.** (1) If a lender, surety or other person who is not an employer with respect to an employee pays wages directly to the employee, or to an agent on behalf of the employee, the lender, surety or other person shall deduct and retain from the wages, and shall be liable to this state for, an amount equal to the amount required to be withheld from the employee's wages by the employer under ORS 316.167.

(2) A lender, surety or other person described under this section shall file a combined quarterly tax report and make payment of the tax or assessment that is due in the time and manner prescribed for employers under ORS 316.168.

(3) Amounts paid under this section shall be credited against the liability of the employer under ORS 316.167.

(4) A lender, surety or other person described under this section shall be considered to be an employer with respect to withholdings made under this section or required to be made under this section for purposes of ORS 316.191, 316.197, 316.202, 316.207 and 316.212.

(5) The employer of an employee that receives wages from a lender, surety or other person shall not be discharged from any liability or other obligation under ORS 316.162 to 316.212 except as provided for in subsection (3) of this section. [1997 c.133 §6]

**316.170** [1953 c.304 §20; repealed by 1969 c.493 §99]

**316.171 Application of tax and report to administration of tax laws.** Except as provided in this section and ORS 314.840, 316.168, 316.197, 316.202 and 657.571, the statutes and regulations applicable to each agency, requiring a report and imposing a tax, shall govern the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, penalties, interest, administrative and judicial appeals and the procedures relating thereto. [1989 c.901 §3]

**316.172 Tax withholding tables to be prepared by department.** (1) The Department of Revenue shall prepare a table for use with the percentage method that provides for the deduction and withholding of a tax equal to a specific percent (to be determined by the department) of the amount by which the wages for a given payroll period (daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannually or annually, as the case may be) exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption for each payroll period (such amount being determined by the department for each such period). The determinations of the department shall result, so far as is practicable, in withholding from the employee a sum substantially equivalent to the amount of the tax that the employee will be required to pay under this

chapter upon such wages. To accomplish this purpose, the department may make special provision for employees who are in the state for limited periods of time.

(2) The department shall prepare tables for use in computing withholding of tax by wage brackets. The wage brackets shall be graduated so that the amount withheld is, as far as practicable, substantially equivalent to the amount of the tax that the employee will be required to pay under this chapter upon such wages.

[1969 c.493 §26; 1973 c.402 §20]

**316.175** [1953 c.304 §21; repealed by 1969 c.493 §99]

**316.177 Reliance on withholding statement; penalty for statement without reasonable basis.** (1) If an employee does not claim a different number of withholding exemptions for state withholding purposes, the employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which the employee is entitled for federal income tax withholding purposes. If an employee does not claim a different number of withholding exemptions for state withholding purposes, the employer may rely upon the number of federal withholding exemptions claimed by the employee, or authorized or specified under the Internal Revenue Code. If the employee does claim a different number of withholding exemptions for state withholding purposes, the employer shall rely on the number specified on that claim.

(2) If any employee makes a statement for federal income tax withholding purposes which claims more than 10 withholding exemptions, or claims exemption from withholding and the employee's income is expected to exceed \$200 per week for both federal and state purposes, or claims exemption from withholding for state purposes but not for federal purposes, and as of the time the statement was made there was no reasonable basis for the statement, the Department of Revenue shall assess and collect from the employee a penalty of \$500.

(3) The penalty imposed under this section is in addition to any other penalty imposed by law. Any employee against whom a penalty is assessed under this section may appeal to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after the order of the tax court becomes final, the department may record the order and collect the amount assessed without interest in the same manner as income tax deficiencies are recorded and collected under ORS 314.430.

(4) The department may waive all or any part of the penalty imposed under subsection (2) of this section if the income tax liability of the employee for the taxable year is equal to or less than the sum of:

(a) The credits against taxes allowed for purposes of this chapter; and

(b) The payments of estimated tax which are considered payments on account of the tax liability of the employee under ORS 316.579 and 316.583. [1969 c.493 §27; 1987 c.293 §19; 1987 c.843 §20; 1993 c.730 §42; 1995 c.650 §37]

**316.180** [1953 c.304 §22; repealed by 1969 c.493 §99]

**316.182 Exemption certificate.** (1) Subject to subsection (2) or (3) of this section and if the employee does not claim a different number of withholding exemptions for purposes of this chapter, an employer shall use the exemption certificate filed by the employee with the employer under the income tax withholding provisions of the Internal Revenue Code for determining the number of withholding exemptions to be used in computing the tax to be withheld under ORS 316.167 and 316.172. If a new exemption certificate is not filed as provided under section 1581 of the Tax Reform Act of 1986 (P.L. 99-514) for federal purposes, the employer shall use the same number of withholding exemptions as used for purposes of the Internal Revenue Code for determining the amount of tax to be withheld under ORS 316.167 and 316.172.

(2) The Department of Revenue may require an exemption certificate to be filed on a form prescribed by the department in any circumstance where the department finds that an exemption certificate filed for purposes of the Internal Revenue Code does not properly reflect the number of withholding exemptions allowable under this chapter.

(3) No exemption certificate need be procured from an employee whose wages consist of wages as defined in ORS 316.162 (2)(e). [1969 c.493 §28; 1987 c.293 §20; 1997 c.839 §16; 2001 c.660 §41]

**316.185** [1953 c.304 §23; 1955 c.129 §1; subsection (5) derived from 1955 c.129 §2; 1965 c.26 §4; repealed by 1969 c.493 §99]

**316.187 Amount withheld is in payment of employee's tax.** The amounts deducted from the wages of an employee during any calendar year in accordance with ORS 316.167 and 316.172 shall be considered to be in part payment of the tax on such employee's income for the taxable year which begins within such calendar year, and the return made by the employer pursuant to ORS 316.202 shall be accepted by the Department of Revenue as evidence in favor of the employee of the amounts so deducted from the employee's wages.

[1969 c.493 §29]

**316.189 Withholding of state income taxes from certain periodic payments.** (1) As used in this section:

(a) "Commercial annuity" means an annuity, endowment or life insurance contract issued by an insurance company authorized to transact insurance in the State of Oregon.

(b) "Department" means the Oregon Department of Revenue.

(c) "Designated distribution" means any distribution or payment from or under an employer deferred compensation plan, an

individual retirement plan or a commercial annuity. "Designated distribution" does not include any amount treated as wages as defined in ORS 316.162, the portion of any distribution or payment that is not includable in the gross income of the recipient or any distribution or payment made under section 404 (k)(2) of the Internal Revenue Code.

(d) "Employer deferred compensation plan" means any pension, annuity, profit-sharing or stock bonus plan or other plan deferring the receipt of compensation.

(e) "Individual retirement plan" means an individual retirement account described in section 408 (a) of the Internal Revenue Code or an individual retirement annuity described in section 408 (b) of the Internal Revenue Code.

(f) "Nonperiodic distribution" means any designated distribution which is not a periodic payment.

(g) "Payer" means any payer of a designated distribution doing business in or making payments or distributions from sources in this state.

(h) "Periodic payment" means a designated distribution which is an annuity or similar periodic payment.

(i) "Plan administrator" means a plan administrator as described in section 414 (g) of the Internal Revenue Code, who is the administrator of a plan created by an Oregon employer.

(j) "Qualified total distribution" means any designated distribution made under a retirement or annuity plan described in section 401 (a) or 403 (a) of the Internal Revenue Code, which consists of the balance to the credit of the employee, exclusive of accumulated deductible employee contributions, made within one taxable year of the recipient.

(2)(a) The payer of any periodic payment shall withhold from such payment the amount which would be required to be withheld from such payment under ORS 316.167 if the payment were wages paid by an employer to an employee. The time and manner of payment of withheld amounts to the department shall be the same as that required under ORS 316.197 for withholding of income taxes from wages.

(b) The payer of any nonperiodic distribution shall withhold from such distribution an amount determined under tables prescribed by the department.

(c) The maximum amount to be withheld under this section on any designated distribution shall not exceed 10 percent of the amount of money and the fair market value of other property received in the distribution. If the distribution is not subject to withholding for federal income tax purposes under section 3405 of the Internal Revenue Code, it shall not be subject to withholding under this section.

(3)(a) Except as provided in paragraph (b) of this subsection, the payer of a designated distribution shall withhold and be liable for payment of amounts required to be withheld under this section.

(b) In the case of any plan described in section 401 (a) or section 403 (a) of the Internal Revenue Code, or section 301 (d) of the Tax Reduction Act of 1975, the plan administrator shall withhold and be liable for payment of amounts required to be withheld under this section, unless the plan administrator has directed the payer to withhold the tax and has provided the payer with the information required by rule of the department.

(4)(a) An individual may elect to have no withholding by a payer under subsection (2) of this section. If an individual has elected to have no federal withholding from payments or distributions described in this section the individual shall be deemed to have elected no withholding for state purposes, unless the individual notifies the payer otherwise.

(b) An election made under this subsection shall be effective as provided under rules promulgated by the department. The rules required under this paragraph shall provide the manner in which an election may be revoked and when such revocation shall be effective.

(5) The payer of any periodic payment or nonperiodic distribution shall give notice to the payee of the right to make an election to have no state withholding from the payment or distribution. The department shall provide by rule for the time and manner of giving the notice required under this subsection.

(6) Any rules permitted or required to be promulgated by the department under this section shall, insofar as is practicable, be consistent with corresponding provisions of section 3405 of the Internal Revenue Code and regulations promulgated thereunder.

(7) Any designated distribution shall be treated as if it were wages paid by an employer to an employee within the meaning of ORS 316.162 to 316.212 for all other purposes of ORS 316.162 to 316.212. In the case of any designated distribution not subject to withholding by reason of an election under subsection (4) of this section, the amount withheld shall be treated as zero.

[1985 c.87 §9]

**Note:** 316.189 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**316.190** [Amended by 1953 c.304 §24; 1955 c.92 §1; subsection (3) derived from 1955 c.92 §2; repealed by 1969 c.493 §99]

**316.191 Withholding taxes at time and in manner other than required by federal law; rules.** Notwithstanding the provisions of ORS 316.197:

(1) When adherence to the federal withholding system creates an undue burden on an employer, the employer may request and the Department of Revenue may permit that taxes be withheld and paid over within a time and in a manner other than that required under federal law.

(2) If the department permits the modification of the time and manner of withholding and payment of taxes under this section the method of withholding and payment permitted shall, whenever possible, provide for withholding and payment in a manner similar to that required for other employers required to deduct and retain similar amounts of income taxes from wages paid to their employees in Oregon.

(3) The department shall adopt rules establishing the manner in which an employer may request a modification under this section, and may by rule prescribe a modification of the time and manner of withholding and payment of taxes in such instances as it considers necessary. The department may adopt by rule any exceptions to federal withholding requirements that have been adopted by the Internal Revenue Service.

[1985 c.87 §2]

**316.192** [1969 c.493 §30; 1971 c.333 §2; repealed by 1985 c.602 §7]

**316.193 Withholding of state income taxes from federal retired pay for members of uniformed services.** (1) The Department of Revenue may enter into an agreement with the appropriate United States agency or instrumentality for the voluntary withholding of state income taxes from the retired pay of members of the uniformed services under the provisions of section 654, Public Law 98-525. The department is hereby authorized to do all acts and comply with any requirements necessary to enable retired members of the uniformed services to elect voluntary withholding of state income taxes from their retired pay.

(2) The department may establish by rule a minimum monthly amount to be withheld and paid over for any member electing voluntary withholding of state income taxes under an agreement entered into under subsection (1) of this section.

(3) Notwithstanding ORS 314.835 or 314.840, the department may disclose to the Department of Defense the name, address or Social Security number of any member electing voluntary withholding of state income taxes whenever necessary to enable the Department of Defense to implement such withholding under the terms of an agreement entered into under subsection (1) of this section.

(4) As used in this section:

(a) "Member" means any person retired from a regular or reserve component of one of the uniformed services, who has Oregon personal income tax liability in connection with the receipt of retired pay.

(b) "Retired pay" means pay and benefits received based on conditions of the federal retirement law, pay grade, years of service, date of retirement, transfer to Fleet Reserve or Fleet Marine Corps Reserve or disability.

(c) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the United States Public Health Service and the commissioned corps of the National Oceanic and Atmospheric Administration.

[1985 c.87 §8]

**Note:** 316.193 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**316.194 Withholding from lottery prize payments.** (1) If a lottery prize payment for a prize is \$5,000 or more, and the payment is made to an individual, the Oregon State Lottery Commission shall withhold eight percent of the payment. A payment made to a partnership, estate, trust or corporation shall not be subject to the withholding of tax.

(2) The commission shall pay to the Department of Revenue any amounts withheld under this section in the time and manner provided by the department by rule.

(3) If a prize exceeds \$600 but is less than \$5,000, the commission shall provide the prize recipient a notice of potential tax liability for each prize payment that is made with respect to the prize. Following the conclusion of a year in which a prize payment is made with respect to a prize described in this subsection, the commission shall send to the prize recipient an income reporting form indicating the amount of the payment. A copy of the form shall be provided to the department. [1997 c.849 §4; 1999 c.43 §1; 1999 c.143 §5]

**316.195** [1953 c.304 §25; repealed by 1969 c.493 §99]

**316.196 Withholding of state income taxes from federal retirement pay for civil service annuitant.** (1) The Department of Revenue may enter into an agreement with the United States Office of Personnel Management for the voluntary withholding of state income taxes from the retirement pay of United States civil service annuitants under the provisions of section 1705 of Public Law 97-35. The department is hereby authorized to do all acts and comply with any requirements necessary to enable retired United States civil servants to elect voluntary withholding of state income taxes from their retirement pay.

(2) The department shall establish by rule a procedure under which a United States civil service annuitant may request voluntary withholding under an agreement entered into under subsection (1) of this section. The procedure may include a minimum monthly amount to be withheld and paid over to the state.

(3) Notwithstanding ORS 314.835 or 314.840, the department may disclose to the United States Office of Personnel Management the name, address or Social Security number of any United States civil service annuitant electing voluntary withholding of state income taxes whenever necessary to enable the United States Office of Personnel Management to implement such withholding under the terms of an agreement entered into under subsection (1) of this section.

(4) As used in this section:

(a) "Civil service annuitant" means any person retired from the federal civil service who has Oregon personal income tax liability in connection with the receipt of retirement pay. "Civil service annuitant" includes a survivor annuitant within the meaning of Title 5, United States Code, section 8331.

(b) "Retirement pay" means regular, recurring monthly annuity payments received based on conditions of federal retirement law, but does not include retired pay as defined in ORS 316.193.

[1985 c.87 §7]

**Note:** 316.196 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**316.197 Payment to department by employer; interest on delinquent payments.** (1)(a) Except as provided under ORS 316.191 or paragraph (b) of this subsection, within the time that each employer is required to pay over taxes withheld for federal income tax purposes for any period, the employer shall pay over to the Department of Revenue or to a financial agent of the department the amounts required to be withheld under ORS 316.167 and 316.172 for the same period. Any employer not required to withhold federal income taxes for any period but who is required to deduct and retain amounts from wages paid to an employee under ORS 316.167 and 316.172 for the same period shall pay over to the department or financial agent of the department, taxes withheld for the period, within the time and in the manner, as if the employer were required to withhold taxes for the period under federal law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, any employer of agricultural employees who is not required to withhold federal income taxes for any period but who is required to deduct and retain amounts from wages paid to those employees under ORS 316.167 and 316.172 shall pay over to the department, or financial agent of the department, taxes so withheld at the same time and for the same period for which the employer is required to pay over employer and employee taxes under chapter 21 of the Internal Revenue Code (Federal Insurance Contributions Act).

(2) Every amount so paid over shall be accounted for as part of the collections under this chapter. No employee has any right of action against an employer in respect of any moneys deducted from wages and paid over in compliance or intended compliance with this section.

(3) If any amount required to be withheld and paid over to the department is delinquent, interest shall accrue at the rate prescribed under ORS 305.220 on that amount from the last day of the month following the end of the calendar quarter within which the amount was required to be paid to the department to the date of payment. The provisions of this subsection shall not relieve any employer from liability for a late payment penalty under any other provision of law. [1969 c.493 §31; 1975 c.594 §1; 1982 s.s.1 c.1 §2; 1983 c.697 §1; 1985 c.87 §4; 1989 c.901 §7]

**316.198 Payment by electronic funds transfer; phase-in; rules.** (1) An employer required to make a combined quarterly tax and assessment payment under ORS 316.168 shall make the payment by means of electronic funds transfer if the employer is required to make federal payroll tax payments electronically.

(2) The Department of Revenue may adopt rules that provide exemptions from the requirement that combined quarterly tax and assessment payments be paid by electronic funds transfer when the taxpayer is disadvantaged by required payment by electronic funds transfer.

(3) The Department of Revenue may accept electronically filed payments voluntarily submitted by an employer who is not required to pay by means of electronic funds transfer.

(4) As used in this section, the term "electronic funds transfer" has the meaning given that term in ORS 293.525. [1997 c.299 §2; 2001 c.28 §6]

**316.200** [1953 c.304 §26; 1965 c.26 §5; repealed by 1969 c.493 §99]

**316.202 Reports by employer; waiver; penalty for failure to report; rules.** (1) With each payment made to the Department of Revenue, every employer shall deliver to the department, on a form prescribed by the department showing the total amount of withheld taxes in accordance with ORS 316.167 and 316.172, and supply such other information as the department may require. The employer is charged with the duty of advising the employee of the amount of moneys withheld, in accordance with such regulations as the department may prescribe, using printed forms furnished or approved by the department for such purpose.

(2) Except as provided in subsection (4) of this section, every employer shall submit a combined quarterly return to the department on a form provided by it showing the number of payments made, the withheld taxes paid during the quarter and an explanation of federal withholding taxes as computed by the employer. The report shall be filed with the department on or before the last day of the month following the end of the quarter.

(3) The employer shall make an annual return to the department on forms provided or approved by it, summarizing the total compensation paid and the taxes withheld for all employees during the calendar year and shall file the same with the department on or before the due date of the corresponding federal return for the year for which report is made. Failure to file the annual report without reasonable excuse on or before the 30th day after notice has been given to the employer of failure subjects the employer to a penalty of \$100. The department may by rule require additional information the department finds

necessary to substantiate the annual return, including but not limited to copies of federal form W-2 for individual employees, and may prescribe circumstances under which the filing requirement imposed by this subsection is waived.

(4) Notwithstanding the provisions of subsection (2) of this section, employers of agricultural employees may submit returns annually showing the number of payments made and the withheld taxes paid. However, such employers shall make and file a combined quarterly tax report with respect to other tax programs, as required by ORS 316.168. [1969 c.493 §32; 1973 c.83 §1; 1982 s.s.1 c.1 §3; 1983 c.697 §2; 1987 c.366 §4; 1989 c.901 §8; 1993 c.593 §5; 1995 c.815 §1]

**316.205** [1953 c.304 §27; repealed by 1957 c.632 §1 (314.280 enacted in lieu of 316.205 and 317.180)]

**316.207 Liability for tax; warrant for collection; conference; appeal.** (1) Every employer who deducts and retains any amount under ORS 316.162 to 316.212 shall hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided in ORS 316.162 to 316.212.

(2) At any time the employer fails to remit any amount withheld, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued, recorded and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

(3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member described in ORS 316.162 (3)(b) of such employer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of liability is received by the department within 30 days after the notice of liability has been mailed, the notice of liability becomes final. In such event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(4)(a) In the case of a failure to file a withholding tax report on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member described in ORS 316.162 (3)(b) any time within three years after the assessment of an employer described in ORS 316.162 (3)(a). The time of assessment against such officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment, and if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In such event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of withheld taxes.

(b) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer or employee of a corporation may be held jointly and severally liable for payment of withheld taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.

(c) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of withheld taxes to the department. If any person notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's determination shall be binding on all persons notified and required to appear under this subsection.

(d) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any person determined to be liable for unpaid withholding taxes under this subsection, each person required to appear before the department under this

subsection shall be impleaded by the plaintiff and made a party to the action before the tax court and shall make available to the tax court such information as was presented before the department, as well as such other information as may be presented to the court. If any person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, 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 ORS 314.835, 314.840 or 314.991. The determination of the tax court shall be binding on all persons made parties to the action under this subsection.

(e) Nothing in this section shall be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unpaid withholding taxes. [1969 c.493 §33; 1985 c.406 §4; 1989 c.423 §3; 1993 c.593 §6; 1995 c.650 §38; 1997 c.839 §17; 2001 c.660 §42]

**316.209 Applicability of ORS 316.162 to 316.212 when services performed by qualified real estate broker or direct seller.** (1) For purposes of ORS 316.162 to 316.212, in the case of services performed as a qualified real estate broker, qualified principal real estate broker or as a direct seller:

(a) The individual performing the services shall not be treated as an employee; and

(b) The person for whom the services are performed shall not be treated as an employer.

(2) As used in this section, “qualified real estate broker” or “qualified principal real estate broker” means any individual if:

(a) The individual is a real estate licensee under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995;

(b) Substantially all of the remuneration (whether or not paid in cash) for the services performed by the individual as a real estate licensee is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the real estate broker, principal real estate broker or real estate appraiser for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.

(3) As used in this section, “direct seller” means any individual if:

(a) The individual is:

(A) Engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis or any similar basis, which the Department of Revenue prescribes by rule, for resale by the buyer or any other person, in the home or otherwise than in a permanent retail establishment; or

(B) Engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment;

(b) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subsection is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes. [1983 c.597 §3; 2001 c.300 §61]

**Note:** The amendments to 316.209 by section 61, chapter 300, Oregon Laws 2001, become operative July 1, 2002. See section 85, chapter 300, Oregon Laws 2001. The text that is operative until July 1, 2002, is set forth for the user’s convenience.

**316.209.** (1) For purposes of ORS 316.162 to 316.212, in the case of services performed as a qualified real estate agent or as a direct seller:

(a) The individual performing the services shall not be treated as an employee; and

(b) The person for whom the services are performed shall not be treated as an employer.

(2) As used in this section, “qualified real estate agent” means any individual if:

(a) The individual is a real estate licensee under ORS 696.010 to 696.490, 696.600 to 696.627, 696.800 to 696.855 and 696.995;

(b) Substantially all of the remuneration (whether or not paid in cash) for the services performed by the individual as a real estate licensee is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the real estate broker, real estate appraiser or real estate organization for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.

(3) As used in this section, “direct seller” means any individual if:

(a) The individual is:

(A) Engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis or any similar basis, which the Department of Revenue prescribes by rule, for resale by the buyer or any other person, in the home or otherwise than in a permanent retail establishment; or

(B) Engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment;

(b) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subsection is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.

**316.210** [1953 c.304 §28; repealed by 1957 c.632 §1 (314.285 enacted in lieu of 316.210 and 317.185)]

**316.212 Application of penalties, misdemeanors and jeopardy assessment; employer as taxpayer.** The provisions of the income tax laws in ORS chapters 305 and 314 and this chapter, relating to penalties, misdemeanors and jeopardy assessments, apply to employers subject to the provisions of ORS 316.162 to 316.212, and for these purposes any amount deducted or required to be deducted and remitted to the Department of Revenue under ORS 316.162 to 316.212 is considered the tax of the employer and with respect to such amount the employer is considered as a taxpayer.  
[1969 c.493 §34; 1982 s.s.1 c.16 §10; 1985 c.87 §5]

**316.215** [1969 c.493 §35; 1975 c.672 §6; 1978 c.9 §2; 1985 c.345 §5; repealed by 1987 c.293 §54]

**316.216 Alternate methods of filing, reporting and calculating liability for nonresident employer and employee in state temporarily.** (1) As used in this section:

(a) "Nonresident employer" means an employer who:

(A) Has no permanent place of business within this state; and

(B) Employs qualifying nonresident employees to perform temporary services in this state.

(b) "Qualifying nonresident employee" means an employee or independent contractor who:

(A) Is not a resident or part-year resident of this state;

(B) Performs temporary services in this state for one or more nonresident employers; and

(C) Has no income from Oregon sources other than income earned in connection with the performance of temporary services for one or more nonresident employers.

(c) "Temporary services" means services performed during a limited period of time, not to exceed 200 days in one calendar year.

(2) The Department of Revenue shall provide for alternate methods of filing, reporting or calculating tax liability, to be used by nonresident employers and qualifying nonresident employees to report and pay Oregon personal income tax on income earned in connection with the employees' performance of temporary services in this state. In providing for an alternate filing, reporting or calculating method, the department shall have the power to:

(a) Prescribe forms to be filed by nonresident employers to satisfy withholding registration, quarterly filing and account termination filing requirements under ORS 316.162 to 316.212, or employee estimated tax requirements under ORS 316.557 to 316.589.

(b) Prescribe forms to be filed by qualifying nonresident employees to satisfy annual personal income tax return requirements under ORS 316.362.

(c) Determine, based upon the circumstances, the amount of withholding or estimated tax payments necessary to result in a sum substantially equivalent to the amount of tax that a qualifying nonresident employee will be required to pay under this chapter.

(d) Enter into agreements pursuant to ORS 305.150 for the purpose of finally determining the Oregon personal income tax liability of qualifying nonresident employees.

(e) Determine whether and to what extent other provisions of this chapter shall be applied to nonresident employers or qualifying nonresident employees.

(3)(a) Except as provided in paragraph (b) of this subsection, a nonresident employer shall comply with the requirements of ORS 316.162 to 316.212 in the same manner as any other employer.

(b) A nonresident employer may elect to employ an alternate method established by the department pursuant to this section by notifying the department in the time and manner established by rule of the department. Any nonresident employer giving notice of election under this paragraph shall not be required to comply with the requirements of ORS 316.162 to 316.212.

(4)(a) Notwithstanding the election of a nonresident employer to employ the alternate method established by the department under this section, a qualifying nonresident employee may elect to report and pay Oregon personal income tax on income earned by the employee in connection with the employee's performance of temporary services in this state in the same manner as any other nonresident.

(b) If a nonresident employer does not make the election permitted under subsection (3) of this section, the qualifying nonresident employees of the employer shall report and pay Oregon personal income tax on income earned in connection with their performance of temporary services within this state in the same manner as any other nonresident.

(5) The department may adopt any rules it considers necessary to carry out the provisions of this section.

[1985 c.352 §2; formerly 316.857]

**316.217** [1969 c.493 §36; repealed by 1987 c.293 §56]

**316.222** [1969 c.493 §37; repealed by 1987 c.293 §56]

**316.227** [1969 c.493 §38; repealed by 1987 c.293 §56]

**316.255** [1953 c.304 §29; repealed by 1959 c.581 §1 (316.256 enacted in lieu of 316.255)]

**316.256** [1959 c.581 §2 (enacted in lieu of 316.255); subsection (4) derived from 1959 c.581 §11; repealed by 1969 c.493 §99]

**316.257** [1963 c.435 §4; repealed by 1969 c.493 §99]

**316.258** [1961 c.225 §2; repealed by 1969 c.493 §99]

**316.260** [1953 c.304 §30; repealed by 1969 c.493 §99]

**316.265** [1953 c.304 §31; 1953 c.552 §7; repealed by 1959 c.581 §3 (316.266 enacted in lieu of 316.265)]

**316.266** [1959 c.581 §4 (enacted in lieu of 316.265); last sentence derived from 1959 c.581 §11; last sentence of subsection (6) enacted as 1961 c.225 §3; 1969 c.103 §1; repealed by 1969 c.493 §99]

## ESTATES AND TRUSTS

(Generally)

**316.267 Application of chapter to estates and certain trusts.** The tax imposed by this chapter on individuals applies to the taxable income of estates and trusts, except for trusts taxed as corporations under ORS chapter 317 or 318. [1969 c.493 §39; 1973 c.115 §3]

**316.270** [1953 c.304 §32; repealed by 1969 c.493 §99]

**316.272 Computation and payment on estate or trust.** The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided by this chapter. The tax shall be paid by the fiduciary. [1969 c.493 §40; 1983 c.684 §21]

**316.275** [1953 c.304 §33; 1959 c.591 §19; subsection (2) derived from 1959 c.591 §21; repealed by 1969 c.493 §99]

**316.277 Associations taxable as corporations exempt from chapter.** (1) An association, trust or other unincorporated organization that is taxable as a corporation for federal income tax purposes is not subject to tax under this chapter, but is taxable as a corporation under ORS chapter 317 or 318, or both, as provided therein.

(2) An association, trust or other unincorporated organization that is not taxable as a corporation for federal income tax purposes but by reason of its purposes or activities is exempt from federal income tax except with respect to its unrelated business taxable income, is taxable under this chapter on such federally taxable income. [1969 c.493 §41; 1973 c.402 §21]

**316.279 Treatment of business trusts and business trusts income.** A domestic or foreign business trust of the type defined in ORS 128.560 is subject to tax under ORS chapter 317 or 318 and amounts distributed by it to its shareholders shall be treated as distributions by a corporation for the purposes of this chapter and ORS chapters 317 and 318, except that distributions that are treated as unrelated business taxable income under section 856(h)(3)(C) (pension-held REITs) of the Internal Revenue Code for federal tax purposes shall also be treated as unrelated business taxable income for state tax purposes. [1973 c.115 §2; 1995 c.556 §4]

**316.280** [1953 c.304 §34; 1953 c.552 §8; 1955 c.256 §1; paragraph (d) of subsection (6) of 1957 Replacement Part derived from 1955 c.256 §2; repealed by 1959 c.581 §5 (316.281 enacted in lieu of 316.280)]

**316.281** [1959 c.581 §6 (enacted in lieu of 316.280); subsection (8) derived from 1959 c.581 §11; 1965 c.99 §1; repealed by 1969 c.493 §99]

(Resident Estates and Trusts)

**316.282 Definitions; rulemaking authority.** (1) For purposes of this chapter:

(a) A “resident trust” means a trust of which the fiduciary is a resident of Oregon, or a trust the administration of which is carried on in Oregon. In the case of a fiduciary that is a corporate fiduciary engaged in interstate trust administration, the residence and place of administration of a trust both refer to the place where the majority of fiduciary decisions are made in administering the trust.

(b) A “resident estate” means an estate of which the fiduciary was appointed by an Oregon court or the administration of which is carried on in Oregon.

(c) The “taxable income” of a resident estate or trust means its federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under ORS 316.287.

(2) The Department of Revenue shall adopt rules defining “trust administration” for purposes of subsection (1)(a) of this section that include within the definition activities related to fiduciary decision making and that exclude from the definition activities related to incidental execution of fiduciary decisions. [1969 c.493 §§42, 43; 1997 c.100 §7; 1997 c.325 §42]

**316.285** [1953 c.304 §35; repealed by 1959 c.581 §7 (316.286 enacted in lieu of 316.285)]

**316.286** [1959 c.581 §8 (enacted in lieu of 316.285); subsection (6) derived from 1959 c.581 §11; repealed by 1969 c.493 §99]

**316.287 “Fiduciary adjustment” defined; shares proportioned.** (1) The “fiduciary adjustment” is the net amount of the modifications to federal taxable income described in this chapter (ORS 316.697 being applicable if the estate or trust is a beneficiary of another estate or trust) that relates to its items of income or deduction of an estate or trust.

(2) The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to the share of the estate or trust income of the beneficiary for such year, under state law or the terms of the instrument, that is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

(3) The Department of Revenue may by regulation authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the department may require.

[1969 c.493 §44; 1975 c.705 §6]

**316.290** [1953 c.304 §36; repealed by 1959 c.581 §9 (316.291 enacted in lieu of 316.290)]

**316.291** [1959 c.581 §10 (enacted in lieu of 316.290); subsection (4) derived from 1959 c.581 §11; repealed by 1969 c.493 §99]

**316.292 Credit for taxes paid another state.** (1) For purposes of this section, an estate or trust is considered a resident of the state which taxes the income of the estate or trust irrespective of whether the income is derived from sources within that state.

(2) Notwithstanding the limitations contained in ORS 316.082 and 316.131, if an estate or trust is a resident of this state and also a resident of another state, the estate or trust shall be allowed a credit against the taxes imposed under this chapter for income taxes imposed by and paid to the other state, subject to the following conditions:

(a) Credit shall be allowed only for the proportion of the taxes paid to the other state as the income taxable under this chapter and also subject to tax in the other state bears to the entire income upon which the taxes paid to the other state are imposed.

(b) The credit shall not exceed the proportion of the tax payable under this chapter as the income subject to tax in the other state and also taxable under this chapter bears to the entire income taxable under this chapter. [1969 c.493 §45; 1985 c.802 §10; 1991 c.838 §7]

**316.295** [1953 c.304 §37; 1965 c.202 §1; repealed by 1969 c.493 §99]

**316.296** [1965 c.154 §2; repealed by 1969 c.493 §99]

**316.297** [1963 c.343 §2; repealed by 1969 c.493 §99]

**316.298 Accumulation distribution credit.** (1) A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax, paid by the trust under this chapter for any preceding taxable year, that would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the Internal Revenue Code.

(2) The credit under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount

less than would have been due if the accumulation distribution or part thereof were excluded from the adjusted gross income of the beneficiary. [1969 c.493 §46; 1997 c.839 §18; 1999 c.90 §14; 2001 c.660 §43]

**316.299** [1965 c.178 §2; repealed by 1969 c.493 §99]

(Nonresident Estates and Trusts)

**316.302 “Nonresident estate or trust” defined.** For purposes of this chapter, a “nonresident estate or trust” means an estate or trust that is not a resident. [1969 c.493 §47; 1997 c.325 §43]

**316.305** [1953 c.304 §38; 1963 c.283 §2; 1963 c.627 §7 (referred and rejected); repealed by 1969 c.493 §99]

**316.306** [1955 c.608 §2; repealed by 1969 c.493 §99]

**316.307 Income of nonresident estate or trust.** For purposes of ORS 316.302 to 316.317:

(1) Items of income, gain, loss and deduction mean those derived from or connected with sources in this state.

(2) Items of income, gain, loss and deduction entering into the definition of federal distributable net income include such items from another estate or trust of which the first estate or trust is a beneficiary.

(3) The source of items of income, gain, loss or deduction shall be determined under regulations prescribed by the Department of Revenue in accordance with the general rules in ORS 316.127 as if the estate or trust were a nonresident individual.

(4) The income of a nonresident estate or trust consists of:

(a) Its share of items of income, gain, loss and deduction that enter into the federal definition of distributable net income;

(b) Increased or reduced by the amount of any items of income, gain, loss or deduction that are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust;

(c) Less the amount of the deduction for its federal exemption. [1969 c.493 §48; 1983 c.684 §22]

**316.310** [1953 c.304 §39; 1957 c.18 §1; repealed by 1969 c.493 §99]

**316.312 Determination of Oregon share of income.** (1) The share of a nonresident estate or trust of items of income, gain, loss and deduction entering into the definition of distributable net income and the share for purpose of ORS 316.127 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss and deduction shall be determined as follows:

(a) To the amount of items of income, gain, loss and deduction that enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications to federal taxable income described in this chapter to the extent they relate to items of income, gain, loss and deduction that also enter into the definition of distributable net income. No modification shall be made under this section that has the effect of duplicating an item already reflected in the definition of distributable net income.

(b) The amount determined under paragraph (a) of this subsection shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated have the same character as for federal income tax purposes. If an item entering into the computation of such amounts is not characterized for federal income tax purposes, it has the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(c) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under paragraph (a) of this subsection shall be in proportion to the beneficiary’s share of the estate or trust income for such year, under state law or the terms of the instrument, that is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(2) The Department of Revenue may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be appropriate and equitable. [1969 c.493 §49; 1975 c.705 §7]

**316.315** [1953 c.304 §10; 1955 c.285 §1; subsection (4) of 1955 Replacement Part derived from 1955 c.285 §2; 1957 c.540 §1; 1959 c.593 §4 (referred and rejected); 1963 c.627 §8 (referred and rejected); 1967 c.127 §1; repealed by 1969 c.493 §99]

**316.317 Credit to beneficiary for accumulation distribution.** A nonresident beneficiary of a trust whose adjusted gross income derived from sources in this state includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this chapter, computed in the same manner and subject to the same limitation as provided by ORS 316.298 with respect to a resident beneficiary. [1969 c.493 §50]

**316.320** [1953 c.304 §41; 1957 c.73 §1; 1965 c.410 §5; repealed by 1969 c.493 §99]

**316.325** [1953 c.304 §42; repealed by 1969 c.493 §99]

**316.330** [1953 c.304 §43; 1955 c.580 §1; repealed by 1969 c.493 §99]

**316.335** [1953 c.304 §44; 1957 s.s. c.15 §3; repealed by 1969 c.493 §99]

**316.336** [1961 c.608 §2; repealed by 1969 c.493 §99]

**316.337** [1957 c.16 §2; repealed by 1969 c.493 §99]

**316.340** [1953 c.304 §45; 1953 c.552 §9; 1955 c.589 §1; repealed by 1969 c.493 §99]

**316.342** [1969 c.493 §51; repealed by 1989 c.625 §27 (314.712 enacted in lieu of 316.342)]

**316.345** [1953 c.304 §46; 1953 c.552 §10; 1959 c.593 §5 (referred and rejected); 1963 c.627 §9 (referred and rejected); 1965 c.337 §1; repealed by 1969 c.493 §99]

**316.347** [1969 c.493 §52; repealed by 1989 c.625 §29 (314.714 enacted in lieu of 316.347)]

**316.350** [1953 c.304 §47; repealed by 1969 c.493 §99]

**316.352** [1969 c.493 §53; 1975 c.705 §8; repealed by 1989 c.625 §31 (316.124 enacted in lieu of 316.352)]

**316.353** [1957 s.s. c.15 §6; subsection (6) derived from 1957 s.s. c.15 §8; 1959 c.92 §1; 1963 c.627 §12 (referred and rejected); 1965 c.410 §6; repealed by 1969 c.493 §99]

**316.355** [1953 c.304 §48; repealed by 1969 c.493 §99]

**316.360** [1953 c.304 §49; repealed by 1969 c.493 §99]

## RETURNS; PAYMENTS; REFUNDS

**316.362 Persons required to make returns.** (1) An income tax return with respect to the tax imposed by this chapter shall be made by the following:

(a) Every resident individual:

(A) Who is required to file a federal income tax return for the taxable year; or

(B) Who has gross income greater than the sum of:

(i) The basic standard deduction allowed under ORS 316.695 (1)(c)(B);

(ii) Any additional standard deduction allowed to the taxpayer under ORS 316.695 (7); and

(iii) An amount equal to the income equivalent of one personal exemption credit under ORS 316.085 (3)(b) if unmarried, or equal to the income equivalent of two personal exemption credits under ORS 316.085 (3)(b) if married.

(b) Every nonresident individual who has federal gross income from sources in this state of more than the basic standard deduction allowed under ORS 316.695 (1)(c)(B).

(c) Every resident estate or trust that is required to file a federal income tax return.

(d) Every nonresident estate that has federal gross income of \$600 or more for the taxable year from sources within this state.

(e) Every nonresident trust that for the taxable year has from sources within this state any taxable income, or gross income of \$600 or more regardless of the amount of taxable income.

(2) Nothing contained in this section shall preclude the Department of Revenue from requiring any individual, estate or trust to file a return when, in the judgment of the department, a return should be filed.

(3) For purposes of this section, the income equivalent of a personal exemption credit under ORS 316.085 (3)(b) shall be determined as follows:

(a) Divide the personal exemption credit amount by the rate applicable to the lowest income bracket under ORS 316.037.

(b) If the resulting quotient is less than the maximum amount of income subject to the rate used in paragraph (a) of this subsection, the quotient is the income equivalent.

(c) If the resulting quotient is more than the maximum amount of income subject to the rate used in paragraph (a) of this subsection:

(A) Multiply the maximum amount of income subject to the rate used in paragraph (a) of this subsection by the rate used in paragraph (a) of this subsection.

(B) Determine the difference between the product calculated under subparagraph (A) of this paragraph and the personal

exemption credit amount.

(C) Divide the difference determined in subparagraph (B) of this paragraph by the rate applicable to the income bracket that is the next succeeding the lowest income bracket under ORS 316.037.

(D) Add the quotient determined in subparagraph (C) of this paragraph to the maximum amount of income subject to the rate used in paragraph (a) of this subsection. The sum is the income equivalent. [1969 c.493 §54; 1983 c.740 §90; 2001 c.77 §6; 2001 c.660 §15]

**Note:** Section 7, chapter 77, Oregon Laws 2001, provides:

**Sec. 7.** The amendments to ORS 316.362 by section 6 of this 2001 Act apply to tax years beginning on or after January 1, 2002. [2001 c.77 §7]

**Note:** Section 16, chapter 660, Oregon Laws 2001, provides:

**Sec. 16.** The amendments to ORS 316.362 by section 15 of this 2001 Act apply to tax years beginning on or after January 1, 2002. [2001 c.660 §16]

**316.363 Returns; instructions.** The instructions to the individual state income tax return form required to be filed by this chapter shall:

- (1) Be written in simple words used in their commonly understood senses that convey meanings clearly and directly;
- (2) Be written in primarily simple, rather than compound or complex, sentences that are as short as possible;
- (3) Limit the use of definitions to definitions of words that cannot be properly explained or qualified in the text;
- (4) Include an index at the beginning of the instructions to provide a useful guide to the use of the form. The index shall give a comprehensive listing of return form parts in a logical sequence, and the index listings shall clearly state the contents of each section;
- (5) Have the text of the instructions printed in roman type at least as large as 10-point modern type, two points leaded;
- (6) Have margins that are adequate for purposes of readability, and have a line length of the text not exceeding four inches for a column;
- (7) Have section headings printed in a contrasting color, typeface or size; and
- (8) Be printed so that the contrast and legibility of the ink and paper used is substantially the equivalent of black ink on white paper. [1977 c.736 §2]

**316.364 Flesch Reading Ease Score form instructions.** (1) The instructions to an individual state income tax return form shall have a total Flesch Reading Ease Score of 60 or higher.

(2) As used in this section:

(a) "Flesch Reading Ease Score" means  $206.835 - (x + y)$  where x equals average sentence length multiplied by 1.015 and y equals average word length multiplied by 84.6.

(b) "Average sentence length" means the total number of words in the instructions to the state income tax return form divided by the total number of sentences in the instructions.

(c) "Average word length" means the total number of syllables in the instructions to the state income tax return form divided by the total number of words in the instructions. [1977 c.736 §3]

**316.365** [1953 c.304 §50; 1953 c.552 §11; 1957 c.586 §15; 1959 c.593 §6 (referred and rejected); 1961 c.411 §1; 1963 c.627 §13 (referred and rejected); repealed by 1969 c.493 §99]

**316.367 Joint return by husband and wife.** A husband and wife may make a joint return with respect to the tax imposed by this chapter even though one of the spouses has neither gross income nor deductions, except that:

- (1) No joint return shall be made under this chapter if the spouses are not permitted to file a joint federal income tax return;
  - (2) If the federal income tax liability of either spouse is determined on a separate federal return, their income tax liabilities under this chapter shall be determined on separate returns;
  - (3) If the federal income tax liabilities of husband and wife are determined on a joint federal return, they shall file a joint return under this chapter and their tax liabilities shall be joint and several; and
  - (4) If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this chapter, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several.
- [1969 c.493 §55; 1985 c.802 §9]

**316.368 When joint return liability divided; showing of marital status and hardship.** Notwithstanding ORS 316.367, upon petition to the Director of the Department of Revenue by one spouse who has filed a joint tax return, the Department of Revenue may terminate the joint and several liability of each spouse and divide the liability equally between both spouses for the tax, penalty and interest due for the tax year that is the subject of the joint return. No petition shall be granted unless at the time of the petition, the spouses are living apart and are legally separated or divorced, and the petitioner satisfies the department that the petitioner is unable to pay the entire liability due to financial hardship. The department shall adopt rules establishing

the manner in which a petitioner shall show financial hardship. [1993 c.593 §8]

**316.369 Circumstances where one spouse relieved of joint return liability.** If a joint return has been made under this chapter for a tax year, a spouse shall be relieved of liability for tax, including interest, penalties and other amounts, for the tax year:

(1) If the Internal Revenue Service has made a determination that relieved the spouse of liability for federal taxes for the same tax year under Internal Revenue Code provisions that provide for spouse relief from liability; or

(2) If the Internal Revenue Service has not made a determination that relieved the spouse of liability for the tax year, but the spouse qualifies to be relieved of state tax liability under rules adopted by the Department of Revenue. In adopting rules under this subsection, the department shall consider the provisions of the Internal Revenue Code and regulations issued thereunder that provide for spouse relief from liability for federal taxes. [1983 c.627 §§2,3; 1985 c.802 §9a; 1999 c.90 §15; 2001 c.660 §7]

**Note:** Section 8, chapter 660, Oregon Laws 2001, provides:

**Sec. 8.** The amendments to ORS 316.369 by section 7 of this 2001 Act apply to claims for relief of tax liability made under ORS 316.369 on or after July 23, 1998. [2001 c.660 §8]

**316.370** [1953 c.304 §51; repealed by 1969 c.493 §99]

**316.371** [1989 c.625 §12; repealed by 2001 c.660 §9]

**316.372 Minor to file return; unpaid tax assessable against parent; when parent may file for minor.** (1) Except as provided in subsection (2) of this section, a minor shall file a return and include therein all items of income, including income attributable to personal services, and such income shall not be included on the return of the parent. All expenditures by the parent or the minor attributable to such income are considered to have been paid or incurred by the minor. However, any tax assessed against the minor, to the extent, attributable to income from personal services, if not paid by the minor, for all purposes shall be considered as having also been properly assessed against the parent. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a minor by reason of having parental rights and duties in respect of such minor.

(2) If a parent is eligible to elect and elects to include the interest and dividend income of a child on the parent's federal income tax return under section 1(g)(7)(B) of the Internal Revenue Code, the parent shall be considered to have elected to include the interest and dividend income of the child on the return filed by the parent for the same taxable period for purposes of this chapter. The child need not in such case file a return for purposes of this chapter for the taxable period to which the election applies. [1969 c.493 §56; 1989 c.625 §13a; 1991 c.457 §7a]

**316.375** [1953 c.304 §52; 1957 c.16 §3; repealed by 1969 c.493 §99]

**316.377 Individual under disability.** An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by a duly authorized agent of the individual, guardian, conservator, fiduciary or other person charged with the care of the person or property of the individual other than a receiver in possession of only a part of the individual's property. [1969 c.493 §57; 1985 c.761 §13]

**316.380** [1953 c.304 §53; repealed by 1969 c.493 §99]

**316.382 Returns by fiduciaries.** (1) An income tax return, in the name of the decedent, for any deceased individual shall be made and filed by a personal representative or other person charged with the care of the property, and this duty extends to any unfiled return prior to decedent's death. The tax shall be levied upon and collected from the estate. A final return of a decedent shall be due when it would have been due if the decedent had not died.

(2) The income tax return of an estate or trust shall be made and filed by the fiduciary thereof, whether the income is taxable to the estate or trust or to the beneficiaries thereof. If two or more fiduciaries are acting jointly, the return may be made by any one of them. [1969 c.493 §58; 1975 c.705 §9]

**316.385** [1963 c.435 §2; repealed by 1969 c.493 §99]

**316.387 Election for final tax determination by personal representative; period for assessment of deficiency; discharge of personal representative from personal liability for tax.** (1) In the case of any tax for which a return is required under this chapter from a decedent or a decedent's estate during the period of administration, the Department of Revenue may give notice of deficiency as described in ORS 305.265 within 18 months after a written election for a final tax determination is made by the personal representative, administrator, trustee or other fiduciary representing the estate of the decedent. This election must be filed after the return is made and filed in the form and manner as may be prescribed by the department by rule.

(2) Notwithstanding the provisions of subsection (1) of this section, if the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of the deficiency may be

given at any time within five years after the return was filed.

(3) The limitations to the giving of a notice of deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed. If the Commissioner of Internal Revenue or other authorized official of the federal government makes a correction resulting in a change of the decedent's or the estate of the decedent's tax for state income tax purposes, then notice of a deficiency under any law imposing tax upon or measured by income for the corresponding tax year may be mailed within one year after the department is notified by the fiduciary or the commissioner of such federal correction, or within the applicable 18-month or five-year period prescribed in subsections (1) and (2) of this section, respectively, whichever period later expires.

(4) After filing the decedent's return, the personal representative, administrator, trustee or other fiduciary may apply in writing for discharge from personal liability for tax on the decedent's income. After paying any tax for which the personal representative, administrator, trustee or other fiduciary is subsequently notified, or after expiration of nine months since receipt of the application and during which no notification of tax liability is made, the discharge becomes effective. A discharge under this subsection does not discharge the personal representative, administrator, trustee or other fiduciary from liability to the extent that assets of the decedent's estate are still in the possession or control of the personal representative, administrator, trustee or other fiduciary. The failure of a personal representative to make application and otherwise proceed under this subsection shall not affect the protection available to the personal representative under ORS 116.113 (2), 116.123 and 116.213.

(5) For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the department, on behalf of the state, may agree upon the amount of taxes at any time due or to become due from such fiduciaries under this chapter or transferees of an estate as provided in ORS 314.310 with respect to a tax return or returns of or for a decedent individual or an estate or trust, and payment in accordance with such agreement shall be in full satisfaction of the taxes to which the agreement relates. [1969 c.493 §59; 1971 c.333 §3; 1995 c.453 §5]

**316.390** [1963 c.435 §3; repealed by 1969 c.493 §99]

**316.392 Notice of qualification of receiver and others.** Every receiver, trustee in bankruptcy, assignee for benefit of creditors or other like fiduciary, shall give notice of qualification as such to the Department of Revenue, as may be required by regulation. [1969 c.493 §60]

**316.397** [1969 c.493 §61; 1971 c.332 §1; 1975 c.672 §7; 1978 c.9 §3; 1981 c.801 §5; repealed by 1983 c.684 §24]

**316.402** [1969 c.493 §62; repealed by 1971 c.332 §2]

**316.405** [1975 c.410 §2; 1967 c.110 §1; repealed by 1969 c.493 §99]

**316.406** [1959 c.591 §21; repealed by 1965 c.410 §7]

**316.407** [1969 c.493 §63; 1971 c.354 §6; 1975 c.593 §18; 1979 c.470 §1; 1980 c.7 §23; repealed by 1989 c.625 §60]

**316.408** [1959 c.591 §2; 1963 c.388 §3; 1963 c.627 §14 (referred and rejected); repealed by 1965 c.410 §7]

**316.410** [1959 c.591 §3; repealed by 1965 c.410 §7]

**316.411** [1963 c.388 §§2,4; repealed by 1965 c.410 §7]

**316.412** [1959 c.591 §4; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.414** [1959 c.591 §5; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.415** [1965 c.410 §3; repealed by 1969 c.493 §99]

**316.417 Date return considered made or advance payment made.** (1) A return filed before the last day prescribed by law for the filing thereof is considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed is considered as made on the last day prescribed by law for the payment of the tax or, if the taxpayer elected to pay the tax in installments, on the last day prescribed for the payment of the first installment. The last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer by the Department of Revenue.

(2) ORS 305.820 applies to returns filed by mail or private express carrier and to due dates that fall on a Saturday, Sunday or legal holiday. [1969 c.493 §64; 1993 c.44 §3]

**316.420** [1959 c.591 §6; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.422** [1969 c.493 §65; repealed by 1971 c.354 §7]

**316.425** [1965 c.410 §4; repealed by 1969 c.493 §99]

**316.426** [1959 c.591 §7; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.430** [1959 c.591 §8; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.432** [1959 c.591 §9; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.434** [1959 c.591 §10; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.436** [1959 c.591 §11; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.438** [1959 c.591 §12; repealed by 1963 c.627 §23 (referred and rejected); repealed by 1965 c.410 §7]

**316.440** [1959 c.591 §13; repealed by 1965 c.410 §7]

**316.442** [1959 c.591 §14; repealed by 1965 c.410 §7]

**316.444** [1959 c.591 §15; repealed by 1965 c.410 §7]

**316.446** [1959 c.591 §16; repealed by 1965 c.410 §7]

**316.448** [1959 c.591 §17; repealed by 1965 c.410 §7]

**316.450** [1959 c.591 §18; repealed by 1965 c.410 §7]

**316.454** [1965 c.248 §3; repealed by 1969 c.493 §99]

**316.455** [1953 c.304 §54; 1953 c.552 §12; 1955 c.596 §2; 1957 c.586 §2; 1957 s.s. c.15 §4; 1963 c.486 §1; 1963 c.627 §15 (referred and rejected); 1965 c.248 §1; repealed by 1969 c.493 §99]

**316.457 Department may require copy of federal return.** If directed to do so by the Department of Revenue, through regulations or instructions upon the state income tax return form, every taxpayer required by this chapter to file an income tax return with the department shall also file with such return a true copy of the federal tax return filed by the taxpayer pursuant to the requirements of the Internal Revenue Code for the same taxable year. The department may, in its discretion, promulgate regulations or instructions that permit taxpayers to submit specified excerpts from federal returns in lieu of submitting copies of the entire federal return. The federal return or any part thereof required to be filed with the state income tax return is incorporated in and shall be a part of the state income tax return. [1969 c.493 §66; 1977 c.872 §6]

**316.462 Change of election.** Any election expressly authorized by this chapter may be changed on such terms and conditions as the Department of Revenue may prescribe by regulation. [1969 c.493 §67]

**316.467** [1969 c.493 §68; 1985 c.602 §14; renumbered 314.724 in 1989]

**316.472 Tax treatment of common trust fund; information return required.** (1) The tax treatment of common trust funds and participants therein, under this chapter, is governed by the provisions of the Internal Revenue Code.

(2) Every financial institution or trust company maintaining a common trust fund shall make a return to the Department of Revenue for each tax year, stating specifically, with respect to such fund, the items of gross income and deductions, and shall include in the return information sufficient to identify the trusts and estates entitled to share in the net income of the common trust fund and the amount of the proportionate share of each such participant. The return shall be made at such time as is designated by the department. [1969 c.493 §69; 1997 c.631 §456]

**316.475** [Formerly 316.080; amended by 1961 c.218 §1; repealed by 1969 c.493 §99]

**316.480** [1967 c.592 §7; 1969 c.340 §2; repealed by 1969 c.493 §99; see 316.097]

**316.485** [1981 c.411 §1; 1989 c.987 §18; repealed by 1995 c.79 §166]

**316.487** [1987 c.902 §7; repealed by 1993 c.797 §33]

**316.490 Refund as contribution to Alzheimer's Disease Research Fund.** (1) Individual taxpayers who file an Oregon income tax return for purposes of this chapter and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Alzheimer's Disease Research Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form a space for taxpayers to designate that a contribution be made to the Alzheimer's Disease Research Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749.

(3) A designation under subsection (1) of this section shall be made with respect to any taxable year on the returns for that taxable year, and once made shall be irrevocable. [1987 c.902 §2; 1989 c.987 §25]

**316.493 Refund as contribution for prevention of child abuse and neglect.** (1) Recognizing that children are Oregon's most valuable resource and that child abuse and neglect is a threat to the physical, mental and emotional health of children; and further recognizing that the incidence of validated cases of reported child abuse and neglect has been increasing at an alarming rate in Oregon and represents an enormous threat to the welfare of our community, the Legislative Assembly hereby provides an additional opportunity to taxpayers to assist in child abuse and neglect prevention by means of an income tax checkoff.

(2) Any individual taxpayer who files an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the holder of the subaccount established pursuant to section 36 (2), chapter 1084, Oregon Laws 1999, or a successor subaccount, account or fund by marking the appropriate box printed on the return pursuant to subsection (3) of this section.

(3) The department shall print on the face of the Oregon income tax form a space for taxpayers to designate that a contribution be made for the prevention of child abuse and neglect from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749.

(4) The Department of Revenue shall transfer to the subaccount established pursuant to section 36 (2), chapter 1084, Oregon Laws 1999, or a successor subaccount, account or fund an amount as credited to the subaccount or its successor under ORS 305.749. [1987 c.771 §2; 1989 c.987 §19; 1999 c.1084 §40]

**316.495** [1989 c.987 §32; repealed by 1995 c.79 §166]

## DISTRIBUTION OF REVENUE

**316.502 Distribution of revenue to General Fund; working balance.** (1) The net revenue from the tax imposed by this chapter, after deducting refunds, shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be retained for the payment of refunds, but such working balance shall not at the close of any fiscal year exceed the sum of \$1 million.

(3) Moneys are continuously appropriated to the Department of Revenue to make the refunds authorized under subsection (2) of this section. [1969 c.493 §70; 1977 c.761 §2]

**316.505** [1953 c.304 §55; 1953 c.552 §13; 1955 c.596 §3; subsection (3) derived from 1955 c.596 §4; 1957 c.586 §3; 1963 c.627 §16 (referred and rejected); repealed by 1969 c.493 §99]

**316.510** [1953 c.304 §56; 1957 c.586 §4; repealed by 1969 c.493 §99]

**316.512** [1965 c.592 §2; repealed by 1969 c.493 §99]

**316.513** [1965 c.592 §3; repealed by 1969 c.493 §99]

**316.515** [1953 c.304 §57; repealed by 1969 c.493 §99]

**316.520** [1953 c.304 §58; repealed by 1957 c.632 §1 (314.355 enacted in lieu of 316.520)]

**316.525** [1953 c.304 §59; repealed by 1969 c.493 §99]

**316.530** [1953 c.304 §60; repealed by 1969 c.493 §99]

**316.535** [1953 c.304 §61; repealed by 1957 c.632 §1 (314.360 enacted in lieu of 316.535)]

**316.540** [1953 c.304 §62; repealed by 1969 c.493 §99]

**316.545** [1953 c.304 §63; repealed by 1957 c.632 §1 (314.385 enacted in lieu of 316.545 and 317.355)]

**316.550** [1953 c.304 §64; repealed by 1957 c.632 §1 (314.365 enacted in lieu of 316.550 and 317.365)]

**316.555** [1953 c.304 §65; repealed by 1957 c.632 §1 (314.370 enacted in lieu of 316.555)]

## PAYMENT OF ESTIMATED TAXES

**316.557 Definition of “estimated tax.”** As used in ORS 316.557 to 316.589, “estimated tax” means the amount of income tax imposed under this chapter for the taxable year, as estimated by the individual, minus the sum of any credits as estimated by the individual against tax provided by this chapter. [1980 c.7 §4; 1985 c.603 §4; 1997 c.839 §21; 1999 c.90 §16; 2001 c.660 §44]

**316.559 Application of ORS 316.557 to 316.589 to estates and trusts.** ORS 316.557 to 316.589 do not apply to an estate or trust. [1980 c.7 §9]

**316.560** [1953 c.304 §66; repealed by 1957 c.632 §1 (314.295 enacted in lieu of 316.560 and 317.375)]

**316.563 When declaration of estimated tax required; exception; effect of short tax year; content; amendment.** (1) Except as provided in subsection (2) of this section, every individual shall declare an estimated tax for the taxable year if:

- (a) The gross income for the taxable year can be reasonably expected to include more than \$1,000 from sources other than wages as defined in ORS 316.162 (2); or
- (b) The gross income for the taxable year can be reasonably expected to exceed:
  - (A) \$20,000 in the case of:
    - (i) A single individual, including a head of household as defined in section 2 (b) of the Internal Revenue Code, or a surviving spouse as defined in section 2 (a) of the Internal Revenue Code; or
    - (ii) A married individual entitled under ORS 316.567 to file a joint declaration with a spouse, but only if the spouse has not received wages, as defined in ORS 316.162 (2) for the taxable year; or
  - (B) \$10,000 in the case of a married individual entitled under ORS 316.567 to file a joint declaration with a spouse, but only if each spouse has received wages as defined in ORS 316.162 (2) for the taxable year; or
  - (C) \$5,000 in the case of a married individual not entitled under ORS 316.567 to file a joint declaration with a spouse.

(2) No declaration is required if the estimated tax as defined in ORS 316.557 is less than the amount established by rule of the Department of Revenue. The department shall consider the provisions of section 6654 of the Internal Revenue Code in determining the amount.

(3) An individual with a taxable year of less than 12 months shall make a declaration in accordance with rules adopted by the Department of Revenue.

(4) An individual may amend the declaration filed during the taxable year under rules prescribed by the department.

(5) The declaration shall contain information required by the department by rule. [1980 c.7 §§2,2a,5,8; 1981 c.678 §1a; 1987 c.293 §21; 1997 c.839 §22; 1999 c.90 §17; 2001 c.660 §45]

**316.565** [1953 c.304 §67; repealed by 1957 c.632 §1 (314.380 enacted in lieu of 316.565 and 317.380)]

**316.567 Joint declaration of husband and wife; liability; effect on nonjoint returns.** (1) Except as provided in subsection (2) of this section, a husband and wife may make a single declaration jointly under ORS 316.557 to 316.589. The liability of the husband and wife making such a declaration shall be joint and several.

(2) A husband and wife may not make a joint declaration:

- (a) If either the husband or the wife is a nonresident alien;
- (b) If they are separated under a decree of divorce or of separate maintenance; or
- (c) If they have different taxable years.

(3) If a husband and wife make a joint declaration but not a joint return for the taxable year, the husband and wife may, in such manner as they may agree, and after giving notice of the agreement to the Department of Revenue:

- (a) Treat the estimated tax for the year as the estimated tax of either the husband or of the wife; or
- (b) Divide the estimated tax between them.

(4) If a husband and wife fail to agree, or fail to notify the department of the manner in which they agree, to the treatment of estimated tax for a taxable year for which they make a joint declaration but not a joint return, the payments shall be allocated between them according to rules adopted by the department. Notwithstanding ORS 314.835, 314.840 or 314.991, the department may disclose to either the husband or the wife the information upon which an allocation of estimated tax was made under this section. [1980 c.7 §3; 1985 c.603 §5]

**316.569 When declaration required of nonresident.** No declaration shall be required of a nonresident individual under ORS 316.557 to 316.589 unless:

(1) Withholding under this chapter is made applicable to the wages, as defined in ORS 316.162, of the nonresident

individual; or

(2) The nonresident individual has income, other than compensation for personal services subject to deduction and withholding under ORS 316.162, which is effectively connected with the conduct of a trade or business within this state. [1980 c.7 §10; 1985 c.603 §6]

**316.570** [1953 c.304 §68; 1957 c.586 §16; 1959 c.632 §1; 1961 c.504 §2; 1969 c.166 §6; repealed by 1969 c.493 §99]

**316.573 When individual not required to file declaration.** (1) An individual need not file a declaration of estimated tax required by ORS 316.563 (1), if:

(a) The estimated gross income of the individual from farming or fishing, including oyster farming, for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year; or

(b) The gross income of the individual from farming or fishing, including oyster farming, shown on the return of the individual in the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return.

(2) For purposes of computing gross income under this section, an individual who is a stockholder of one or more electing small business corporations for federal income tax purposes shall consider his or her share of the gross income of the electing small business corporation as his or her individual income. The electing small business corporation gross income shall be classed as farming, fishing, nonfarming or nonfishing as the case may be in carrying out the provisions of this section. [1980 c.7 §12]

**316.575** [1953 c.304 §69; 1955 c.595 §1; repealed by 1957 c.586 §19]

**316.577 Date of filing declaration.** Except as provided in ORS 316.573, declarations of estimated tax required by ORS 316.563 (1) from individuals who are neither farmers nor fishermen for the purpose of that section shall be filed for tax years beginning on or after January 1, 1982, on or before April 15 of the taxable year, except that if the requirements of ORS 316.563 (1) are first met:

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year;

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year. [1980 c.7 §11; 1981 c.678 §2; 1983 c.162 §64]

**316.579 Amount of estimated tax to be paid with declaration; installment schedule; prepayment of installment.** (1) For taxable years beginning on or after January 1, 1982, an individual shall pay the estimated tax, with respect to which a declaration is required under ORS 316.563 (1), as provided in subsections (2) to (6) of this section.

(2) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15 of the taxable year, and the fourth on January 15 of the succeeding year.

(3) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by ORS 316.577 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the calendar year, and the third on January 15 of the succeeding taxable year.

(4) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by ORS 316.577 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of filing of the declaration, and the second on January 15 of the succeeding taxable year.

(5) If the declaration is filed after September 15 of the taxable year and is not required by ORS 316.577 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(6) If the declaration is filed after the time prescribed in ORS 316.577, subsections (3) to (5) of this section shall not apply. Instead, there shall be paid at the time of filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in ORS 316.577, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(7) If a taxpayer does not file a declaration but files a return on or before January 31 of the succeeding year and pays in full the amount stated as due on the return:

(a) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, the return shall be considered as the declaration; and

(b) If the tax shown on the return, as reduced by the sum of the credits against the tax allowed for purposes of this chapter, is greater than the estimated tax shown in an earlier declaration, or in the last amendment thereof, the return shall be considered as the amendment of the declaration permitted by ORS 316.563 (4) to be filed on or before January 15.

(8) In the application of this section to a taxable year beginning on any date other than January 1, there shall be substituted for the 15th or last day of the month specified in this section, the 15th or last day of the corresponding month.

(9) An individual may pay an installment of the estimated tax before the date prescribed for its payment.

(10) Any payment of estimated tax received by the Department of Revenue shall first be applied to underpayments of estimated tax due for any prior installment due for the taxable year. Any excess amount shall be applied to the installment that next becomes due after the payment was received. [1980 c.7 §§16,20; 1981 c.678 §3; 1985 c.603 §7; 1987 c.293 §22; 1993 c.730 §43]

**316.580** [1953 c.304 §70; 1955 c.595 §2; 1957 c.586 §17; renumbered 316.751]

**316.583 Effect of payment of estimated tax or installment; credit for overpayment of prior year taxes.** (1) Payment of the estimated income tax or any installment shall be considered payment on account of the income taxes imposed by this chapter for the taxable year.

(2) If there is an overpayment of income tax for a taxable year, the taxpayer may elect on a timely filed return for that taxable year (determined with regard to any extension of time for filing) to have the overpayment credited against an installment of estimated tax for the subsequent taxable year. The amount credited shall be deemed paid as estimated tax on the first date prescribed for payment of the estimated tax.

(3) If there is an overpayment of income taxes for a taxable year, and the taxpayer elects on a return (including an amended return) for that taxable year filed after the due date (determined with regard to any extension of time for filing) to have the overpayment credited against an installment of estimated tax for a subsequent taxable year, the overpayment shall be credited against that installment of estimated tax. The amount credited shall be deemed paid as estimated tax on the date the return was filed.

(4) The Department of Revenue may adopt rules which enable the taxpayer or department to credit against the estimated income tax the amount the taxpayer or the department determines to be an overpayment of the income tax for a preceding taxable year. [1980 c.7 §§19,21; 1993 c.726 §35]

**316.585** [1953 c.304 §71; 1955 c.595 §3; 1957 c.586 §18; renumbered 316.770]

**316.587 Effect of underpayment of estimated tax; computation of underpayment; interest; when not imposed.** (1) Except as provided in subsection (5) of this section, if an individual makes an underpayment of estimated tax, interest shall accrue at the rate established under ORS 305.220 for each month, or fraction thereof, on the amount underpaid for the period the estimated tax or any installment remains unpaid. The penalty provisions contained in ORS chapter 314 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 316.557 to 316.589.

(2) For purposes of subsection (1) of this section, the amount of underpayment shall be the excess of the required installment over the amount (if any) of the installment paid on or before the due date for the installment.

(3) The period of underpayment shall run from the date the installment was due to the earlier of the following dates:

(a) The 15th day of the fourth month following the close of the taxable year; or

(b) With respect to any portion of the underpayment, the date on which the portion is paid.

(4) For purposes of subsection (3)(b) of this section, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(5)(a) Interest accruing under subsection (1) of this section shall not be imposed if the individual was a resident of this state throughout the preceding taxable year and had no tax liability for that year, and the preceding taxable year was a taxable year of 12 months.

(b) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax to the extent that the Department of Revenue determines that by reason of casualty, disaster or other unusual circumstances the imposition of interest would be against equity and good conscience.

(c) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax if the department determines that:

(A) In the tax year the estimated tax payment was required to be made or in the tax year preceding such tax year, the taxpayer (i) retired after having attained age 62 or (ii) became disabled; and

(B) The underpayment was due to reasonable cause and not to willful neglect.

(d) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax attributable to the pro rata share of a shareholder of the income of an S corporation if:

(A) The income is taxable income for an initial year for which S corporation status is elected for the corporation; and

(B) The shareholder is a nonresident or for the preceding taxable year was a part-year resident for Oregon tax purposes.

(6) For purposes of this section, the estimated tax shall be computed without any reduction for the amount of credit estimated to be allowed to the individual for the taxable year under ORS 316.187. The amount of the credit allowed under ORS 316.187 for the taxable year shall be considered a payment of estimated tax. An equal part of the credit shall be considered paid on each installment date for the taxable year, unless the taxpayer establishes the date on which all amounts were actually withheld, in which case the amount so withheld shall be considered payment of estimated tax on the dates on which the amounts were actually withheld.

(7) For purposes of subsections (5) and (8) of this section, the term "tax" means the tax imposed by this chapter minus any credits against tax allowed for purposes of this chapter, other than the credit against tax provided by ORS 316.187.

(8) For purposes of subsections (2) and (4) of this section, the term "required installment" means the amount of the

installment that would be due if the estimated tax were equal to the lesser of:

(a) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year);

(b) If the preceding taxable year was a taxable year of 12 months, the percentage of the tax shown on the return filed by the individual for the preceding taxable year that is established by the Department of Revenue by rule; or

(c) Ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(9) For purposes of subsection (8) of this section:

(a) If an amended return is filed on or before the return due date (determined with regard to any extension of time granted to the taxpayer), then the term "return" means the amended return.

(b) If during initial processing of the return the department adjusts the amount of tax due, then the term "tax shown on the return" means the tax as adjusted by the department. This paragraph shall not apply if it is ultimately determined that the adjustment was improper.

(c) The department shall consider the provisions of section 6654 of the Internal Revenue Code. [1980 c.7 §22; 1982 s.s.1 c.16 §21; 1985 c.603 §8; 1987 c.293 §22a; 1989 c.625 §13b; 1991 c.457 §7h; 1993 c.726 §35a; 1995 c.556 §5; 1999 c.90 §18; 2001 c.660 §4]

**316.588 When interest on underpayment not imposed.** (1) Interest accruing under ORS 316.587 shall not be imposed for any taxable year if the tax shown on the return for the taxable year (or, if no return is filed, the tax), minus the sum of any credits allowable for purposes of this chapter, including the credit allowable under ORS 316.187, is less than the amount established by rule adopted under ORS 316.563 (2).

(2) For purposes of this section:

(a) If an amended return is filed on or before the return due date (determined with regard to any extension of time granted to the taxpayer), then the term "return" means the amended return.

(b) If during initial processing of the return the Department of Revenue adjusts the amount of tax due, then the term "tax shown on the return" means the tax as adjusted by the department. This paragraph shall not apply if it is ultimately determined that the adjustment was improper. [1987 c.293 §22c; 1993 c.726 §35b; 1999 c.90 §19; 2001 c.660 §5]

**316.589 Application to short tax years and tax years beginning on other than January 1.** (1) The application of ORS 316.557 to 316.589 to taxable years of less than 12 months shall be in accordance with rules adopted by the Department of Revenue.

(2) In the application of ORS 316.557 to 316.589 to a taxable year beginning on any date other than January 1 there shall be substituted, for the months specified in ORS 316.557 to 316.589, the months which correspond thereto. [1980 c.7 §§14,15; 1985 c.603 §9]

**316.590** [1953 c.304 §72; repealed by 1969 c.493 §99]

**316.605** [1953 c.304 §73; 1955 c.590 §1; repealed by 1957 c.632 §1 (314.405 enacted in lieu of 316.605 and 317.405)]

**316.610** [1953 c.304 §74; 1953 c.552 §14; 1957 c.17 §1; repealed by 1957 c.632 §1 (314.410 enacted in lieu of 316.610 and 317.410)]

**316.615** [1953 c.304 §75; 1953 c.552 §15; 1955 c.583 §1; 1957 c.23 §1; repealed by 1957 c.632 §1 (314.415 enacted in lieu of 316.615 and 317.415)]

**316.620** [1953 c.304 §76; 1955 c.355 §1; repealed by 1957 c.632 §1 (314.420 enacted in lieu of 316.620, 317.370 and 317.420)]

**316.625** [1953 c.304 §77; repealed by 1957 c.632 §1 (314.425 enacted in lieu of 316.625 and 317.425)]

**316.630** [1953 c.304 §78; repealed by 1957 c.632 §1 (314.430 enacted in lieu of 316.630 and 317.430)]

**316.635** [1953 c.304 §79; repealed by 1957 c.632 §1 (314.435 enacted in lieu of 316.635 and 317.435)]

**316.640** [1953 c.304 §80; repealed by 1957 c.632 §1 (314.440 enacted in lieu of 316.640, 317.440 and 317.445)]

**316.645** [1953 c.304 §81; 1961 c.504 §3; repealed by 1969 c.166 §8 and 1969 c.493 §99]

**316.650** [1953 c.304 §82; 1953 c.552 §16; repealed by 1957 c.632 §1 (314.445 enacted in lieu of 316.650 and 317.455)]

**316.655** [1953 c.304 §83; 1953 c.552 §17; repealed by 1957 c.632 §1 (subsections (1) and (2) of 314.450 enacted in lieu of

316.655 and 317.460)]

**316.660** [1953 c.304 §84; repealed by 1957 c.632 §1 (314.455 enacted in lieu of 316.660 and 317.465)]

**316.665** [1953 c.304 §85; 1953 c.552 §18; 1955 c.588 §1; repealed by 1957 c.632 §1 (314.460 enacted in lieu of 316.665 and 317.470)]

**316.670** [1953 c.304 §86; repealed by 1957 c.632 §1 (314.465 enacted in lieu of 316.670 and 317.475)]

**316.675** [1953 c.304 §87; 1953 c.552 §19; repealed by 1957 c.632 §1 (314.470 enacted in lieu of 316.675 and 317.480)]

## MODIFICATIONS OF TAXABLE INCOME

(Generally)

**316.680 Modification of taxable income.** (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c)(A) If the taxpayer does not qualify for the subtraction under subparagraph (B) of this paragraph, compensation (other than pension or retirement pay) received for active service performed by a member of the Armed Forces of the United States in an amount not to exceed \$3,000 per annum.

(B) For the tax year of initial draft or enlistment into the Armed Forces of the United States or for the tax year of discharge from or termination of full-time active duty for the Armed Forces of the United States, compensation (other than pension or retirement pay or pay for service when on military reserve duty) paid by the Armed Forces of the United States for services performed outside this state, if the taxpayer is on active duty as a full-time officer, enlistee or draftee, with the Armed Forces of the United States.

(d) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(e) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(f)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(g) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(h) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.970 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(i) If included in taxable income for federal tax purposes, the amount contributed to a qualified tuition savings program account established under ORS 348.841 to 348.873, except that a subtraction under this paragraph may not exceed:

(A) \$2,000 for the tax year; or

(B) In the case of a married individual filing separately, \$1,000 for the tax year.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political

subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) The amount of a nonqualified withdrawal, as defined in ORS 348.841, from a qualified tuition savings program account established under ORS 348.841 to 348.873, to the extent the amount added to federal taxable income under this paragraph does not exceed the lesser of:

(A) The total amount contributed to the account within 12 months preceding the date of the nonqualified withdrawal; or

(B) \$2,000.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code. [Formerly 316.067; 1985 c.345 §7; 1985 c.802 §11; 1987 c.293 §23; 1987 c.647 §13; 1991 c.457 §7b; 1991 c.823 §3; 1995 c.556 §8; 1995 c.561 §17; 1995 c.746 §59; 1995 c.816 §32; 1997 c.99 §18; 1999 c.90 §22; 1999 c.403 §1; 1999 c.746 §12; 1999 c.981 §16; 1999 c.1005 §3; 1999 c.1007 §3; 2001 c.13 §1; 2001 c.509 §18]

**Note:** Section 2, chapter 13, Oregon Laws 2001, provides:

**Sec. 2.** The amendments to ORS 316.680 by section 1 of this 2001 Act apply to tax years beginning on or after January 1, 2001. [2001 c.13 §2]

**Note:** See note under 316.738.

**Note:** Section 2, chapter 795, Oregon Laws 2001, provides:

**Sec. 2.** (1) Notwithstanding ORS 316.680, for a tax year beginning on or after January 1, 2001, and before January 1, 2002, the subtraction from federal taxable income for amounts of federal income taxes less refunds of federal taxes described in ORS 316.680 (1)(b) may not take into account the amount of any accelerated 10 percent tax rate bracket credit allowed under section 6428 of the Internal Revenue Code, or advance refund of the credit allowed under section 6428(e) of the Internal Revenue Code.

(2) Notwithstanding ORS 316.012, as used in this section, "section 6428 of the Internal Revenue Code" means section 6428 of the federal Internal Revenue Code, as added by section 101 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16). [2001 c.795 §2]

**Note:** The amendments to 316.680 by section 1, chapter 212, Oregon Laws 2001, apply to tax years beginning on or after January 1, 2003. See section 2, chapter 212, Oregon Laws 2001. The text that applies to tax years beginning on or after January 1, 2003, is set forth for the user's convenience.

**316.680.** (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph, and by

any expenses incurred in the production of interest or dividend income described in this paragraph to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c)(A) If the taxpayer does not qualify for the subtraction under subparagraph (B) of this paragraph, compensation (other than pension or retirement pay) received for active service performed by a member of the Armed Forces of the United States in an amount not to exceed \$3,000 per annum.

(B) For the tax year of initial draft or enlistment into the Armed Forces of the United States or for the tax year of discharge from or termination of full-time active duty for the Armed Forces of the United States, compensation (other than pension or retirement pay or pay for service when on military reserve duty) paid by the Armed Forces of the United States for services performed outside this state, if the taxpayer is on active duty as a full-time officer, enlistee or draftee, with the Armed Forces of the United States.

(d) Amounts allowable under sections 2621(a)(2) and 2622(b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

(e) Any supplemental payments made to JOBS Plus Program participants under ORS 411.892.

(f)(A) Federal pension income that is attributable to federal employment occurring before October 1, 1991. Federal pension income that is attributable to federal employment occurring before October 1, 1991, shall be determined by multiplying the total amount of federal pension income for the tax year by the ratio of the number of months of federal creditable service occurring before October 1, 1991, over the total number of months of federal creditable service.

(B) The subtraction allowed under this paragraph applies only to federal pension income received at a time when:

(i) Benefit increases provided under chapter 569, Oregon Laws 1995, are in effect; or

(ii) Public Employees Retirement System benefits received for service prior to October 1, 1991, are exempt from state income tax.

(C) As used in this paragraph:

(i) "Federal creditable service" means those periods of time for which a federal employee earned a federal pension.

(ii) "Federal pension" means any form of retirement allowance provided by the federal government, its agencies or its instrumentalities to retirees of the federal government or their beneficiaries.

(g) Any amount included in federal taxable income for the tax year that is attributable to the conversion of a regular individual retirement account into a Roth individual retirement account described in section 408A of the Internal Revenue Code, to the extent that:

(A) The amount was subject to the income tax of another state or the District of Columbia in a prior tax year; and

(B) The taxpayer was a resident of the other state or the District of Columbia for that prior tax year.

(h) Any amounts awarded to the taxpayer by the Public Safety Memorial Fund Board under ORS 243.954 to 243.970 to the extent that the taxpayer has not taken the amount as a deduction in determining the taxpayer's federal taxable income for the tax year.

(i) If included in taxable income for federal tax purposes, the amount contributed to a qualified tuition savings program account established under ORS 348.841 to 348.873, except that a subtraction under this paragraph may not exceed:

(A) \$2,000 for the tax year; or

(B) In the case of a married individual filing separately, \$1,000 for the tax year.

(j) If included in taxable income for federal tax purposes, the amount withdrawn during the tax year in qualified withdrawals from a qualified tuition savings program account established under ORS 348.841 to 348.873.

(2) There shall be added to federal taxable income:

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(f) The amount taken as a deduction on the taxpayer's federal return for unused qualified business credits under section 196 of the Internal Revenue Code.

(g) The amount of any increased benefits paid to a taxpayer under chapter 569, Oregon Laws 1995, under the provisions of chapter 796, Oregon Laws 1991, and under section 26, chapter 815, Oregon Laws 1991, that is not includable in the taxpayer's

federal taxable income under the Internal Revenue Code.

(h) The amount of any long term care insurance premiums paid or incurred by the taxpayer during the tax year if:

(A) The amount is taken into account as a deduction on the taxpayer's federal return for the tax year; and

(B) The taxpayer claims the credit allowed under ORS 315.610 for the tax year.

(i) Any amount taken as a deduction under section 1341 of the Internal Revenue Code in computing federal taxable income for the tax year, if the taxpayer has claimed a credit for claim of right income repayment adjustment under ORS 315.068.

(j) The amount of a nonqualified withdrawal, as defined in ORS 348.841, from a qualified tuition savings program account established under ORS 348.841 to 348.873, to the extent the amount added to federal taxable income under this paragraph does not exceed the lesser of:

(A) The total amount contributed to the account within 12 months preceding the date of the nonqualified withdrawal; or

(B) \$2,000.

(3) Discount and gain or loss on retirement or disposition of obligations described under subsection (2)(a) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code.

**316.681 Interest or dividends to benefit self-employed or individual retirement accounts.** ORS 316.680 (1)(a) shall apply to the interest or dividends described under ORS 316.680 (1)(a) to the extent such interest or dividends are includable in arriving at federal taxable income as distributions from plans to benefit the self-employed or from individual retirement accounts described under sections 401 to 408 of the Internal Revenue Code. [1985 c.738 §2]

**316.683 State exempt-interest dividends.** (1) A regulated investment company, or a pool of assets managed by a fiduciary, including a financial institution, shall be qualified to pay state exempt-interest dividends, as defined in subsection (2) of this section, to its shareholders or beneficiaries.

(2) The term "state exempt-interest dividend" means any dividend or part thereof (other than a capital gain dividend, as defined in section 852(b) of the Internal Revenue Code) paid by a regulated investment company, or any pool of assets managed by a fiduciary, including but not limited to a financial institution, and designated by it as a state exempt-interest dividend in a written notice mailed to its shareholders or beneficiaries not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year (including state exempt-interest dividends paid after the close of the taxable year in the manner described in section 855 of the Internal Revenue Code) is greater than the excess of (a) the amount of interest and dividends received on obligations described in ORS 316.680 (1)(a), over (b) the sum of the amount of any deductible interest on indebtedness incurred to carry such obligations and the amount of any deductible expenses incurred in the production of interest and dividend income from such obligations, the portion of such distribution which shall constitute a state exempt-interest dividend shall be only that proportion of the amount so designated as the amount of such excess for such taxable year bears to the amount so designated. The exemption created by this section shall not exceed the portion of the dividend which is attributable to items of interest described in ORS 316.680 (1)(a).

(3) A state exempt-interest dividend shall be treated by a shareholder or beneficiary for all purposes as an item of interest described in ORS 316.680 (1)(a). The shareholder or beneficiary shall subtract from federal taxable income the state exempt-interest dividends received with respect to the shares of a regulated investment company or any pool of assets managed by a fiduciary, including but not limited to a financial institution. However, the amount subtracted under this section shall be reduced (but not below zero) by an amount equal to any deductible interest on indebtedness incurred to carry such shares multiplied by the state exempt-interest dividends and divided by the total dividends on such shares for the taxable year.

(4) If a shareholder of a regulated investment company, or a beneficiary of a pool of assets managed by a fiduciary, including a financial institution, receives a state exempt-interest dividend with respect to any share, and the share is held by the taxpayer for six months or less, then any loss on the sale or exchange of the share shall, to the extent of the amount the state exempt-interest dividend, be disallowed. The Department of Revenue may adopt rules that reduce the holding period requirements to less than six months.

(5) As used in this section, "financial institution" means a financial institution as defined in ORS 706.008. [1987 c.293 §12b; 1989 c.988 §2; 1993 c.18 §81; 1993 c.229 §24; 1993 c.318 §13; 1997 c.631 §457]

**316.685 Federal income tax deductions; accrual method of accounting required; adjustment for federal earned income credit.** (1)(a) The federal income tax deduction provided by ORS 316.680 shall be as reported on the taxpayer's original return and shall be computed on the accrual method of accounting. Any adjustments to the federal income tax deduction now or hereafter required by Oregon law, including but not limited to the elimination of the self-employment tax, also shall be computed and eliminated according to the accrual method of accounting.

(b) For purposes of calculating the amount of the deduction for federal income taxes provided under ORS 316.680, the taxpayer shall not take into account any amount of the earned income credit provided under section 32 of the Internal Revenue Code that reduced the amount of the taxpayer's federal income tax liability for the tax year.

(2) If refunds or additional assessments result from an adjustment whether initiated by the federal or state government or the taxpayer after the filing of the original return by the taxpayer, any additional federal taxes shall be deductible by the Oregon taxpayer under this section in the year in which the adjustment is finally determined or paid whichever is later. In the case of a

refund the tax reduction shall be added to the taxpayer's income in the year in which the refund is received.

(3) For purposes of this chapter, federal income tax does not include the following:

(a) Taxes, contributions or other payments paid by employees in pursuance of federal laws relating to Social Security, railroad retirement, unemployment compensation or old age benefits.

(b) Taxes paid pursuant to the Self-Employment Contribution Act, subtitle A, chapter 2, Internal Revenue Code. [Formerly 316.072; 1987 c.293 §24; 1997 c.692 §4]

**316.687 Amount in excess of standard deduction for child, if child's income included on parent's federal return; limitation.** There shall be added to federal taxable income of a parent who makes an election under section 1(g)(7)(B) of the Internal Revenue Code any amount in excess of the standard deduction allowed for a child under ORS 316.695 (8) but not in excess of the amount described in section 1(g)(7)(B)(i) of the Internal Revenue Code (twice the amount in effect for the taxable year under section 63(c)(5)(A) of the Internal Revenue Code). The addition under this section shall be made for each child whose income is included in the taxable income of the parent under section 1(g)(7)(B) of the Internal Revenue Code. [1989 c.625 §13; 1991 c.457 §7c; 1997 c.839 §23; 1999 c.917 §2]

**316.690 Foreign income taxes.** (1) Subject to subsection (2) of this section, in addition to other modifications provided in this chapter, and if a taxpayer elects to take foreign income taxes imposed for the taxable year by a foreign country as a credit on the federal income tax return or does not itemize personal deductions on the federal income tax return, there shall be subtracted from federal taxable income in the computation of state taxable income the amount of foreign income taxes imposed for the taxable year by a foreign country.

(2) The deduction for foreign country income taxes provided by this section shall be limited as follows:

(a) Except as provided in paragraph (b) of this subsection, the sum of foreign country income taxes deducted in computing state taxable income and the modification for federal income taxes authorized by ORS 316.680 (1)(b) as limited by ORS 316.695 (3) shall not exceed \$3,000.

(b) In the case of a husband and wife filing separate tax returns, the sum described in paragraph (a) of this subsection shall be limited to \$1,500. [Formerly 316.071; 1985 c.345 §8; 1987 c.293 §24a]

**316.695 Additional modifications of taxable income.** (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be added to or subtracted from federal taxable income:

(a) If, in computing federal income tax for a taxable year, the taxpayer deducted itemized deductions, as defined in section 63(d) of the Internal Revenue Code, the taxpayer shall add the amount of itemized deductions deducted (the itemized deductions less an amount, if any, by which the itemized deductions are reduced under section 68 of the Internal Revenue Code).

(b) If, in computing federal income tax for a taxable year, the taxpayer deducted the standard deduction, as defined in section 63(c) of the Internal Revenue Code, the taxpayer shall add the amount of the standard deduction deducted.

(c)(A) From federal taxable income there shall be subtracted the larger of (i) the taxpayer's itemized deductions or (ii) a standard deduction. Except as provided in subsection (8) of this section, for purposes of this subparagraph, "standard deduction" means the sum of the basic standard deduction and the additional standard deduction.

(B) For purposes of subparagraph (A) of this paragraph, the basic standard deduction is:

(i) \$3,280, in the case of joint return filers or a surviving spouse;

(ii) \$1,640, in the case of an individual who is not a married individual and is not a surviving spouse;

(iii) \$1,640, in the case of a married individual who files a separate return; or

(iv) \$2,640, in the case of a head of household.

(C)(i) For purposes of subparagraph (A) of this paragraph for tax years beginning on or after January 1, 2003, the Department of Revenue shall annually recompute the basic standard deduction for each category of return filer listed under subparagraph (B) of this paragraph. The basic standard deduction shall be computed by dividing the average U.S. City Average Consumer Price Index for the second quarter of the current calendar year by the average U.S. City Average Consumer Price Index for the second quarter of 2002, then multiplying that quotient by the amount listed under subparagraph (B) of this paragraph for each category of return filer.

(ii) If any change in the maximum household income determined under this subparagraph is not a multiple of \$5, the increase shall be rounded to the next lower multiple of \$5.

(iii) As used in this subparagraph, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(D) For purposes of subparagraph (A) of this paragraph, the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (7) of this section.

(E) As used in subparagraph (B) of this paragraph, "surviving spouse" and "head of household" have the meaning given those terms in section 2 of the Internal Revenue Code.

(F) In the case of the following, the standard deduction referred to in subparagraph (A) of this paragraph shall be zero:

(i) A husband or wife filing a separate return where the other spouse has claimed itemized deductions under subparagraph (A) of this paragraph;

- (ii) A nonresident alien individual;
- (iii) An individual making a return for a period of less than 12 months on account of a change in his or her annual accounting period;
- (iv) An estate or trust;
- (v) A common trust fund; or
- (vi) A partnership.

(d) For the purposes of paragraph (c)(A) of this subsection, the taxpayer's itemized deductions are the sum of:

(A) The taxpayer's itemized deductions as defined in section 63(d) of the Internal Revenue Code (reduced, if applicable, as described under section 68 of the Internal Revenue Code) minus the deduction for Oregon income tax (reduced, if applicable, by the proportion that the reduction in federal itemized deductions resulting from section 68 of the Internal Revenue Code bears to the amount of federal itemized deductions as defined for purposes of section 68 of the Internal Revenue Code); and

(B) The amount that may be taken into account under section 213(a) of the Internal Revenue Code, not to exceed seven and one-half percent of the federal adjusted gross income of the taxpayer, if the taxpayer has attained the following age before the close of the taxable year, or, in the case of a joint return, if either taxpayer has attained the following age before the close of the taxable year:

- (i) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, a taxpayer must attain 58 years of age before the close of the taxable year.
- (ii) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, a taxpayer must attain 59 years of age before the close of the taxable year.
- (iii) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, a taxpayer must attain 60 years of age before the close of the taxable year.
- (iv) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, a taxpayer must attain 61 years of age before the close of the taxable year.
- (v) For taxable years beginning on or after January 1, 1999, a taxpayer must attain 62 years of age before the close of the taxable year.

(2)(a) There shall be subtracted from federal taxable income any portion of the distribution of a pension, profit-sharing, stock bonus or other retirement plan, representing that portion of contributions which were taxed by the State of Oregon but not taxed by the federal government under laws in effect for tax years beginning prior to January 1, 1969, or for any subsequent year in which the amount that was contributed to the plan under the Internal Revenue Code was greater than the amount allowed under this chapter.

(b) Interest or other earnings on any excess contributions of a pension, profit-sharing, stock bonus or other retirement plan not permitted to be deducted under paragraph (a) of this subsection shall not be added to federal taxable income in the year earned by the plan and shall not be subtracted from federal taxable income in the year received by the taxpayer.

(3)(a) Except as provided in paragraph (b) of this subsection and subsection (4) of this section, in addition to the adjustments to federal taxable income required by ORS 316.680, there shall be added to federal taxable income the amount of any federal income taxes in excess of \$5,000, accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(b) In the case of a husband and wife filing separate tax returns, the amount added shall be in the amount of any federal income taxes in excess of \$2,500, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(c)(A) For a calendar year beginning on or after January 1, 2003, the Department of Revenue shall make a cost-of-living adjustment to the federal income tax threshold amount described in paragraphs (a) and (b) of this subsection.

(B) The cost-of-living adjustment for a calendar year is the percentage by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged index for the period beginning September 1, 2000, and ending August 31, 2001.

(C) As used in this paragraph, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(D) If any adjustment determined under subparagraph (B) of this paragraph is not a multiple of \$50, the adjustment shall be rounded to the next lower multiple of \$50.

(E) The adjustment shall apply to all tax years beginning in the calendar year for which the adjustment is made.

(4)(a) In addition to the adjustments required by ORS 316.130, a full-year nonresident individual shall add to taxable income a proportion of any accrued federal income taxes as computed under ORS 316.685 in excess of \$5,000 in the proportion provided in ORS 316.117.

(b) In the case of a husband and wife filing separate tax returns, the amount added under this subsection shall be computed in a manner consistent with the computation of the amount to be added in the case of a husband and wife filing separate returns under subsection (3) of this section. The method of computation shall be determined by the Department of Revenue by rule.

(5) Subsections (3)(b) and (4)(b) of this section shall not apply to married individuals living apart as defined in section 7703(b) of the Internal Revenue Code.

(6)(a) For tax years beginning on or after January 1, 1981, and prior to January 1, 1983, income or loss taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections 1373 to 1375 of the Internal

Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent that as income or loss of the S corporation, they were required to be adjusted under the provisions of ORS chapter 317.

(b) For tax years beginning on or after January 1, 1983, items of income, loss or deduction taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent that as items of income, loss or deduction of the shareholder the items are required to be adjusted under the provisions of this chapter.

(c) The tax years referred to in paragraphs (a) and (b) of this subsection are those of the S corporation.

(d) As used in paragraph (a) of this subsection, an S corporation refers to an electing small business corporation.

(7)(a) The taxpayer shall be entitled to an additional amount, as referred to in subsection (1)(c)(A) and (D) of this section, of \$1,000:

(A) For himself or herself if he or she has attained age 65 before the close of his or her taxable year; and

(B) For the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code.

(b) The taxpayer shall be entitled to an additional amount, as referred to in subsection (1)(c)(A) and (D) of this section, of \$1,000:

(A) For himself or herself if he or she is blind at the close of the taxable year; and

(B) For the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code. For purposes of this subparagraph, if the spouse dies during the taxable year, the determination of whether such spouse is blind shall be made immediately prior to death.

(c) In the case of an individual who is not married and is not a surviving spouse, paragraphs (a) and (b) of this subsection shall be applied by substituting "\$1,200" for "\$1,000."

(d) For purposes of this subsection, an individual is blind only if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(8) In the case of an individual with respect to whom a deduction under section 151 of the Internal Revenue Code is allowable for federal income tax purposes to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction (referred to in subsection (1)(c)(B) of this section) applicable to such individual for such individual's taxable year shall equal the lesser of:

(a) The amount allowed to the individual under section 63(c)(5) of the Internal Revenue Code for federal income tax purposes for the tax year for which the deduction is being claimed; or

(b) The amount determined under subsection (1)(c)(B) of this section. [Formerly 316.068; 1985 c.141 §6; 1985 c.345 §9; 1985 c.802 §12; 1987 c.293 §25; 1989 c.625 §14; 1989 c.626 §8; 1991 c.457 §7d; 1991 c.823 §12; 1995 c.556 §9; 1997 c.99 §2; 1999 c.917 §1; 2001 c.221 §1; 2001 c.660 §14]

**Note:** Section 2, chapter 221, Oregon Laws 2001, provides:

**Sec. 2.** The amendments to ORS 316.695 by section 1 of this 2001 Act apply to tax years beginning on or after January 1, 2002. [2001 c.221 §2]

**Note:** 316.695 (4) and (5) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**316.697 Fiduciary adjustment.** There shall be added to or subtracted from federal taxable income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under ORS 316.287. [Formerly 316.077]

**316.701** [1983 c.162 §61; repealed by 1987 c.293 §70]

**316.705** [1953 c.304 §88; repealed by 1957 c.632 §1 (314.805 enacted in lieu of 316.705 and 317.505)]

**316.706** [1957 c.586 §6; 1959 c.76 §1; 1961 c.506 §2; 1961 c.623 §1; repealed by 1969 c.493 §99]

**316.707 Computation of depreciation of property under federal law; applicability.** (1) To the extent that the amount allowed as a deduction under section 168 of the Internal Revenue Code (Accelerated Cost Recovery System) exceeds, or is less than, the amount that would be allowed as a deduction for depreciation for the property under the federal Internal Revenue Code as amended and in effect on December 31, 1980, the difference shall be added to, or subtracted from federal taxable income, whichever is applicable.

(2) The modifications required by subsection (1) of this section apply only to the differences in the computation of depreciation (reasonable allowance for exhaustion, wear, tear and obsolescence) under the Accelerated Cost Recovery System and the other methods of depreciation. Nothing in this section shall be construed to govern the eligibility of property for depreciation, or other provisions of the Internal Revenue Code which do not directly govern the computation of the deduction

amount for recovery property.

(3) There shall be added to federal taxable income any amount deducted under section 179 of the Internal Revenue Code (election to expense certain depreciable business assets). However, any asset with respect to which this section applies may be depreciated as otherwise provided under this chapter.

(4) Income included in federal taxable income by a shareholder of an S corporation pursuant to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income as required by the provisions of this section.

(5) This section shall not apply to property placed in service in taxable years beginning on or after January 1, 1985. [1983 c.162 §67; 1985 c.802 §13]

**316.710** [1953 c.304 §89; repealed by 1957 c.632 §1 (subsections (2), (3) and (4) of 306.040 enacted in lieu of 316.710)]

**316.711** [1957 c.586 §7; 1959 c.593 §7 (referred and rejected); 1961 c.623 §2; repealed by 1969 c.493 §99]

**316.714** [1957 c.586 §7; 1959 c.593 §8 (referred and rejected); 1963 c.627 §17 (referred and rejected); repealed by 1969 c.493 §99]

**316.715** [1953 c.304 §90; repealed by 1957 c.632 §1 (314.810 enacted in lieu of 316.715)]

**316.716 Differences in basis on federal and state return.** (1) Upon the taxable sale, exchange or disposition of any asset in a tax year beginning on or after January 1, 1983, federal taxable income shall be increased or decreased by an amount which will reflect one or more of the following:

(a) The difference in basis which results from the difference in depreciation or cost recovery, or expense claimed under section 179 of the Internal Revenue Code, allowed or allowable on the Oregon return and that allowed or allowable on the federal return for that asset;

(b) The difference in basis which results when a taxpayer has taken a federal credit, which requires as a condition of the use of the federal credit the reduction of the basis of an asset, and the federal credit is not allowable for Oregon tax purposes;

(c) The difference in basis as a result of any deferral of gain which has been granted under federal tax law but not under Oregon tax law or granted under Oregon law but not granted under federal law;

(d) The difference in basis under federal and Oregon tax law at the time the asset was acquired; or

(e) Any other differences in the basis of the asset which are due to differences between federal and Oregon tax law.

(2) There shall be added to or subtracted from federal taxable income any amount necessary to carry out the purposes of subsection (1) of this section.

(3) If a taxpayer has taken a federal credit, which requires as a condition of the use of the federal credit the reduction of a corresponding deduction, and the federal credit is not allowable for Oregon purposes, the taxpayer shall be allowed the deduction for Oregon tax purposes.

[1983 c.162 §69; 1985 c.802 §14]

**316.718** [1989 c.625 §6; repealed by 1991 c.457 §24]

**316.720** [1953 c.304 §91; repealed by 1957 c.632 §1 (314.815 enacted in lieu of 316.720 and 317.505)]

**316.721** [1957 c.586 §12; repealed by 1969 c.493 §99]

**316.723** [1983 c.162 §70; 1985 c.802 §15; 1987 c.293 §26; 1991 c.457 §7e; repealed by 1995 c.556 §43]

**316.725** [1953 c.304 §92; repealed by 1957 c.632 §1 (314.820 enacted in lieu of 316.725 and 317.520)]

**316.729 Applicability of certain federal law.** For taxable years that begin on or after January 1, 1981, section 2, chapter 613, Oregon Laws 1981, shall not apply to the provisions of the Internal Revenue Code relating to:

(1) Sections 1361 and 1362 of the Internal Revenue Code (pertaining to subchapter S corporations).

(2) Sections 421 and 422A of the Internal Revenue Code (concerning incentive stock options).

(3) Section 1034 of the Internal Revenue Code (pertaining to the sale of a personal residence).

(4) Section 121 of the Internal Revenue Code (pertaining to the one time exclusion of a gain from the sale of a personal residence by an individual who has attained age 55). [1983 c.162 §73; 1995 c.556 §10]

**316.730** [1953 c.304 §93; repealed by 1957 c.632 §1 (314.825 enacted in lieu of 316.730 and 317.525)]

**316.731** [1957 c.586 §13; repealed by 1969 c.493 §99]

**316.735** [1953 c.304 §94; repealed by 1957 c.632 §1 (314.830 enacted in lieu of 316.735 and 317.530)]

**316.737 Amount specially taxed under federal law to be included in computation of state taxable income.** If a taxpayer has taken a deduction to arrive at federal taxable income for the purpose of having that income taxed in a manner different from the taxation of federal taxable income, the amount which was deducted and specially taxed shall be added to federal taxable income in the computation of state taxable income. However, if any portion of the amount added was treated as capital gain in arriving at federal taxable income, that portion shall be treated as capital gain in the computation of state taxable income. [1983 c.162 §76; 1987 c.293 §27]

**316.738 Modification of taxable income when deferred gain is recognized as result of out-of-state disposition of property.** (1) If gain is deferred upon the voluntary or involuntary disposition of property in an exchange that qualifies for deferral under section 1031 or 1033 of the Internal Revenue Code, and the property acquired in the exchange has a situs outside of this state, upon the sale or other disposition of the acquired property in a transaction in which gain or loss is recognized for federal tax purposes but is not taken into account in computing federal taxable income for Oregon tax purposes, there shall be added to federal taxable income the difference between:

(a) The adjusted basis of the acquired property on the date the exchange under section 1031 or 1033 of the Internal Revenue Code was completed; and

(b) The lesser of:

(A) The fair market value of the acquired property on the date the exchange under section 1031 or 1033 of the Internal Revenue Code was completed; or

(B) The fair market value of the acquired property on the date gain or loss from the sale or other disposition of the acquired property is recognized for federal tax purposes.

(2) If the adjusted basis described in subsection (1)(a) of this section is larger than either value described in subsection (1)(b) of this section, the difference computed under subsection (1) of this section shall be subtracted from federal taxable income instead of being added to federal taxable income.

(3) The Department of Revenue may require taxpayers owning property acquired in an exchange under section 1031 or 1033 of the Internal Revenue Code that has a situs outside of this state to file an annual report on the acquired property, and may adopt rules to implement reporting requirements under this section. [2001 c.509 §15]

**Note:** Section 20, chapter 509, Oregon Laws 2001, provides:

**Sec. 20.** Sections 15 and 17 of this 2001 Act [316.738 and 317.327], the amendments to ORS 316.680 by section 18 of this 2001 Act and the repeal of ORS 314.290 and 317.326 by section 19 of this 2001 Act apply to:

(1) Tax years beginning on or after January 1, 1998; and

(2) Any tax year for which an amended return may be filed or a notice of deficiency issued on or after the effective date of this 2001 Act [October 6, 2001]. [2001 c.509 §20]

**316.740** [1953 c.304 §95; 1957 c.75 §1; repealed by 1957 c.632 §1 (314.835 enacted in lieu of 316.740 and 317.535)]

**316.741** [1957 c.586 §8; repealed by 1969 c.493 §99]

**316.742** [1991 c.457 §7g; 1995 c.556 §11; repealed by 1997 c.839 §69]

**316.743** [1997 c.824 §2; repealed by 2001 c.660 §55]

**316.744 Cash payments for energy conservation.** Any amount received as a cash payment for energy conservation measures under ORS 469.631 to 469.687 is exempt from the tax imposed under this chapter. [Formerly 316.069; 1985 c.802 §16]

**316.745** [1953 c.304 §96; repealed by 1957 c.632 §1 (314.840 enacted in lieu of 316.745 and 317.540)]

**316.746** [1991 c.641 §4; repealed by 1999 c.880 §2]

**316.750** [1953 c.304 §97; repealed by 1957 c.632 §1 (314.845 enacted in lieu of 316.750 and 317.545)]

**316.751** [Formerly 316.580; repealed by 1969 c.493 §99]

(Additional Personal Exemption Credits)

**316.752 Definitions for ORS 316.752 to 316.771.** For purposes of ORS 316.752 to 316.771:

(1) A person is “severely disabled” if the person:

(a) Has lost the use of one or more lower extremities;

(b) Has lost the use of both hands; or

(c) Has a physical or mental condition that limits the abilities of the person to earn a living, maintain a household or provide personal transportation for the person without employing special orthopedic or medical equipment or outside help.

(2) "Orthopedic or medical equipment" includes, but is not limited to, wheelchairs, braces, prostheses or special crutches.

(3) "Outside help" includes, but is not limited to, unrelated individuals whom the severely disabled taxpayer employs to keep house, maintain the house or yard, or to transport the taxpayer. [Formerly 316.135; 1987 c.158 §50; 1989 c.224 §51]

**316.755** [1953 c.304 §98; repealed by 1957 c.632 §1 (314.850 enacted in lieu of 316.755)]

**316.758 Additional personal exemption credit for severely disabled persons.** In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes, there shall be allowed an additional personal exemption credit for the taxpayer if the taxpayer is severely disabled at the close of the taxable year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the taxpayer for state personal income tax purposes for the taxable year. [Formerly 316.136; 1985 c.345 §10; 1987 c.293 §28]

**316.760** [1953 c.304 §99; repealed by 1957 c.632 §1 (314.855 enacted in lieu of 316.760 and 317.550)]

**316.761** [1957 c.586 §9; 1963 c.627 §18 (referred and rejected); 1963 s.s. c.3 §1; repealed by 1969 c.493 §99]

**316.765 Additional personal exemption credit for spouse of severely disabled person; conditions.** (1) An additional personal exemption credit in the same amount as allowed under ORS 316.758 for a severely disabled taxpayer shall be allowed for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse:

(a) Is severely disabled;

(b) Has no gross income for the calendar year in which the taxable year of the taxpayer begins; and

(c) Is not the dependent of another taxpayer.

(2) In the case of a joint return, each spouse who is severely disabled shall be allowed the additional credit in the amount provided under ORS 316.758 if the spouse otherwise qualifies under this section.

(3) For purposes of this section, the determination of whether the spouse is severely disabled shall be made as of the close of the taxable year of the taxpayer except that if the spouse dies during such taxable year such determination shall be made as of the time of the death of the spouse. [Formerly 316.137; 1985 c.345 §11; 1987 c.293 §29]

**316.770** [Formerly 316.585; 1963 c.83 §1; repealed by 1969 c.493 §99]

**316.771 Proof of status for exemption credit.** Each person qualifying for the additional personal exemption credit allowed in ORS 316.758 and 316.765 may claim the credit on the personal income tax return. However, the claim shall be substantiated by a letter from a licensed physician or osteopath describing the nature and extent of the physical disability. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063. [Formerly 316.138; 1985 c.345 §12; 1987 c.293 §30; 1995 c.54 §12]

**316.775** [1957 c.586 §10; 1959 c.234 §3; repealed by 1969 c.493 §99]

(Exemptions)

**316.777 Income derived from sources within federally recognized Indian country exempt from tax.** (1) Any income derived from sources within the boundaries of federally recognized Indian country in Oregon by any enrolled member of a federally recognized American Indian tribe residing in federally recognized Indian country in Oregon at the time the income is earned is exempt from tax under this chapter.

(2) An extract from the tribal rolls or other documentary proof of the taxpayer's enrolled status and other additional proofs as may be required by the Department of Revenue, shall be attached to or accompany any return for any year for which exemption under subsection (1) of this section is claimed. The requirement of proof may be waived partially, conditionally or absolutely, as provided under ORS 315.063. [Formerly 316.049; 1985 c.317 §1; 1995 c.54 §17]

**316.778 Small city business development exemption.** (1) For each tax year in which a business firm receives an annual certification under ORS 285B.108, the income of the taxpayer apportionable to the certified facility of the business firm shall be exempt from tax under this chapter.

(2) The income of a resident taxpayer that is exempt under this section shall be determined by:

(a) Multiplying the federal taxable income of the taxpayer by the ratio of the taxpayer's federal adjusted gross income derived from the business firm over the taxpayer's federal adjusted gross income; and

(b) Multiplying the amount determined under paragraph (a) of this subsection by the ratio of the business firm's income derived from the firm's activities at the certified facility over the business firm's income from all business activities.

(3) The income of a nonresident or part-year resident taxpayer that is exempt under this section shall be determined by:

(a) Multiplying the Oregon-sourced federal taxable income of the taxpayer by the ratio of the taxpayer's federal adjusted

gross income derived from the business firm over the taxpayer's federal adjusted gross income; and

(b) Multiplying the amount determined under paragraph (a) of this subsection by the ratio of the business firm's income derived from the firm's activities at the certified facility over the business firm's income from all business activities.

(4) The Department of Revenue shall by rule prescribe a method by which a business firm determines the extent to which the firm's income is derived from the firm's activities at the certified facility.

(5)(a) A partnership or S corporation shall report the information necessary to compute exempt income under this section to the firm's owners within 30 days following the issuance of the annual certification to the partnership or S corporation under ORS 285B.108.

(b) The department may permit extensions of time for reporting the information required under this subsection.

(6) As used in this section:

(a) "Business firm" has the meaning given that term in ORS 285B.103.

(b) "Certified facility" means a facility, as defined in ORS 285B.103, for which an annual certification under ORS 285B.108 has been issued. [2001 c.944 §6]

**316.780** [1957 c.586 §11; repealed by 1969 c.493 §99]

**316.783 Amounts received for condemnation of Indian tribal lands.** Amounts received as condemnation awards as a result of condemnation by the federal government of Indian tribal lands are exempt from the tax imposed by this chapter. [Formerly 316.050]

**316.785 Income derived from exercise of Indian fishing rights.** Income derived from the exercise of rights of any Indian tribe to fish secured by treaty, Executive order or Act of Congress is exempt from the tax imposed by this chapter if section 7873 of the Internal Revenue Code does not permit a like federal tax to be imposed on such income. [1989 c.625 §5]

**316.787 Payments to Japanese and Aleuts under Civil Liberties Act of 1988.** Amounts paid to an eligible individual (persons of Japanese ancestry and Aleut civilian residents of the Pribilof Islands and the Aleutian Islands) under section 1989b-4, Title I, or 1989c-5, Title II, of the Civil Liberties Act of 1988 (P.L. 100-383) shall be treated for purposes of this chapter as damages for human suffering and shall be exempt from the taxes imposed under this chapter. [1989 c.625 §4]

**316.788** [Formerly 316.051; repealed by 1987 c.293 §70]

**316.789 Persian Gulf Desert Shield active military service.** (1) Compensation received for active service as a member in the Armed Forces of the United States outside this state during any month beginning on or after August 1, 1990, and before the date designated by the President of the United States as the date of termination of combatant activities in the Persian Gulf Desert Shield area is excluded from gross income for purposes of this chapter.

(2) To the extent included in arriving at federal taxable income, there shall be subtracted from the federal taxable income of a resident or nonresident individual any compensation described in subsection (1) of this section that is not entitled to subtraction under ORS 316.127, 316.680 or other law.

(3) For purposes of this section, "compensation" does not include pension or retirement pay. [1991 c.177 §2]

**316.790** [1953 c.304 §116; 1957 c.528 §3; repealed by 1969 c.493 §99]

**316.794** [Formerly 316.052; repealed by 1987 c.293 §70]

**316.799** [Formerly 316.053; repealed by 1987 c.293 §70]

**316.802** [1969 c.493 §71; renumbered 316.970]

**316.805** [1953 c.304 §100; repealed by 1969 c.493 §99]

(Additional Modifications of Taxable Income)

**316.806 Definitions for ORS 316.806 to 316.818.** As used in ORS 316.806 to 316.818:

(1) "Construction job site" means the specific location of a construction project.

(2) "Construction project" means the construction, alteration, repair, improvement, moving or demolition of a structure and appurtenances thereto.

(3) "Construction worker" means a person who is a member of a recognized construction trade, craft, union or industrial occupation and who is lawfully engaged in the performance of labor, pursuant to contract or subcontract, at a construction project.

(4) "Traveling expenses" means daily transportation expenses that:

(a) Are not otherwise deductible under the federal Internal Revenue Code.

(b) Are incurred by a construction worker in job-related travel between a construction job site located more than 50 miles from the principal residence of the construction worker.

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance, but does not include meals unless the construction worker is required by the employer to stay overnight at the construction job site. [Formerly 316.057]

**316.810** [1953 c.304 §101; repealed by 1969 c.493 §99]

**316.812 Certain traveling expenses.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.806, incurred by a construction worker during the first year of continuous employment on the same construction job site. However, if employment on the same construction job site is temporarily interrupted for any reason whatsoever, the period of interruption shall not be taken into account in determining the one-year period. [Formerly 316.058]

**316.815** [1953 c.304 §102; 1955 c.582 §1; repealed by 1969 c.493 §99]

**316.818 Proof of expenses.** The modification to federal taxable income by ORS 316.812 shall be substantiated by any proof required by the Department of Revenue by rule. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063. [Formerly 316.059; 1995 c.54 §13]

**316.820** [1953 c.304 §103; 1963 c.627 §19 (referred and rejected); repealed by 1969 c.493 §99]

**316.824 Definitions for ORS 316.824 and 316.832.** As used in ORS 316.824 and 316.832:

(1) "Forest products" means any merchantable form including but not limited to logs, poles and piling, into which a fallen tree may be cut before it undergoes manufacturing.

(2) "Logger" means a person commonly known as a faller or buckler who furnishes and maintains personal equipment in the commercial harvesting of forest products and who is paid on a per-unit cut basis.

(3) "Logging operation site" means the specific location of the commercial harvesting of forest products.

(4) "Traveling expenses" means daily transportation expenses that:

(a) Are not otherwise deductible under the federal Internal Revenue Code.

(b) Are incurred by a logger in job-related travel between a logging operation site located more than 50 miles from the principal residence of the logger.

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance but does not include meals or lodging. [Formerly 316.061]

**316.825** [1953 c.304 §104; repealed by 1969 c.493 §99]

**316.827** [1957 s.s. c.15 §7; last sentence derived from 1957 s.s. c.15 §8; 1963 c.627 §20 (referred and rejected); repealed by 1969 c.493 §99]

**316.830** [1953 c.304 §105; repealed by 1969 c.493 §99]

**316.832 Travel expenses for loggers.** (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.824, incurred by a logger in job-related travel.

(2) The modification to federal taxable income by subsection (1) of this section shall be substantiated by any proof required by the Department of Revenue by rule. The requirement for substantiation may be waived partially, conditionally or absolutely, as provided under ORS 315.063. [Formerly 316.063; 1995 c.54 §14]

**316.834 Underground storage tank pollution prevention or essential services grant.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any underground storage tank pollution prevention or essential services grant made by the Department of Environmental Quality under section 6, chapter 863, Oregon Laws 1991, to any taxpayer. [1991 c.863 §33]

**316.835** [1953 c.304 §106; repealed by 1969 c.493 §99]

**316.838 Art object donation.** (1) If an art object has not been previously sold or otherwise transferred by its creator and the creator makes a charitable contribution of the art object that qualifies for the deduction allowed by section 170 of the Internal Revenue Code for the taxable year, there shall be subtracted from federal taxable income any positive amount obtained by subtracting:

(a) The amount otherwise deductible on the Oregon tax return of the taxpayer-creator for the taxable year as charitable contributions from

(b) The amount that would have been deductible by the taxpayer-creator if the deduction for charitable contributions had been computed without reduction in amount under section 170 (e) of the Internal Revenue Code for the art object charitably contributed by its creator.

(2) As used in this section, "art object" means a painting, sculpture, photograph, graphic or craft art, industrial design, costume or fashion design, tape or sound recording or film.

(3) No additional subtraction shall be allowed to the taxpayer-creator under this section unless the tax return is accompanied by a copy of an appraisal report showing the fair market value of the art object at the time the contribution was made. [Formerly 316.064; 1989 c.938 §1]

**316.840** [1953 c.304 §107; 1961 c.506 §3; repealed by 1969 c.493 §99]

**316.844 Special computation of gain or loss where farm use value used.** (1) Notwithstanding any other provision of this chapter, when gain or loss that is included in federal taxable income is derived from the disposition of property and the gain, loss or basis computed with respect to that disposition involves, in whole or in part, property that was valued at the property's value for farm use or as forestland under ORS 118.155 (1995 Edition), then there shall be added to federal taxable income the difference between the taxable gain or loss that would otherwise be determined under this chapter and the gain or loss that would be taxable had the basis for federal tax purposes been computed using the forest or farm use value provided for under ORS 118.155 (1995 Edition) instead of the basis computed pursuant to section 1014 of the Internal Revenue Code.

(2) This section applies to gains and losses from dispositions of property acquired from a decedent, or from property the basis of which is computed in whole or in part with respect to property acquired from a decedent, whose death occurred before January 1, 1987. [Formerly 316.081; 1987 c.646 §13; 1997 c.99 §19]

**316.846 Scholarship awards used for housing expenses.** (1) There shall be subtracted from federal taxable income amounts received from a scholarship awarded to the taxpayer or a dependent of the taxpayer that are used for housing expenses of the scholarship recipient at the time the scholarship recipient is attending an accredited community college, college, university or other institution of higher education.

(2) A subtraction may not be allowed under this section if the amounts described in subsection (1) of this section:

(a) Are not included in the taxpayer's federal gross income for the tax year; or

(b) Are taken into account as a deduction on the taxpayer's federal income tax return for the tax year. [1999 c.747 §2]

**316.848 Individual development accounts.** (1) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of taxpayer deposits to an individual development account established by the taxpayer under ORS 458.685.

(2) Matching deposits made by a fiduciary organization to an individual development account, and interest accruing on account holder deposits and matching deposits, are exempt from taxation until withdrawn by the taxpayer.

(3) Moneys withdrawn by the taxpayer from an individual development account for an approved purpose, as described under ORS 458.685, are exempt from taxation under this chapter. A withdrawal by a taxpayer for a purpose other than an approved purpose is taxable under this chapter. [1999 c.1000 §10]

**Note:** Sections 14 (1) and 15, chapter 1000, Oregon Laws 1999, provide:

**Sec. 14.** (1) Notwithstanding ORS 316.848, if the Legislative Revenue Officer reports under section 13 (2), chapter 1000, Oregon Laws 1999, that the revenue impact of tax deductions under ORS 316.848 (1) for the biennium ending June 30, 2001, is likely to exceed \$250,000, a deduction may not be allowed under ORS 316.848 for any deposits made on or after January 1, 2001, and on or before December 31, 2002. [1999 c.1000 §14(1); 2001 c.114 §34(1)]

**Sec. 15.** Sections 8, 13 and 14 of this 1999 Act are repealed on January 1, 2004. The repeal of section 14 of this 1999 Act does not allow a taxpayer to file for any deduction or credit under section 10 [316.848] or 12 [315.271] of this 1999 Act that was prohibited under section 14 of this 1999 Act. [1999 c.1000 §15]

**316.849** [Formerly 316.145; repealed by 1993 c.475 §3]

**316.852 Qualified donations and sales to educational institutions.** (1) As used in this section:

(a) "Contribution base" has the meaning given that term in section 170 of the Internal Revenue Code.

(b) "Educational institution" means:

(A) A public common or union high school district;

(B) A private school that has been registered under ORS 345.505 to 345.575 and that is an organization described in section 501(c)(3) of the Internal Revenue Code;

(C) An accredited public community college, college or university located in this state; or

(D) An accredited private community college, college or university located in this state that is an organization described in section 501(c)(3) of the Internal Revenue Code.

(c) "Qualified donation" means a transfer of a fee estate in land from a taxpayer to an educational institution without consideration of any kind given to the taxpayer by the educational institution in exchange for the land.

(d) “Qualified reduced sale” means a transfer of a fee estate in land by a taxpayer to an educational institution for consideration paid by the educational institution that is less than the fair market value of the land at the time of transfer.

(2) There shall be added to federal taxable income the amount that otherwise would be taken into account as a charitable contribution deduction for a qualified donation or a qualified reduced sale pursuant to section 170 of the Internal Revenue Code.

(3) In the case of a qualified donation made by the taxpayer during the tax year, the fair market value of the qualified donation shall be subtracted from federal taxable income.

(4) In the case of a qualified reduced sale made by the taxpayer during the tax year, the difference between the fair market value of the land and the sale price of the land shall be subtracted from federal taxable income.

(5) Notwithstanding subsections (3) and (4) of this section, the subtraction allowed under this section may not exceed:

(a) In the case of a qualified donation, 50 percent of the taxpayer’s contribution base for the tax year; or

(b) In the case of a qualified reduced sale, 25 percent of the taxpayer’s contribution base for the tax year.

(6) Any subtraction not allowed because of the limitations imposed under subsection (5) of this section may be carried forward and claimed as a subtraction in the next succeeding tax year. Any amount remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year, but may not be carried beyond the 15th succeeding tax year.

(7) If a partnership or S corporation makes a qualified donation or qualified reduced sale during the tax year, each partner or shareholder shall be allowed a subtraction under this section in proportion to their ownership interest in the partnership or S corporation. [1999 c.358 §2]

**Note:** Section 6, chapter 358, Oregon Laws 1999, provides:

**Sec. 6.** Sections 2 and 4 of this 1999 Act [316.852 and 317.488] apply to donations and reduced sales occurring in tax years beginning on or after January 1, 2000, and before January 1, 2008. [1999 c.358 §6]

**316.854** [Formerly 316.150; 1985 c.802 §16a; repealed by 1987 c.293 §70]

**316.855** [1953 c.304 §108; 1963 c.305 §1; repealed by 1969 c.493 §99]

**316.857** [1989 1985 c.352 §2; renumbered 316.216 in 1989]

**316.860** [1953 c.304 §109; repealed by 1969 c.493 §99]

**316.863** [1985 c.802 §3; repealed by 1997 c.839 §69]

**316.865** [1953 c.304 §110; repealed by 1969 c.493 §99]

**316.870** [1953 c.304 §111; repealed by 1969 c.493 §99]

## DEFERRAL OF REINVESTED GAIN

**316.871 Definitions for ORS 316.872.** As used in ORS 316.871 and 316.872, unless the context requires otherwise:

(1) “Consideration” includes money, property or securities. If consideration is for other than money, consideration shall mean the amount equal to the adjusted basis to the corporation of the property received reduced by any liability to which the property was subject or which was assumed by the corporation as of the time the property was received.

(2) “Security” means any security as defined in ORS 59.015.

(3) “Small business corporation” means a corporation that:

(a) Is organized in this state or authorized to transact business in this state under the Oregon Business Corporation Act and which has its primary place of business or commercial domicile in Oregon as determined under the administrative rule of the Department of Revenue.

(b) Had total employment of no more than 200 employees, as measured by the number of employees covered by federal unemployment insurance on December 31 of the year preceding issuance of the small business stock, a majority of which employees were covered by Oregon unemployment insurance on December 31 of the year preceding acquisition of the small business stock. However, if more than 50 percent of the outstanding equity securities of all classes are held by another corporation, the employment of the controlling corporation shall be counted as employment of the eligible corporation for purposes of this paragraph.

(c) Had gross receipts for its tax year ending in the calendar year previous to the calendar year in which the tax year of the taxpayer claiming the credit under ORS 316.872, begins of which not more than 25 percent were obtained from royalties, rents, dividends, interest, annuities and sales and exchanges of property. However, this restriction does not apply to companies whose primary business is the sale or development of computer software.

(d) Is not engaged primarily in the business of managing, holding, buying or selling real property.

(e) Has not issued small business securities for consideration in excess of \$1 million. Any small business securities issued

by affiliates of the corporation as defined in section 1504 of the Internal Revenue Code shall be aggregated with the small business securities issued by the corporation for purposes of the \$1 million limit.

(4) "Small business security" means a security issued by a small business corporation and purchased by a taxpayer directly from the same small business corporation, or purchased by a taxpayer from an underwriter which is selling the securities as part of a plan to raise new debt or equity capital for the small business corporation. The Department of Revenue shall, upon request, designate those small business security issues which fit the definition set forth in this paragraph. [1985 c.715 §2; 1987 c.293 §9; 1993 c.18 §82; 1997 c.772 §30]

**316.872 Deferral of gain on sale of small business securities.** (1) If a small business security owned by a taxpayer is sold by the taxpayer, and within six months from the date of sale, another small business security is purchased by the taxpayer, gain from the sale shall only be recognized to the extent that the sales price of the small business security sold exceeds the cost of purchasing the new small business security.

(2) Where the purchase of a new small business security results, under subsection (1) of this section, in the nonrecognition of gain on the sale of an old small business security, in determining the basis of the new small business security, the basis shall be reduced by an amount equal to the amount of the gain not so recognized on the sale of the old small business security.

(3) Federal taxable income shall be modified to the extent necessary to carry out the provisions of this section. [1985 c.715 §3; 1987 c.647 §15]

**Note:** Section 4, chapter 715, Oregon Laws 1985, provides:

**Sec. 4.** This Act [316.871 and 316.872] applies to small business securities acquired during tax years beginning on or after January 1, 1986, and prior to January 1, 1990. [1985 c.715 §4]

**Note:** Section 16, chapter 647, Oregon Laws 1987, provides:

**Sec. 16.** The amendments to section 3, chapter 715, Oregon Laws 1985 [316.872], by section 15 of this Act apply to small business security acquired during tax years beginning on or after January 1, 1986, and prior to January 1, 1990. [1987 c.647 §16]

**316.873 Definitions for ORS 316.873 to 316.884.** As used in ORS 316.873 to 316.884:

(1) "Capital asset" means an asset defined as a capital asset under section 1221 of the Internal Revenue Code, except that it includes property, used in the taxpayer's trade or business, of a character that is subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code, or real property used in the taxpayer's trade or business.

(2) "Commercial domicile" means commercial domicile as defined under ORS 314.610.

(3) "Expansion share" means a unit of ownership of a business that meets all of the following criteria:

(a) The unit has unlimited voting rights and the right to receive a share of the net assets of the business upon dissolution, or may at the option of the holder of the share be converted into shares with these characteristics.

(b) The unit is issued directly to the taxpayer, or to a partnership, limited liability company or S corporation of which the taxpayer is, at the time the unit is issued, a partner, member or shareholder.

(c) The business has less than \$5 million in revenues during the 12 full months immediately preceding the date of the first equity investment in the business by the taxpayer.

(d) At the time the unit is issued, the business has a net equity, adjusted by adding back all dividends or distributions made by the business, that is equal to or less than the sum of all previous equity investments.

(e) At the time the unit is issued, no unit of ownership of the business is publicly traded.

(f) The unit is issued in exchange for money or property to be used in the operations of the business. A unit, the proceeds received by the business of which are used by the business to reacquire an ownership interest or other security of the business, shall not constitute an expansion share.

(4) "Gain" or "deferred gain" means gain as determined for federal income tax purposes with the modifications contained in this chapter.

(5) "Qualified business interest" means an ownership interest in a business conducting a qualified business activity.

(6) "Qualified business activity" means a business that is owned by an individual, partnership, limited liability company, S corporation or C corporation, the activity of which meets all of the following criteria:

(a) The activity is an activity listed in the Standard Industrial Classification Manual, 1987 (SIC), as published by the Office of Management and Budget, Executive Office of the President, as being any of the following:

(A) Agriculture, forestry or fishing (Division A).

(B) Mining (Division B).

(C) Construction (Division C).

(D) Manufacturing (Division D).

(E) Transportation, communications, electric, gas or sanitary service (Division E).

(F) Wholesale trade (Division F).

(G) Retail trade (Division G).

(H) Personal services (Major Group 72, Division I).

(I) Business services (Major Group 73, Division I).

(J) Automotive repair, services or parking (Major Group 75, Division I).

(K) Miscellaneous repair services (Major Group 76, Division I).

(L) Engineering, accounting, research, management or related services (Major Group 87, Division I).

(b) The business generates income from investment property only as an incidental effect of the management of working capital. For purposes of ORS 316.873 to 316.884, ownership interests in entities controlled by the business or directly involved in the support of the qualified business activity of the business do not constitute investment property.

(c) The commercial domicile of the business is in this state.

(d)(A) The employment base of the business in this state is at least as large as the employment base of the business outside this state.

(B) For purposes of this paragraph, the employment base of a business shall be the sum of the number of full-time equivalent employees and the number of full-time equivalent independent contractors located in this state or outside this state, as the case may be.

(7) "Qualified business asset" means a capital asset held for use in this state in a qualified business activity.

(8) "Related party" means an individual who is a member of the taxpayer's family, as that term is defined in section 267(c)(4) of the Internal Revenue Code.

(9) "Qualified investment fund" means a partnership, limited liability company or S corporation formed solely for the purpose of acquiring qualified business interests or qualified business assets and that:

(a) Invests in qualified business interests or qualified business assets; or

(b) Acquires investment property only on an interim basis or an incidental basis until a suitable qualified business interest or qualified business asset may be located by the fund.

(10) "Investment property" means property that has the capacity to produce gross income from:

(a) Interest, annuities or royalties not derived in the ordinary course of a trade or business; or

(b) Dividends, except that investment property does not include expansion shares. [1995 c.809 §2; 1997 c.839 §25]

**316.874 Deferral of gain from sale of capital asset; reinvestment of gain; disposition of interest or asset in which gain reinvested.** (1) In addition to any other modifications to federal taxable income made for purposes of this chapter, and upon the filing by the taxpayer of a declaration described under ORS 316.877 (1), a taxpayer who has income for federal income tax purposes, from gain on the sale or other disposition of a capital asset may defer recognition of all or part of the gain in determining the taxes imposed under this chapter by reinvesting the proceeds of the sale or other disposition in a qualified business interest, qualified investment fund or qualified business asset within six months of the date on which the gain would otherwise have been recognized.

(2) For purposes of ORS 316.873 to 316.884, gain shall be considered to be reinvested in a qualified business interest, qualified investment fund or qualified business asset in the same proportion that the proceeds from the sale or other disposition of the capital asset (net of federal income taxes paid or owing as a result of the sale or other disposition) are reinvested.

(3) Upon the sale or other disposition of a qualified business interest, interest in a qualified investment fund or a qualified business asset with respect to which gain was previously deferred under this section as the result of a prior sale or disposition, the previously deferred gain may continue to be deferred:

(a) Only to the extent that an amount equal to the total of all gain deferred under this section is reinvested in one or more qualified business interests or qualified business assets; and

(b) Only if a new declaration described under ORS 316.877 (1) is filed with the Department of Revenue.

(4) Gain resulting from the sale or other disposition of a qualified business interest, interest in a qualified investment fund or a qualified business asset that the taxpayer may not continue to defer under subsection (1) of this section shall be added to federal taxable income in the manner provided under ORS 316.879 (3).

(5) The Department of Revenue may by rule further refine the method by which a taxpayer determines whether a transaction constitutes the sale or disposition of a qualified business interest, interest in a qualified investment fund or a qualified business asset with respect to which gain has been deferred. [1995 c.809 §3]

**316.875** [1953 c.304 §112; repealed by 1969 c.493 §99]

**316.876 Gain that may not be deferred under ORS 316.873 to 316.884.** The following types of gain or income may not be deferred under ORS 316.873 to 316.884:

(1) Gain from the sale or other disposition of property received in lieu of salary, wages or other compensation for services performed by the taxpayer, to the extent of the fair market value of the property at the time of receipt by the taxpayer.

(2) Gain or income from the sale of inventory, except gain derived from the bulk sale of inventory not in the ordinary course of a trade or business.

(3) Gain from the sale of property that is not held for the production of income.

(4) Gain from investment property.

(5) Gain that is treated or characterized as ordinary income under any provision of the Internal Revenue Code. [1995 c.809 §4]

**316.877 Declaration of intent to reinvest in qualified business interest, qualified investment fund or qualified**

**business asset required for deferral of gain.** (1) A declaration shall accompany the income tax return of a taxpayer seeking to defer gain under ORS 316.873 to 316.884. The declaration shall state the source and the amount of the gain to be deferred and shall declare the intent of the taxpayer to reinvest the gain in a qualified business interest, qualified investment fund or a qualified business asset within six months of the date of sale or other disposition from which the gain is derived.

(2) A taxpayer who has filed a declaration of intent to reinvest shall, with the income tax return for the tax year of reinvestment, file a statement that the reinvestment has occurred. The statement shall be on such form as the Department of Revenue may prescribe and shall:

- (a) Identify the qualified business interest, interest in a qualified investment fund or qualified business asset acquired;
- (b) State the basis for qualification as a qualified business interest, qualified investment fund or qualified business asset; and
- (c) Give the purchase price or other consideration given for the qualified business interest, interest in the qualified investment fund or qualified business asset acquired.

(3) The statement described in subsection (2) of this section shall reference the specific declaration of intent to reinvest that is being fulfilled. [1995 c.809 §5]

**316.878 Basis of qualified business interest, qualified investment fund or qualified business asset in which gain reinvested.** The basis of the taxpayer in a qualified business interest, qualified investment fund or qualified business asset shall not be reduced by the amount of gain deferred under ORS 316.873 to 316.884. [1995 c.809 §6]

**316.879 Events causing deferral of gain to cease; recognition of deferred gain.** (1) If a taxpayer is granted a deferral under ORS 316.873 to 316.884, the amount of the deferred gain that is reinvested in a qualified business interest, qualified investment fund or qualified business asset shall be an adjustment to federal taxable income notwithstanding ORS 316.874 when any of the following occur:

- (a) The asset ceases to be a qualified business asset.
- (b) The investment fund ceases to be a qualified investment fund.
- (c) The business ceases day-to-day operations or ceases to be a qualified business.
- (d) The current asset value of the qualified business is reduced 50 percent or more as a result of the withdrawal of:
  - (A) Capital assets from the business; or
  - (B) Proceeds from the sale or other disposition of capital assets of the business.

(2) For purposes of subsection (1)(b) of this section, a qualified investment fund may not be disqualified upon the disqualification of one or more of the qualified business activities in which the fund holds interests, if the fund divests itself of the fund's interests in the disqualified business activity within 12 months of the date of disqualification. If the qualified investment fund does not divest itself of the fund's interests in a disqualified business activity within 12 months of the disqualification, only that portion of the gain previously deferred under ORS 316.873 to 316.884 that is attributable to the interest in the disqualified business activity shall be an adjustment to the federal taxable income of the owners of the fund.

(3)(a) Except as provided in paragraph (b) of this subsection, upon the occurrence of an event described in subsection (1) of this section requiring recognition of deferred gain, the deferred gain shall be added to federal taxable income for the tax year in which the event occurs. Except for adjustments required for purposes of this chapter other than in ORS 316.873 to 316.884, no other adjustment to federal taxable income shall be made as a result of an event requiring recognition of deferred gain described in subsection (1) of this section.

(b) A taxpayer who does not own a controlling interest in a business with respect to which an event occurs requiring recognition of gain as described in subsection (1)(a), (b) and (c) of this section may continue to defer gain by timely filing a declaration of intent to reinvest as described in ORS 316.877.

(c) If a qualified investment fund fails to divest itself of the fund's interests in a disqualified business activity within the 12-month period described in subsection (2) of this section, the deferred gain that is required to be recognized by subsection (2) of this section shall be added to federal taxable income for the tax year in which expires the 12-month period for divestment. [1995 c.809 §7]

**316.880** [1953 c.304 §113; repealed by 1969 c.493 §99]

**316.881 Sale or disposition of reinvestment interest; period for assessment of deficiency; failure to reinvest after declaration filed.** (1) If a taxpayer sells or otherwise disposes of a qualified business interest or qualified business asset, the statutory period prescribed in ORS 314.410 for assessing a deficiency attributable to any part of the gain deferred under ORS 316.873 to 316.884 shall not expire prior to the expiration of three years after the latest of the following dates:

- (a) The date of receipt by the Department of Revenue of the statement described in ORS 316.877 (2).
- (b) The date of receipt by the department of a statement from the taxpayer declaring an intent not to reinvest.
- (c) The date that is six months after the date of sale or disposition resulting in possible deferred gain.

(2) Any gain deferred under ORS 316.873 to 316.884 that is later required to be added to federal taxable income under ORS 316.873 to 316.884 shall be added to federal taxable income for the tax year in which the event causing the addition occurs. Any deficiency attributable to any portion of deferred gain may be assessed before the expiration of the latest date described under subsection (1) of this section.

(3) A taxpayer who files a declaration of intent to reinvest but fails to reinvest as required by ORS 316.874 shall be liable

for unpaid taxes on the deferred amount and for interest at the rate established under ORS 305.220 for deficiencies from the date that the tax on the deferred gain would have been due had the declaration not been filed to the date of payment. [1995 c.809 §8]

**316.882 Death or disability; election of successor related party to continue deferral; basis upon death if deferral not continued.** (1) If, on account of death or disability of the taxpayer, a related party succeeds to a qualified business interest, interest in a qualified investment fund or qualified business asset upon the acquisition of which gain was deferred under ORS 316.873 to 316.884, then at the election of the related party, the death or disability of the taxpayer shall not result in the addition to federal taxable income of the deferred gain.

(2) The related party who succeeds to the qualified business interest, interest in a qualified investment fund or qualified business asset may dispose of the interest or asset without addition of the deferred gain to federal taxable income if the requirements of reinvestment and other requirements of ORS 316.873 to 316.884 are met.

(3) If a taxpayer dies, and the death does not result in the addition of the deferred gain to federal taxable income because of an election under this section, at the time the deferred gain is added to federal taxable income, the amount of gain shall be determined using the basis that the deceased taxpayer had in the qualified business interest, qualified investment fund or qualified business asset. [1995 c.809 §9]

**316.883 Rules for ORS 316.873 to 316.884; adoption by Department of Revenue.** The Department of Revenue may adopt rules under ORS 316.873 to 316.884 including rules that define what constitutes an interim holding of investment property by a qualified investment fund and an incidental holding of investment property by a qualified business activity or a qualified investment fund. [1995 c.809 §10]

**Note:** Section 11, chapter 809, Oregon Laws 1995, provides:

**Sec. 11.** (1) Sections 2 to 10 of this Act [316.873 to 316.883] apply to gain incurred from the sale or other disposition of a capital asset in tax years beginning on or after January 1, 1997, and to investments in qualified business interests, qualified investment funds or qualified business assets that occur on or before December 31, 1999.

(2)(a) The Department of Revenue, in conjunction with the Economic and Community Development Department and the Legislative Revenue Officer, shall prepare a report regarding the economic impact of sections 2 to 10 of this Act and shall present the report to those committees of the Seventieth Legislative Assembly to which revenue matters are assigned. The purpose of the report is to analyze the job creation and tax implications of sections 2 to 10 of this Act.

(b) The confidentiality requirements applicable to tax returns and the information contained therein shall not be applicable to the Economic and Community Development Department and the Legislative Revenue Officer for purposes of preparing the report described in paragraph (a) of this subsection. [1995 c.809 §11]

**316.884 Deferral of gain for tax years beginning in 1996; applicability of ORS 316.873 to 316.884; modifications.** (1) For gain incurred from the sale or other disposition of a capital asset in tax years beginning on or after January 1, 1996, and before January 1, 1997, ORS 316.873 to 316.884 apply, as modified by this section.

(2) A taxpayer may defer recognition of gain on the sale or other disposition of a capital asset as provided for under ORS 316.874 (2), except that the reinvestment must be in a qualified business interest or a qualified business asset.

(3) Recognition of gain may be deferred under this section only if the taxpayer's reinvestment:

(a) Consists of a qualified business interest in a C corporation; or

(b) Relates to a qualified business activity in which the taxpayer materially participates, as that term is defined in section 469 of the Internal Revenue Code and the regulations thereunder.

(4) For purposes of calculating the amount of gain that shall be considered to be reinvested under this section, ORS 316.874 (2) shall not apply and the amount of gain that shall be considered to be reinvested shall be the lesser of:

(a) The amount of the gain incurred from the sale or other disposition of a capital asset by the taxpayer; or

(b) The amount of the reinvestment. [1995 c.809 §12]

**316.885** [1953 c.304 §114; repealed by 1969 c.493 §99]

**316.970 Effect of chapter 493, Oregon Laws 1969.** This chapter is intended to supersede any conflicting provisions of law in effect on August 22, 1969, to the extent of such conflict. [Formerly 316.802]

## PENALTIES

**316.990** [1953 c.304 §115; repealed by 1957 c.632 §1 (314.991 enacted in lieu of 316.990 and 317.990)]

**316.992 Penalty for filing incorrect return that is based on frivolous position or is intended to delay or impede administration; appeal.** (1) The Department of Revenue shall assess a penalty of \$250 against any individual who files what purports to be a return of the tax imposed by this chapter but which:

(a) Does not contain information on which the substantial correctness of the self-assessment may be judged; or

(b) Contains information that on its face indicates that the self-assessment is substantially incorrect.

(2) A penalty may be imposed under subsection (1) of this section only if the conduct referred to in subsection (1) of this section is due to:

(a) A position which is frivolous; or

(b) An intention, apparent on the face of the purported return, to delay or impede the administration of the income tax laws of this state.

(3) The penalty imposed under this section is in addition to any other penalty imposed by law. Any person against whom a penalty is assessed under this section may appeal to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after the order of the tax court becomes final, the department may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430.

(4) If an assessment of tax due for the taxable year with respect to which a penalty is imposed under this section is under appeal at the same time that an appeal is filed under this subsection, the tax court may consolidate the appeals into a single proceeding.

(5) As used in this section, "a position which is frivolous" includes, but is not limited to:

(a) Reference to a spurious constitutional argument;

(b) Reliance on a "gold standard" or "war tax" deduction;

(c) An argument that wages or salary are not includable in taxable income;

(d) An argument that the Sixteenth Amendment to the United States Constitution was not properly adopted; or

(e) An argument that "unenfranchised, sovereign, freemen or natural persons" are not subject to the tax laws. [1987 c.843 §11; 1995 c.650 §39]