Chapter 314

2009 EDITION

Taxes Imposed Upon or Measured by Net Income

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GENERAL PROVISIONS

314.011 Definitions; conformance with federal income tax law. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2) As used in this chapter:

(a) Any term 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.

(b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect on May 1, 2009.

(c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, any reference to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before May 1, 2009, even when the amendments take effect or become operative after that date, except where the Legislative Assembly has specifically provided otherwise.

(3) 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.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section 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.

(5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section 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 subsection (2) of this section 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. [1957 c.632 §40; 1965 c.152 §24; 1971 c.215 §8; 1977 c.870 §39; 1987 c.293 §50; 1989 c.625 §25; 1991 c.457 §16; 1993 c.726 §10; 1995 c.556 §20; 1997 c.325 §32; 1997 c.839 §48; 1999 c.90 §1; 1999 c.224 §9; 2001 c.660 §32; 2003 c.77 §10; 2005 c.94 §74; 2005 c.519 §8; 2005 c.832 §23; 2007 c.614 §10; 2008 c.45 §11; 2009 c.5 §21; 2009 c.909 §21]

Note: The amendments to 314.011 by section 22, chapter 909, Oregon Laws 2009, apply to tax years beginning on or after January 1, 2011. See section 46, chapter 909, Oregon Laws 2009. The text that applies to tax years beginning on and after January 1, 2011, is set forth for the user's convenience.

314.011. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2) As used in this chapter:

(a) Any term 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.

(b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect:

(A) On May 1, 2009; or

(B) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

(c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, except those described in paragraph (b) of this subsection, any reference to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before May 1, 2009, even when the amendments take effect or be-

come operative after that date, except where the Legislative Assembly has specifically provided otherwise.

(3) 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.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section 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.

(5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section 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 subsection (2) of this section 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.

314.012 [Repealed by 1953 c.310 §3]

314.013 [2003 c.704 §4; repealed by 2005 c.533 §5]

314.014 [Repealed by 1953 c.310 §3]

314.015 Soccer referees considered independent contractors. Notwithstanding ORS 670.600, for purposes of ORS chapter 316, a person serving as a referee or assistant referee in a youth or adult recreational soccer match shall be considered to be an independent contractor. [2005 c.94 §73; 2009 c.33 §12]

314.016 [Repealed by 1953 c.310 §3]

314.018 [Repealed by 1953 c.310 §3]

314.020 [Repealed by 1953 c.310 §3]

314.021 Application of chapter. Except where the context requires otherwise, this chapter is applicable to all laws of this state imposing taxes upon or measured by net income. [1957 c.632 §2; 1961 c.176 §3; 1965 c.152 §25; 1971 c.215 §9; 1977 c.870 §40; 1987 c.293 §51; 1989 c.625 §26; 1995 c.79 §153; 1995 c.556 §21]

314.022 [Repealed by 1953 c.310 §3]

314.023 Application to partners in domestic partnership and to surviving partners. This chapter applies to partners in a domestic partnership, as defined in ORS 106.310, and surviving partners as if federal income tax law recognized a domestic partnership in the same manner as Oregon law. [2007 c.99 §11]

314.024 [Repealed by 1953 c.310 §3]

314.026 [Repealed by 1953 c.310 §3]

314.028 [Repealed by 1953 c.310 §3]

314.029 Application of Deficit Reduction Act of 1984 (P.L. 98-369) and Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to personal income tax. (1)(a) Notwithstanding ORS 316.012 (1983 Replacement Part), and subject to all other provisions of ORS chapter 316 in effect and applicable to transactions occurring on or after January 1, 1984, the Deficit Reduction Act of 1984 (P.L. 98-369) insofar as it applies to transactions occurring on or after January 1, 1984, shall apply to the same transactions for Oregon tax purposes.

(b) Notwithstanding ORS 316.012 (1985 Replacement Part), and subject to all other provisions of ORS chapter 316 in effect and applicable to transactions occurring on or after January 1, 1985, the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) insofar as it applies to transactions occurring on or after January 1, 1985, shall apply to the same transactions for Oregon tax purposes. The amendments by the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to section 168 of the Internal Revenue Code apply to property placed in service after May 8, 1985, but do not apply to property to which section 105(b)(2) and (3) of the Act (P.L. 99-121) apply.

(2)(a) If a deficiency is assessed against any taxpayer for a tax year for which subsection (1) of this section applies and the deficiency, or any portion thereof, is attributable to any retroactive treatment for Oregon tax purposes given P.L. 98-369 or 99-121 under subsection (1) of this section, then any interest or penalty assessed under ORS chapter 305, 314 or 316 with respect to the deficiency or portion shall be canceled.

(b) If a refund is due any taxpayer for a tax year for which subsection (1) of this section applies and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment given P.L. 98-369 or 99-121 for Oregon tax purposes under subsection (1) of this section, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(3)(a)(A) At the election of the taxpayer and if the taxpayer is required to file an Oregon return for a tax year beginning in 1985, any changes required on account of subsection (1)(a) of this section for a tax year beginning prior to January 1, 1985, may be made either by filing an amended return or

be made on a tax return filed for a tax year beginning in 1985 in the manner determined by the Department of Revenue by rule. An election made under this paragraph shall apply to all changes required on account of subsection (1)(a) of this section.

(B) Any changes required on account of subsection (1)(b) of this section for a tax year beginning prior to January 1, 1987, shall be made by filing an amended return within the time prescribed by law.

(b) Exercise of the election provided under paragraph (a)(A) of this subsection shall not operate to modify any election made on the return to which the change relates or on the return in which the change is made unless otherwise provided by the department by rule.

(c) For purposes of paragraph (a)(A) of this subsection, if a taxpayer is not required to file an Oregon return for a tax year beginning in 1985, the taxpayer shall reflect the change in an amended return for the tax year to which the change relates.

(d)(A) If a taxpayer fails to make an election under paragraph (a)(A) of this subsection, the department shall make any changes under paragraph (a)(A) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1985 return is filed, whichever period expires later.

(B) If a taxpayer fails to file an amended return under paragraph (a)(B) of this subsection, the department shall make any changes under paragraph (a)(B) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1987 return is filed, whichever period expires later. [Formerly 316.021]

Note: 314.029 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.030 [Repealed by 1953 c.310 §3]

314.031 Application of Deficit Reduction Act of 1984 (P.L. 98-369) and Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to corporate excise and income tax. (1)(a) Notwithstanding ORS 317.010, 317.013 and 317.018 (all 1983 Replacement Part), and subject to all other provisions of ORS chapters 317 and 318 in effect and applicable to transactions occurring on or after January 1, 1984, the Deficit Reduction Act of 1984 (P.L. 98-369) insofar as it applies to transactions occurring on or after January 1, 1984, shall apply to the same transactions for Oregon tax purposes.

(b) Notwithstanding ORS 317.010, 317.013 and 317.018 (all 1985 Replacement Part), and subject to all other provisions of ORS chapters 317 and 318 in effect and applicable to transactions occurring on or after January 1, 1985, the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) insofar as it applies to transactions occurring on or after January 1, 1985, shall apply to the same transactions for Oregon tax purposes. The amendments by the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to section 168 of the Internal Revenue Code apply to property placed in service after May 8, 1985, but do not apply to property to which section 105 (b)(2) and (3) of the Act (P.L. 99-121) apply.

(2)(a) If a deficiency is assessed against any taxpayer for a tax year for which subsection (1) of this section applies and the deficiency, or any portion thereof, is attributable to any retroactive treatment for Oregon tax purposes given P.L. 98-369 or 99-121 under subsection (1) of this section, then any interest or penalty assessed under ORS chapter 305, 314, 317 or 318 with respect to the deficiency or portion shall be canceled.

(b) If a refund is due any taxpayer for a tax year for which subsection (1) of this section applies and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment given P.L. 98-369 or 99-121 for Oregon tax purposes under subsection (1) of this section, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(3)(a)(A) At the election of the taxpayer and if the taxpayer is required to file an Oregon return for a tax year beginning in 1985, any changes required on account of subsection (1)(a) of this section for a tax year beginning prior to January 1, 1985, may be made either by filing an amended return or be made on a tax return filed for a tax year beginning in 1985 in the manner determined by the Department of Revenue by rule. An election made under this paragraph shall apply to all changes required on account of subsection (1)(a) of this section.

(B) Any changes required on account of subsection (1)(b) of this section for a tax year beginning prior to January 1, 1987, shall be made by filing an amended return within the time prescribed by law.

(b) Exercise of the election provided under paragraph (a)(A) of this subsection shall not operate to modify any election made on the return to which the change relates or on

the return in which the change is made unless otherwise provided by the department by rule.

(c) For purposes of paragraph (a)(A) of this subsection, if a taxpayer is not required to file an Oregon return for a tax year beginning in 1985, the taxpayer shall reflect the change in an amended return for the tax year to which the change relates.

(d)(A) If a taxpayer fails to make an election under paragraph (a)(A) of this subsection, the department shall make any changes under paragraph (a)(A) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1985 return is filed, whichever period expires later.

(B) If a taxpayer fails to file an amended return under paragraph (a)(B) of this subsection, the department shall make any changes under paragraph (a)(B) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1987 return is filed, whichever period expires later. [Formerly 317.021]

Note: 314.031 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.032 [Repealed by 1953 c.310 §3]

314.033 Application of federal Tax Reform Act of 1986 (P.L. 99-514). (1) For purposes of subsections (2) to (15) of this section, "TRA" means the federal Tax Reform Act of 1986 (P.L. 99-514).

(2) Unless the context requires otherwise, the amendments, repeals and new matter contained in chapter 293, Oregon Laws 1987, apply generally to tax years beginning on or after January 1, 1987, or to transactions occurring on or after January 1, 1987, in tax years beginning on or after January 1, 1987. However, certain changes made by the federal Tax Reform Act of 1986 (P.L. 99-514) and adopted by the amendments to ORS 316.007, 316.012, 317.010, 317.013 and 317.018 by sections 1, 2 and 31 to 33, chapter 293, Oregon Laws 1987, apply for federal tax purposes as follows:

(a) To tax years beginning prior to January 1, 1987;

(b) To transactions occurring before, on or after December 31, 1986, in tax years ending after that date; or

(c) To transactions occurring prior to January 1, 1987, but with tax consequences for federal purposes only for tax years beginning after December 31, 1986.

(3) The changes described in subsection (2)(a) of this section, if otherwise applicable for Oregon tax purposes, shall apply to and are specifically adopted for tax years beginning prior to January 1, 1987.

(4) The changes described in subsection (2)(b) and (c) of this section if otherwise applicable for Oregon tax purposes, shall apply to and are specifically adopted for transactions occurring before, on or after December 31, 1986, in tax years ending after December 31, 1986, or beginning after December 31, 1986, whichever is applicable.

(5) The changes described in subsections (3) and (4) of this section are exemplified by, but are specifically not limited to the following:

(a) The amendments made by section 122 of the TRA (relating to charitable and employee achievement awards) which apply to prizes and awards granted after December 31, 1986.

(b) The amendments by section 123 of the TRA (relating to scholarships and fellowships) which apply to tax years beginning after December 31, 1986, but only in the case of scholarships and fellowships granted after August 16, 1986.

(c) The amendments to the Internal Revenue Code relating to depreciation and the expensing of certain depreciable business assets by sections 201 and 202 of the TRA which apply generally for property placed in service on or after January 1, 1987, in tax years ending on or after that date. However, if an election is made under section 203(a)(1)(B) of the TRA, that election shall be considered to be made for Oregon tax purposes. In addition, the transitional rules contained in sections 203 and 204 of the TRA shall apply for Oregon purposes to the extent they can be made applicable, in the same manner as for federal tax purposes.

(d) Section 611 of the TRA (reducing the dividends received deduction for corporations) which applies to dividends received or accrued after December 31, 1986, in tax years ending after that date. In conjunction with this paragraph, the amendments to ORS 317.267 by chapter 293, Oregon Laws 1987, apply to dividends received or accrued after December 31, 1986, in tax years ending after that date.

(e) Section 1103 of the TRA (relating to the deduction for a spousal IRA), which applies to tax years beginning before, on or after December 31, 1985.

(f) Section 1708(a) of the TRA (relating to Vietnam MIA's) which applies to tax years beginning after December 31, 1982.

(6) If the TRA allows or requires an adjustment to the federal tax return filed for a tax year beginning prior to January 1, 1987, and such an adjustment is made, the adjustment (if adopted for Oregon tax purposes) shall also be made to the corresponding Oregon return notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135.

(7) If certain transactions are grandfathered by the TRA or the changes in the federal law made by the TRA are otherwise made inapplicable to those transactions, the same treatment shall be given those transactions for Oregon tax purposes unless otherwise provided under ORS chapter 316, 317, 318 or other law governing the determination of Oregon personal income and Oregon corporate excise and income taxes.

(8) Subsections (2) to (6) of this section do not apply to the amendments to ORS 316.021 and 317.021 by chapter 293, Oregon Laws 1987.

(9) Subsections (2) to (6) of this section do not apply to the amendments to ORS 267.380, 307.380 and 310.630 made by sections 65, 66 and 69, chapter 293, Oregon Laws 1987.

(10) The amendments to ORS 310.630 by section 66, chapter 293, Oregon Laws 1987, apply to property taxes billed or rent constituting property taxes paid in calendar years beginning on or after January 1, 1987.

(11) Subsections (2) to (6) of this section do not apply to the amendments creating a new paragraph (c) of subsection (3) of ORS 316.680. The amendments to ORS 316.680 by section 23, chapter 293, Oregon Laws 1987, creating a new paragraph (c) of subsection (3) of ORS 316.680 apply to tax years beginning on or after January 1, 1986.

(12) ORS 316.588 and the amendments to ORS 314.525, 316.579 and 316.587 by sections 22, 22a and 61a, chapter 293, Oregon Laws 1987, first apply to estimated tax payments due for tax years beginning on or after January 1, 1988.

(13) ORS 316.683 first applies to distributions made by regulated investment companies or fiduciaries, including banks, savings associations or credit unions, to the taxpayer for taxable years of the taxpayer beginning on or after January 1, 1987.

(14) Subsections (2) to (6) of this section do not apply to the amendments to ORS 314.385 and 314.395 by sections 59a and 59b, chapter 293, Oregon Laws 1987. The amendments to ORS 314.385 and 314.395 by sections 59a and 59b, chapter 293, Oregon Laws 1987, apply to tax years beginning on or after January 1, 1988.

(15) The amendments to ORS 317.476 by section 45d, chapter 293, Oregon Laws 1987, first apply to losses occurring in tax years beginning on or after January 1, 1987. [Formerly 316.023; 1997 c.99 §17]

Note: 314.033, 314.035, 314.037, 314.039 and 314.041 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 293, Oregon Laws 1987," for the words "this Act" in sections 71, 72 and 73, chapter 293, Oregon Laws 1987, compiled as 316.023 and renumbered 314.033 in 1993. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1987 Comparative Section Table located in Volume 20 of ORS.

314.034 [Repealed by 1953 c.310 §3]

314.035 Application of Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), Family Support Act of 1988 (P.L. 100-485) and Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647). (1) Except as provided in subsections (2) to (4) of this section and sections 83 to 92, chapter 625, Oregon Laws 1989, the amendments by chapter 625, Oregon Laws 1989, apply to transactions or activities occurring on or after January 1, 1989, in tax years beginning on or after January 1, 1989.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Family Support Act of 1988 (P.L. 100-485) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(4) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)

shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(5)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1989, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 625, Oregon Laws 1989, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1989, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 625, Oregon Laws 1989, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(c) Any changes required on account of chapter 625, Oregon Laws 1989, for a tax year beginning prior to January 1, 1989, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1989 return is filed, whichever period expires later. [1989 c.625 §82]

Note: See first note under 314.033.

Note: Legislative Counsel has substituted "chapter 625, Oregon Laws 1989," for the words "this Act" in section 82, chapter 625, Oregon Laws 1989, compiled as 314.035. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1989 Comparative Section Table located in Volume 20 of ORS.

314.036 [Repealed by 1953 c.310 §3]

314.037 Application of P.L. 101-140, Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) and Omnibus Budget Reconciliation Act of 1991 (P.L. 101-508). (1) Except as provided in subsection (2) of this section and sections 25a to 32, chapter 457, Oregon Laws 1991, the new material and amendments by chapter 457, Oregon Laws 1991, apply to transactions or activities occurring on or after January 1, 1991, in tax years beginning on or after January 1, 1991.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in P.L. 101-140, the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) and the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1991, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 457, Oregon Laws 1991, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1991, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 457, Oregon Laws 1991, then notwithstanding ORS 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 457, Oregon Laws, 1991, for a tax year beginning prior to January 1, 1991, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1991 return is filed, whichever period expires later. [1991 c.457 §25]

Note: See first note under 314.033.

Note: Legislative Counsel has substituted "chapter 457, Oregon Laws 1991," for the words "this Act" in section 25, chapter 457, Oregon Laws 1991, compiled as 314.037. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1991 Comparative Section Table located in Volume 20 of ORS.

314.038 [Repealed by 1953 c.310 §3]

314.039 Application of P.L. 102-2, Comprehensive National Energy Policy Act of 1992 (P.L. 102-486), Unemployment Compensation Amendments of 1992 (P.L. 102-318), Tax Extension Act of 1991 (P.L. 102-227) and Emergency Unemployment Compensation Act of 1991 (P.L. 102-164). (1) Except as specifically provided otherwise, the new material enacted, amendments and repeals made by chapter 726, Oregon Laws 1993, apply to transactions or activities oc-

curring on or after January 1, 1993, in tax years beginning on or after January 1, 1993.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in P.L. 102-2, the Comprehensive National Energy Policy Act of 1992 (P.L. 102-486), the Unemployment Compensation Amendments of 1992 (P.L. 102-318), the Tax Extension Act of 1991 (P.L. 102-227) and the Emergency Unemployment Compensation Act of 1991 (P.L. 102-164) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1993, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 726, Oregon Laws 1993, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1993, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 726, Oregon Laws 1993, then notwithstanding ORS 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 726, Oregon Laws 1993, for a tax year beginning prior to January 1, 1993, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1993 return is filed, whichever period expires later. [1993 c.726 §53]

Note: See first note under 314.033.

Note: Legislative Counsel has substituted "chapter 726, Oregon Laws 1993," for the words "this Act" in section 53, chapter 726, Oregon Laws 1993, compiled as 314.039. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 20 of ORS.

314.040 [Repealed by 1953 c.310 §3]

314.041 Application of Revenue Reconciliation Act of 1993 (P.L. 103-66), the Uruguay Round Agreements Act (P.L. 103-465) and P.L. 104-7. (1) Except as provided in subsection (2) of this section, sections 7, 7a, 28, 38 and 40, chapter 556, Oregon Laws 1995, and the new material enacted and amendments and repeals made by chapter 556, Oregon Laws 1995, apply to transactions or activities occurring on or after January 1, 1995, in tax years beginning on or after January 1, 1995.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Revenue Reconciliation Act of 1993 (P.L. 103-66), the Uruguay Round Agreements Act (P.L. 103-465) or P.L. 104-7 shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1995, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 556, Oregon Laws 1995, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1995, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 556, Oregon Laws 1995, then notwithstanding ORS 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 556, Oregon Laws 1995, for a tax year beginning before January 1, 1995, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1995 return is filed, whichever period expires later. [1995 c.556 §39; 2009 c.33 §13]

Note: See first note under 314.033.

Note: Legislative Counsel has substituted "chapter 556, Oregon Laws 1995," for the words "this Act" in section 39, chapter 556, Oregon Laws 1995, compiled as 314.041. Specific ORS references have not been substi-

tuted pursuant to 173.160. These sections may be determined by referring to the 1995 Comparative Section Table located in Volume 20 of ORS.

314.042 [Repealed by 1953 c.310 §3]

314.043 Application of ICC Termination Act of 1995 (P.L. 104-88), P.L. 104-117, Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134), Small Business Job Protection Act of 1996 (P.L. 104-188), Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). (1) Except as specifically provided otherwise, the new provisions enacted and amendments and repeals of statutes made by chapter 839, Oregon Laws 1997, apply to transactions or activities occurring on or after January 1, 1997, in tax years beginning on or after January 1, 1997.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the ICC Termination Act of 1995 (P.L. 104-88), P.L. 104-117, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134), the Small Business Job Protection Act of 1996 (P.L. 104-188), the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1997, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 839, Oregon Laws 1997, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1997, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 839, Oregon Laws 1997, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 839, Oregon Laws 1997, for a tax year beginning prior to January 1, 1997, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1997 return is filed, whichever period expires later. [1997 c.839 §70; 1999 c.21 §32]

Note: 314.043 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 839, Oregon Laws 1997," for the words "this Act" in section 70, chapter 839, Oregon Laws 1997, compiled as 314.043. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1997 Comparative Section Table located in Volume 20 of ORS.

314.044 [Repealed by 1953 c.310 §3]

314.045 Application of Taxpayer Relief Act of 1997 (P.L. 105-34), Taxpayer Browsing Protection Act (P.L. 105-35), Balanced Budget Act of 1997 (P.L. 105-33), Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206), Transportation Equity Act for the 21st Century (P.L. 105-178) and Tax and Trade Relief Extension Act of 1998 (P.L. 105-277). (1) Except as specifically provided in sections 4, 4b, 20 and 25b, chapter 90, Oregon Laws 1999, the new provisions enacted and amendments to statutes made by chapter 90, Oregon Laws 1999, apply to transactions or activities occurring on or after January 1, 1999, in tax years beginning on or after January 1, 1999.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Taxpayer Relief Act of 1997 (P.L. 105-34), the Taxpayer Browsing Protection Act (P.L. 105-35), the Balanced Budget Act of 1997 (P.L. 105-33), the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206), the Transportation Equity Act for the 21st Century (P.L. 105-178) and the Tax and Trade Relief Extension Act of 1998 (P.L. 105-277) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1999, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 90, Oregon

Laws 1999, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1999, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 90, Oregon Laws 1999, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 90, Oregon Laws 1999, for a tax year beginning before January 1, 1999, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 1999, and before January 1, 2000, is filed, whichever period expires later. [1999 c.90 §37]

Note: 314.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 90, Oregon Laws 1999," for the words "this 1999 Act" in section 37, chapter 90, Oregon Laws 1999, compiled as 314.045. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1999 Comparative Section Table located in Volume 20 of ORS.

314.046 [Repealed by 1953 c.310 §3]

314.047 Application of Tax Relief Extension Act of 1999 (P.L. 106-170) and FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (P.L. 106-519). (1) The amendments to statutes by sections 23 to 52, chapter 660, Oregon Laws 2001, apply to transactions or activities occurring on or after January 1, 2001, in tax years beginning on or after January 1, 2001.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Tax Relief Extension Act of 1999 (P.L. 106-170) and the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (P.L. 106-519), apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2001, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under the amendments to statutes by sections 23 to 52, chapter 660, Oregon Laws 2001, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2001, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to statutes by sections 23 to 52, chapter 660, Oregon Laws 2001, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of the amendments to statutes by sections 23 to 52, chapter 660, Oregon Laws 2001, for a tax year beginning before January 1, 2001, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2001, and before January 1, 2002, is filed, whichever period expires later. [2001 c.660 §53]

Note: 314.047 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 660, Oregon Laws 2001," for the words "of this 2001 Act" in section 53, chapter 660, Oregon Laws 2001, compiled as 314.047. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2001 Comparative Section Table located in Volume 20 of ORS.

314.048 [Repealed by 1953 c.310 §3]

314.049 Application of Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) and Job Creation and Worker Assistance Act of 2002 (P.L. 107-147). (1) The amendments to statutes by sections 1 to 22, chapter 77, Oregon Laws 2003, apply to transactions or activities occurring on or after January 1, 2003, in tax years beginning on or after January 1, 2003.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) and the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147) apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2003, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under the amendments to statutes by sections 1 to 22, chapter 77, Oregon Laws 2003, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2003, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to statutes by sections 1 to 22, chapter 77, Oregon Laws 2003, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to statutes by sections 1 to 22, chapter 77, Oregon Laws 2003, for a tax year beginning before January 1, 2003, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2003, and before January 1, 2004, is filed, whichever period expires later. [2003 c.77 §23]

Note: 314.049 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 77, Oregon Laws 2003," for the words "this 2003 Act" in section 23, chapter 77, Oregon Laws 2003, compiled as 314.049. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2003 Comparative Section Table located in Volume 20 of ORS.

314.050 [Repealed by 1953 c.310 §3]

314.051 Application of Veterans Benefit Act of 2002 (P.L. 107-330), Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27), Military Family Tax Relief Act of 2003 (P.L. 108-121), Working Families Tax Relief Act of 2004 (P.L. 108-311) and American Jobs Creation Act of 2004 (P.L. 108-357). (1) Except as provided in subsections (2) and (3) of this section, ORS 316.821 and the amendments to statutes by sections 13 to 28 and 31, chapter 832, Oregon Laws 2005, apply to transactions or activities occurring on or after January 1, 2005, in tax years beginning on or after January 1, 2005.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Veterans Benefits Act of 2002 (P.L. 107-330), the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27), the Military Family Tax Relief Act of 2003 (P.L. 108-121), the Working Families Tax Relief Act of 2004 (P.L. 108-311), the American Jobs Creation Act of 2004 (P.L. 108-357) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2005, and the deficiency or any portion thereof is attributable to any retroactive treatment under ORS 316.821 and the amendments to statutes by sections 13 to 28 and 31, chapter 832, Oregon Laws 2005, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2005, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under ORS 316.821 and the amendments to statutes by sections 13 to 28 and 31, chapter 832, Oregon Laws 2005, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of ORS 316.821 and the amendments to statutes by sections 13 to 28 and 31, chapter 832, Oregon Laws 2005, for a tax year beginning before January 1, 2005, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection,

the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2005, and before January 1, 2006, is filed, whichever period expires later. [2005 c.832 §32]

Note: 314.051 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 832, Oregon Laws 2005," for the words "this 2005 Act" in section 32, chapter 832, Oregon Laws 2005, compiled as 314.051. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2005 Comparative Section Table located in Volume 20 of ORS.

314.052 [Repealed by 1953 c.310 §3]

314.053 Application of Deficit Reduction Act of 2005 (P.L. 109-171), Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) and Pension Protection Act of 2006 (P.L. 109-280). (1) Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 1 to 14, chapter 614, Oregon Laws 2007, apply to transactions or activities occurring on or after January 1, 2007, in tax years beginning on or after January 1, 2007.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Deficit Reduction Act of 2005 (P.L. 109-171), the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), the Pension Protection Act of 2006 (P.L. 109-280) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2007, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to statutes by sections 1 to 14, chapter 614, Oregon Laws 2007, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2007, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to statutes by sections 1 to 14, chapter 614, Oregon Laws 2007, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to statutes by sections 1 to 14, chapter 614, Oregon Laws 2007, for a tax year beginning before January 1, 2007, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2007, and before January 1, 2008, is filed, whichever period expires later. [2007 c.614 §15]

Note: 314.053 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 614, Oregon Laws 2007," for the words "this 2007 Act" in section 15, chapter 614, Oregon Laws 2007, compiled as 314.053. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2007 Comparative Section Table located in Volume 20 of ORS.

314.054 [Repealed by 1953 c.310 §3]

314.055 Application of Energy Independence and Security Act of 2007 (P.L. 110-140), the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142), the Tax Increase Prevention Act of 2007 (P.L. 110-166) and the Tax Technical Corrections Act of 2007 (P.L. 110-172). (1) Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 1 to 17, chapter 45, Oregon Laws 2008, apply to transactions or activities occurring on or after January 1, 2008, in tax years beginning on or after January 1, 2008.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Energy Independence and Security Act of 2007 (P.L. 110-140), the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142), the Tax Increase Prevention Act of 2007 (P.L. 110-166), the Tax Technical Corrections Act of 2007 (P.L. 110-172) and other federal law amending the Internal Revenue Code apply for Oregon personal income and

corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2008, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to statutes by sections 1 to 17, chapter 45, Oregon Laws 2008, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2008, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to statutes by sections 1 to 17, chapter 45, Oregon Laws 2008, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to statutes by sections 1 to 17, chapter 45, Oregon Laws 2008, for a tax year beginning before January 1, 2008, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2008, and before January 1, 2009, is filed, whichever period expires later. [2008 c.45 §18]

Note: 314.055 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 45, Oregon Laws 2008," for the words "this 2008 Act" in section 18, chapter 45, Oregon Laws 2008, compiled as 314.055. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2008 Comparative Section Table located in Volume 20 of ORS.

314.056 [Repealed by 1953 c.310 §3]

314.057 Application of Economic Stimulus Act of 2008 (P.L. 110-185), the Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. 110-245), the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), the Housing and Economic Recovery Act of 2008 (P.L. 110-289), the Emergency Economic Stabilization Act of 2008, the Energy Improvement and Extension Act of 2008 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (P.L. 110-343) and the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). (1) Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 1 to 27, chapter 5, Oregon Laws 2009, apply to transactions or activities occurring on or after January 1, 2009, in tax years beginning on or after January 1, 2009.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Economic Stimulus Act of 2008 (P.L. 110-185), the Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. 110-245), the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), the Housing and Economic Recovery Act of 2008 (P.L. 110-289), the Emergency Economic Stabilization Act of 2008, the Energy Improvement and Extension Act of 2008 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (P.L. 110-343) and the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2009, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27, chapter 5, Oregon Laws 2009, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2010, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to ORS

305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27, chapter 5, Oregon Laws 2009, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27, chapter 5, Oregon Laws 2009, for a tax year beginning before January 1, 2010, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2009, and before January 1, 2010, is filed, whichever period expires later. [2009 c.5 §28]

Note: 314.057 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 5, Oregon Laws 2009," for the words "this 2009 Act" in section 28, chapter 5, Oregon Laws 2009, compiled as 314.057. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2009 Comparative Section Table located in Volume 20 of ORS.

314.058 [Repealed by 1953 c.310 §3]

314.059 Application of American Recovery and Reinvestment Act of 2009 (P.L. 111-5). (1) Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 1 to 34, chapter 909, Oregon Laws 2009, apply to transactions or activities occurring on or after May 1, 2009, in tax years beginning on or after January 1, 2009.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2009, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 316.013, 317.010, 317.018, 317.097, 458.670 and 657.010 by sections 11 to 34, chapter 909, Oregon Laws 2009, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2010, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 316.013, 317.010, 317.018, 317.097, 458.670 and 657.010 by sections 11 to 34, chapter 909, Oregon Laws 2009, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 316.013, 317.010, 317.018, 317.097, 458.670 and 657.010 by sections 11 to 34, chapter 909, Oregon Laws 2009, for a tax year beginning before January 1, 2010, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2009, and before January 1, 2010, is filed, whichever period expires later. [2009 c.909 §35]

Note: 314.059 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Legislative Counsel has substituted "chapter 909, Oregon Laws 2009," for the words "this 2009 Act" in section 35, chapter 909, Oregon Laws 2009, compiled as 314.059. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 2009 Comparative Section Table located in Volume 20 of ORS.

314.060 [Repealed by 1953 c.310 §3]

314.062 [Repealed by 1953 c.310 §3]

314.064 [Repealed by 1953 c.310 §3]

314.066 [Repealed by 1953 c.310 §3]

314.068 [Repealed by 1953 c.310 §3]

314.070 [Repealed by 1953 c.310 §3]

314.072 [Repealed by 1953 c.310 §3]

314.074 [Repealed by 1953 c.310 §3]

314.075 Evading requirements of law prohibited. No person, or officer or employee of a corporation or a member or employee of a partnership, shall, with intent to evade any requirement of any law imposing taxes upon or measured by net income or any lawful requirement of the Department of Revenue thereunder:

(1) Fail to pay any tax or to make, sign or verify any return or to supply any information required;

(2) Make, render, sign or verify any false or fraudulent return or statement; or

(3) Supply any false or fraudulent information. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

314.078 Determination of tax credit amounts. For purposes of this chapter and ORS chapters 315, 316, 317 and 318, a taxpayer claiming a credit against tax must claim the maximum amount of any tax credit that is allowed to the taxpayer for the tax year, to the extent of the tax liability of the taxpayer. [2001 c.8 §2]

314.080 Venue on failure to comply with law. The failure to do any act required by or under any law imposing taxes upon or measured by net income shall be deemed an act committed in part at the office of the Department of Revenue in Oregon. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

314.085 Taxable year; rules. (1) The taxable year of a partnership, REMIC (real estate mortgage investment conduit), FASIT (financial asset securitization investment trust) or taxpayer shall be the same as its taxable year for federal income tax purposes.

(2) If the taxable year of a partnership, REMIC, FASIT or taxpayer is changed for federal income tax purposes, that change in taxable year shall also apply for purposes of state taxation. If a change in taxable year results in a taxable period of less than 12 months, the personal deductions and the personal exemption credits allowed by ORS chapter 316 shall be prorated under rules adopted by the Department of Revenue.

(3) Notwithstanding subsections (1) and (2) of this section, if the department terminates the taxable year of a taxpayer under ORS 314.440, the tax shall be computed for the period determined by such action. [1987 c.293 §55; 1997 c.839 §52]

314.088 Discharge of tax liability when taxpayer dies while performing military service. (1) This section applies to a taxpayer who was a member of the Armed Forces of the United States who was on active duty for 90 consecutive days or more or who was a member of the Oregon National Guard, the military reserve forces or the organized militia of any other state or territory of the United States who performed service in a status under Title 10 of the United States Code for a period of 90 consecutive days or more, and who died during the performance of that service.

(2) If a taxpayer described in subsection (1) of this section had a tax liability for a tax due under ORS chapter 316, the tax liability, and all interest and penalties associated with any unpaid portion of the tax liability, shall be discharged and shall be deemed wholly satisfied for the taxpayer. [2005 c.519 §2]

Note: Sections 3 and 4, chapter 519, Oregon Laws 2005, provide:

Sec. 3. Section 2 of this 2005 Act [314.088] applies to deaths of taxpayers described in section 2 of this 2005 Act that occurred on or after September 11, 2001. [2005 c.519 §3]

Sec. 4. Notwithstanding ORS 314.415 or any other law limiting the period for which a claim for refund of taxes may be made, the liability discharged under section 2 of this 2005 Act [314.088] may be allowed if filed on or before December 31, 2006. [2005 c.519 §4]

314.091 Abeyance of tax during periods of active duty military service. (1) This section applies to a taxpayer who is a member of the Armed Forces of the United States who is on active duty for 90 consecutive days or more or who is a member of the Oregon National Guard, the military reserve forces or the organized militia of any other state or territory of the United States who performs service in a status under Title 10 of the United States Code for a period of 90 consecutive days or more.

(2) If a taxpayer described in subsection (1) of this section has an unpaid tax liability for a tax due under ORS chapter 316 that arose during a period in which service is performed as described in subsection (1) of this section, the unpaid tax liability, and all interest and penalties associated with the unpaid tax liability, shall be held in abeyance until a date that is six months after the date that the taxpayer's active duty or status under Title 10 of the United States Code ceases. [2005 c.519 §6]

Note: Section 7, chapter 519, Oregon Laws 2005, provides:

Sec. 7. Section 6 of this 2005 Act [314.091] applies to unpaid tax liability of taxpayers described in section 6 of this 2005 Act that was incurred during periods of military service that occurred on or after September 11, 2001. [2005 c.519 §7]

ADJUSTMENT OF RETURNS

314.105 Definitions for ORS 314.105 to 314.135. For purposes of ORS 314.105 to 314.135:

(1) "Determination" means:

(a) A decision by the Oregon Tax Court that has become final;

(b) A closing agreement made under ORS 305.150;

(c) A final disposition by the Department of Revenue of a claim for refund. For purposes of this paragraph, a claim for refund shall be deemed finally disposed of by the department as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the department in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(d) Under regulations prescribed by the department, an agreement for purposes of ORS 314.105 to 314.135 signed by the department and by any person, relating to the liability of such person (or the person for whom the person acts) in respect of a tax for any taxable period.

(2) "Related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(a) Husband and wife;

(b) Grantor and fiduciary;

(c) Grantor and beneficiary;

(d) Fiduciary and beneficiary, legatee, or heir;

(e) Decedent and decedent's estate;

(f) Partner;

(g) Member of an affiliated group of corporations as defined in section 1504 of the Internal Revenue Code; or

(h) Shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code.

(3) "Taxpayer" means any person or entity subject to tax under an applicable revenue law. [1971 c.248 §2; 1984 c.1 §15; 1985 c.602 §1; 1987 c.758 §11; 2005 c.94 §75]

314.110 [1953 c.702 §1; 1957 c.337 §4; repealed by 1971 c.248 §6]

314.115 Adjustment to correct effect of certain errors; use limited. (1) If a determination is described in ORS 314.125 and, on the date of the determination, correction of the effect of the error referred to in the applicable provision of ORS 314.125 is prevented by the operation of any law or rule of law other than ORS 314.105 to 314.135 and other than ORS 305.150, then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in ORS 314.135.

(2) Except in cases described in ORS 314.125 (3)(b) and (4), an adjustment shall be made under this section only if:

(a) In case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under ORS 314.135, there is adopted in the determination a position maintained by the Department of Revenue; or

(b) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under ORS 314.135, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made, and the position maintained by the department in the case described in paragraph (a) of this subsection or maintained by the taxpayer in the case described in this paragraph is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(3) In the case of a determination described in ORS 314.125 (3)(b) (relating to certain exclusions from income), adjustment shall be made under this section only if assessment of a deficiency for the taxable year in which the item is includable or against the related taxpayer was not barred, by any law or rule of law, at the time the department first maintained, in a notice of deficiency sent pursuant to ORS 305.265 or before the Oregon Tax Court, that the item described in ORS 314.125 (3)(b) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(4) In the case of a determination described in ORS 314.125 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under ORS 314.105 to 314.135 only if credit or refund of the overpayment attributable to the deduction or credit described in ORS 314.125 that should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the department or before the Oregon Tax Court, in writing, that the taxpayer was entitled to such deduction or

credit for the taxable year to which the determination relates.

(5) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in ORS 314.125 (3)(b)), the adjustment shall not be made with respect to a related taxpayer unless the related taxpayer stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or complaint in the Oregon Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of determination. [1971 c.248 §3; 1979 c.689 §24; 1997 c.325 §33; 2005 c.94 §76]

314.120 [1953 c.702 §2; repealed by 1971 c.248 §6]

314.125 When adjustment may be made. The circumstances under which the adjustment provided in ORS 314.115 is authorized are as follows:

(1) The determination requires the inclusion in gross income of an item that was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) The determination allows a deduction or credit that was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3)(a) The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and that was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(b) The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but that is includable in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) The determination disallows a deduction or credit that should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs or legatees, specified in sections 641 to 679 of the Internal Revenue Code, or corresponding provisions of subsequent internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted or included, or disallowed, omitted or allowed, as the case may be in respect of the related taxpayer.

(6) The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted or disallowed, as the case may be, in respect of a related taxpayer described in ORS 314.105 (2)(g).

(7)(a) The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction that was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in paragraph (b) of this subsection, any of the errors described in paragraph (c) of this subsection.

(b) The taxpayer with respect to whom the erroneous treatment occurred must be:

(A) The taxpayer with respect to whom the determination is made;

(B) A taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title; or

(C) A taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) of the Internal Revenue Code.

(c) With respect to a taxpayer described in paragraph (b) of this subsection, there was an erroneous inclusion in, or omission from, gross income, there was an erroneous recognition, or nonrecognition, of gain or loss, or there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible. [1971 c.248 §4; 1983 c.162 §50; 1987 c.293 §52; 2005 c.94 §77]

314.130 [1953 c.702 §3; repealed by 1971 c.248 §6]

314.135 Computation; method of adjustment; credit or setoff limited; recovery after payment limited. (1)(a) In computing the amount of an adjustment under ORS 314.105 to 314.135 there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of:

(A) The sum of the amount shown as the tax by the taxpayer on the return of the taxpayer, if a return was made by the tax-

payer and an amount was shown as the tax by the taxpayer thereon, plus the amounts previously assessed (or collected without assessment) as a deficiency, over

(B) The amount of refunds (as defined in ORS 314.415) made.

(b) There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item in the computation of gross income, taxable income, and other matters under ORS 316.317 or ORS chapter 317 or 318. A similar computation shall be made for any other taxable year affected, or treated as affected, by an Oregon net loss for prior years (as provided by ORS 317.476 or 317.478 and section 45b, chapter 293, Oregon Laws 1987), by a net operating loss deduction (as defined in the federal Internal Revenue Code) or by a capital loss carryback or carryover (as defined in the federal Internal Revenue Code) determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(2) The adjustment authorized in ORS 314.115 (1) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Department of Revenue with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (1) of this section and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in ORS 314.105 (1)(d), an adjustment has been made by the assessment and collection of a deficiency of the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (1) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(3) The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under ORS 314.105 to 314.135, shall not be diminished by any credit or setoff based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under ORS 314.105 to 314.135, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment. [1971 c.248 §5; 1983 c.162 §51; 1987 c.293 §52a]

314.140 Adjustment of returns of related taxpayers after reallocation of income or deduction on federal return. (1) Whenever there has been an adjustment of federal income tax liability involving a reallocation of any item of income or deduction between related taxpayers, and when such adjustment results in the assessment of a tax deficiency or the issuance of a refund check or both, then for Oregon income tax purposes, whether or not the Department of Revenue effects a similar reallocation of income or deduction for the same tax year, said federal tax deficiency and additions thereto shall be deducted (to the extent otherwise provided by law) by the taxpayer paying the same, and said federal tax refund, including interest thereon, shall be returned (to the extent otherwise required by law) by the taxpayer receiving the same.

(2) If, however, the related taxpayers involved (or their authorized representatives) so elect in accordance with subsection (3), then the refund of one, with interest thereon, shall be treated as a reduction of the deficiency of the other, including additions thereto, so that only the net amount of deficiency shall be deducted or the net amount of refund shall be returned, as the case may be.

(3) An election under subsection (2) shall be in writing, signed by each related taxpayer or authorized representative, and filed with the department prior to the expiration of the applicable period of limitation with respect to the adjustment of the last open state return of either related taxpayer affected by the federal tax deficiency or refund. Such election shall constitute a waiver of any statute of limitations to permit the adjustment of all returns of the related taxpayers for the purpose only of effecting a reallocation of income or deductions similar to that made by the federal tax authorities and to adjust the federal income tax deductions resulting therefrom. [1953 c.702 §4]

314.155 [1965 c.178 §8; 1969 c.493 §79; repealed by 1983 c.162 §57]

314.160 [1965 c.178 §9; 1969 c.493 §80; repealed by 1983 c.162 §57]

314.165 [1965 c.178 §10; 1969 c.493 §81; repealed by 1983 c.162 §57]

314.170 [1965 c.178 §11; repealed by 1969 c.493 §98]

314.175 [1965 c.178 §12; 1969 c.493 §82; repealed by 1983 c.162 §57]

314.210 [Formerly 317.605; 2003 c.46 §31; repealed by 2005 c.94 §78]

314.220 [Formerly 317.610; repealed by 2005 c.94 §78]

314.230 [Formerly 317.615; repealed by 2005 c.94 §78]

314.250 [1967 c.592 §18; 1987 c.293 §53; repealed by 1989 c.802 §8]

POLLUTION CONTROL FACILITIES

314.255 Collection of taxes due after revocation of certification of pollution control facility; exceptions to tax relief allowed for pollution control facility. (1) Upon receipt of notice of the revocation of a certification of a pollution control facility pursuant to ORS 468.185 (1), the Department of Revenue immediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(2) No tax relief shall be allowed under ORS 307.405 or 315.304 for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof, except where such facilities are used for resource recovery. [1967 c.592 §§16,17; 1969 c.493 §83; 1979 c.531 §5]

LOBBYING EXPENDITURES

314.256 Lobbying expenditures; proxy tax; rules. (1) If a tax is imposed upon an organization under section 6033(e) of the Internal Revenue Code (proxy tax on lobbying expenditures) for any tax year, a like tax is imposed for the tax year upon the same amount as taxed for federal tax purposes, as allocated or apportioned to Oregon. The rate of the tax shall be the rate specified in ORS 317.061. The tax shall be assessed and collected under the applicable provisions of this chapter and ORS chapter 305.

(2) Any organization that is required to include on a federal return the information described in section 6033(e)(1) of the Internal Revenue Code shall file a copy of the federal return containing the information with the Department of Revenue.

(3) The department may determine by rule the method by which the tax described in subsection (1) of this section is allocated and apportioned to Oregon.

(4) If section 6033(e) of the Internal Revenue Code (relating to the proxy tax on lobbying expenditures) is repealed or otherwise eliminated by Act of the United States, this section is repealed as of the applicable date of the repeal or elimination of the proxy tax under section 6033(e) of the Internal Revenue Code. [1995 c.556 §37; 1997 c.839 §49]

314.257 [1995 c.556 §46; repealed by 1997 c.839 §69]

CONVEYANCE OF REAL ESTATE

314.258 Withholding in certain conveyances of real estate; rules. (1) As used in this section:

(a) "Authorized agent" means an agent who is responsible for closing and settlement services in a conveyance.

(b) "Closing and settlement services" means services that are provided by:

(A) A licensed escrow agent in a real estate closing escrow as provided in ORS 696.505 to 696.590; or

(B) An attorney for the benefit of a transferor or a transferee in a conveyance, if, simultaneously with the conveyance, the attorney deposits the unpaid purchase price into the attorney's client trust account for disbursal pursuant to the written instructions of, or the agreement between, the transferor and transferee.

(c) "Consideration" includes the amount of cash paid for a conveyance and the amount of any lien, mortgage, contract, indebtedness or other encumbrance existing against the property conveyed to which the property remains subject or which the purchaser agrees to pay or assume.

(d) "Conveyance" means a transfer or a contract to transfer fee title to any real estate located in the State of Oregon.

(e) "Net proceeds" means the net amount to be disbursed to the transferor, prior to reduction for withholding, as shown on the transferor's settlement statement for the conveyance.

(f) "Transferor" means:

(A) An individual who is not a resident of this state, as defined in ORS 316.027, on the closing date of the conveyance; or

(B) A corporation taxed under section 11 of the Internal Revenue Code and subchapter C, chapter 1 of the Internal Revenue Code, that is not domiciled in this state or that is not registered or otherwise qualified to do business in this state on the closing date of the conveyance.

(2) An authorized agent providing closing and settlement services in a conveyance is

required to withhold from consideration payable to a transferor an amount equal to the least of:

(a) Four percent of the consideration for the conveyance;

(b) The net proceeds resulting from the conveyance; or

(c) Eight percent of the gain includable in the transferor's Oregon taxable income. In arriving at this amount, the authorized agent may rely upon the transferor's written affirmation of the amount of includable gain.

(3) An authorized agent is not required to withhold amounts under this section if:

(a) The consideration for the conveyance does not exceed $100,000;

(b) The conveyance is pursuant to a judicial foreclosure proceeding, a writ of execution, a nonjudicial foreclosure of a trust deed or a nonjudicial forfeiture of a land sale contract;

(c) The conveyance is in lieu of foreclosure of a mortgage, trust deed or other security instrument or a land sale contract with no additional monetary consideration;

(d) The transferor is a personal representative, executor, conservator, bankruptcy trustee or other person acting under judicial review;

(e) The transferor delivers to the authorized agent a written assurance as provided in section 6045(e) of the Internal Revenue Code that the sale or exchange qualifies for exclusion of gain under section 121 of the Internal Revenue Code;

(f) The authorized agent obtains a written affirmation that the transferor is unlikely to owe Oregon income tax as a result of the conveyance;

(g) The amount that would be withheld under subsection (2) of this section is less than $100, or less than a minimum amount established by rule by the Department of Revenue; or

(h) The authorized agent is an attorney and a licensed escrow agent is providing services in the conveyance.

(4)(a) Amounts withheld pursuant to this section are held in trust for the State of Oregon and shall be paid to the department in the time and manner prescribed by the department by rule.

(b) If an authorized agent fails to remit an amount withheld by the agent under this section by the time remittance is required, the department may recover from the authorized agent the amount withheld with interest at the rate established under ORS 305.220.

(c) If an authorized agent fails to withhold when withholding is required under this section, the department may recover a penalty not to exceed the greater of:

(A) $500; or

(B) 10 percent of the amount required to be withheld under this section, but not more than $2,500.

(d) The department may not proceed with collection actions against the authorized agent if the authorized agent:

(A) Withholds the required amount in connection with a conveyance and timely remits the funds to the department;

(B) Is not required to withhold an amount under this section; or

(C) Demonstrates to the department that the authorized agent obtained a written affirmation as described in this section or an assurance as provided in section 6045(e) of the Internal Revenue Code prior to disbursal of funds due the transferor resulting from the conveyance.

(e) A transferor may claim the amount withheld by an authorized agent on the transferor's personal income tax return or corporate income tax return or excise tax return.

(f) An authorized agent may withhold funds under this section without written instructions to withhold from the transferor.

(g) A written affirmation, as provided under this section, shall be executed by the transferor or the transferor's tax advisor under penalty of perjury and shall contain the transferor's taxpayer identification number. The authorized agent shall retain for six years from the date of the closing of the conveyance any written affirmation obtained by the agent in connection with the conveyance. The department shall prescribe by rule the form and content of the written affirmation and procedures for submission to the department of the information contained in the written affirmation.

(h) It shall be a defense to any claim by the department or by a transferor against an agent that the agent has acted in reasonable reliance upon representations made by the transferor or the transferor's tax advisor. [2007 c.864 §4; 2008 c.54 §1; 2009 c.174 §13]

REMICS AND FASITS

314.260 Taxation of real estate mortgage investment conduits. (1)(a) An entity described in section 860D of the Internal Revenue Code (a real estate mortgage investment conduit or REMIC) is not subject to a tax under ORS chapter 316, 317 or 318 (and may not be treated as a corporation, part-

nership or trust for purposes of ORS chapter 316, 317 or 318).

(b) If a REMIC engages in a prohibited transaction as defined in section 860F(a)(2) of the Internal Revenue Code, the REMIC shall be subject to a tax equal to six and six-tenths percent of the net income derived from the prohibited transaction. The tax imposed under this paragraph shall be assessed and collected under this chapter and ORS chapter 305 and shall be credited to the General Fund to be made available for general governmental expenses.

(2) The income of any REMIC shall be taxable to the holders of the interests in the REMIC under ORS chapter 316, 317 or 318, whichever is applicable.

(3) Taxable income or loss with respect to income received as the holder of any interest in a REMIC shall be determined under sections 860A to 860G of the Internal Revenue Code.

(4) To determine the portion of the income of a REMIC that is taxable to a nonresident holder of an interest in the REMIC, there shall be included only that part derived from or connected with sources in this state, as such part is determined under rules adopted by the Department of Revenue in accordance with the general rules in ORS 316.352 (1987 Replacement Part). [1987 c.293 §63; 2005 c.94 §79]

314.265 Taxation of financial asset securitization investment trusts. (1)(a) An entity described in section 860L of the Internal Revenue Code (a financial asset securitization investment trust, or FASIT) shall not be subject to a tax under ORS chapter 316, 317 or 318 (and shall not be treated as a corporation, partnership, trust or mortgage pool for purposes of ORS chapter 316, 317 or 318).

(b) If a FASIT engages in a prohibited transaction as defined in section 860L(e)(2) of the Internal Revenue Code, the FASIT shall be subject to a tax equal to 6.6 percent of the net income derived from the prohibited transaction. The tax shall be paid by the holder of the ownership interest in the FASIT. The tax imposed under this paragraph shall be assessed and collected under the applicable provisions of this chapter and ORS chapter 305 and shall be credited to the General Fund to be made available for general governmental expenses.

(2) The income of any FASIT shall be taxable to the holders of the ownership interests in the FASIT under ORS chapter 316, 317 or 318, whichever is applicable.

(3) Taxable income or loss, with respect to income received as the holder of any interest in a FASIT, shall be determined under sections 860H to 860L of the Internal Revenue Code, as defined in ORS 316.012 or 317.010 and 317.018, and section 1621(e) of the Small Business Job Protection Act of 1996 (P.L. 104-188), as otherwise determined and modified under ORS chapter 316, 317 or 318, whichever is applicable, to the FASIT interest holder.

(4) To determine the portion of the income of a FASIT that is taxable to a nonresident holder of an interest in the FASIT, there shall be included only that part derived from or connected with sources in this state. [1997 c.839 §51]

314.275 [1957 c.544 §2; 1969 c.493 §84; 1983 c.162 §52; repealed by 1987 c.293 §56]

METHODS OF ACCOUNTING AND REPORTING INCOME

314.276 Method of accounting. (1) The method of accounting of a partnership, REMIC (real estate mortgage investment conduit), FASIT (financial asset securitization investment trust) or taxpayer shall be the same as the method of accounting which the partnership, REMIC, FASIT or taxpayer uses for federal income tax purposes for the taxable year.

(2) Notwithstanding subsection (1) of this section, if the method of accounting used by the partnership, REMIC, FASIT or taxpayer does not clearly reflect income, the computation of taxable income shall be made under such method as the Department of Revenue may prescribe.

(3) If the method of accounting is changed for federal income tax purposes, the partnership, REMIC, FASIT or taxpayer shall adopt the same method of accounting for purposes of ORS chapter 316, 317 or 318 and shall use that method beginning with the return filed which corresponds to the first federal return filed which is required to use the new method. Any adjustments required to prevent amounts from being duplicated or omitted shall be taken into account for state tax purposes in the same manner as for federal tax purposes.

(4) Subsections (1) and (3) of this section shall not apply with respect to methods of accounting which are disallowed for purposes of ORS chapter 316, 317 or 318. [1987 c.293 §57; 1997 c.839 §53]

314.277 [1961 c.176 §§2,4; 1969 c.493 §85; repealed by 1987 c.293 §56]

314.280 Allocation of income of financial institution or public utility from business within and without state; rules; alternative apportionment for electing utilities or telecommunications taxpayers. (1) If a taxpayer has income from business activity as a financial institution or as a public utility (as defined respectively in

ORS 314.610 (4) and (6)) which is taxable both within and without this state (as defined in ORS 314.610 (8) and 314.615), the determination of net income shall be based upon the business activity within the state, and the Department of Revenue shall have power to permit or require either the segregated method of reporting or the apportionment method of reporting, under rules and regulations adopted by the department, so as fairly and accurately to reflect the net income of the business done within the state.

(2) The provisions of subsection (1) of this section dealing with the apportionment of income earned from sources both within and without the State of Oregon are designed to allocate to the State of Oregon on a fair and equitable basis a proportion of such income earned from sources both within and without the state. Any taxpayer may submit an alternative basis of apportionment with respect to the income of the taxpayer and explain that basis in full in the return of the taxpayer. If approved by the department that method will be accepted as the basis of allocation.

(3)(a) Apportionment rules adopted by the department under this section must apply the weightings used in ORS 314.650 to comparable factors used to apportion income from business activity of taxpayers subject to this section.

(b) Notwithstanding paragraph (a) of this subsection, a taxpayer primarily engaged in utilities or telecommunications may elect to have income from business activity apportioned by applying the weightings used in ORS 314.650 (1999 Edition) to comparable factors used to apportion such income.

(c) The election shall be made in the time and manner prescribed by the department by rule. The election shall continue in force and effect for the tax year for which the election is made and for each subsequent tax year until the year in which the taxpayer revokes the election.

(d) An electing taxpayer may revoke the taxpayer's election by filing a revocation of election in the time and manner prescribed by the department. The revocation shall apply to the tax year following the year in which the election is made and to each subsequent tax year.

(e) As used in this subsection:

(A) "Telecommunications" means business operations that conduct, maintain or provide for the transmission of voice data and text between network termination points and telecommunications reselling. Transmission facilities may be based on one technology or a combination of technologies.

(B) "Utilities" means business operations that provide electric power, natural gas, steam supply, water supply or sewage removal through a permanent infrastructure of lines, mains and pipes. [1957 c.632 §4 (enacted in lieu of 316.205 and 317.180); 1963 c.319 §1; 1965 c.152 §22; 2001 c.933 §1; 2009 c.403 §5]

Note: Section 8, chapter 403, Oregon Laws 2009, provides:

Sec. 8. (1) Except as provided in subsection (2) of this section, the amendments to ORS 314.280, 314.610, 314.615, 317.010, 317.070 and 317.090 by sections 1 to 6 of this 2009 Act and the repeal of ORS 317.056 by section 7 of this 2009 Act apply to tax years beginning on or after January 1, 2009.

(2) In the case of entities listed in ORS 314.610 (4)(a) to (i), the amendments to ORS 314.280, 314.610, 314.615, 317.010, 317.070 and 317.090 by sections 1 to 6 of this 2009 Act and the repeal of ORS 317.056 by section 7 of this 2009 Act apply to any tax year for which a return is subject to audit or adjustment by the Department of Revenue on or after the effective date of this 2009 Act [September 28, 2009], any tax year for which a return is the subject of an appeal on or after the effective date of this 2009 Act and any tax year for which a claim for refund may be made on or after the effective date of this 2009 Act. [2009 c.403 §8]

314.285 [1957 c.632 §5 (enacted in lieu of 316.210 and 317.185); repealed by 1987 c.293 §56]

314.287 Costs allocable to inventory. (1) In the computation of state taxable income, costs allocable to inventory shall be the same as those allocable to inventory under section 263A of the Internal Revenue Code as of the close of the tax year for which a return is filed and shall not be adjusted for any addition, subtraction, modification or other adjustment contained in this chapter or ORS chapter 316, 317 or 318 or other law governing the imposition of state taxes imposed upon or measured by net income.

(2) If any provision of ORS chapter 316, 317 or 318 appears to require an adjustment to inventory costs contrary to the provisions of this section, that adjustment shall not be made.

(3) The additions, subtractions, modifications or other adjustments to federal taxable income required in determining Oregon taxable income under ORS chapter 316, 317 or 318 shall be made to federal taxable income notwithstanding that such adjustments are properly attributable to costs allocable to inventory. [1987 c.293 §57b]

314.290 [1957 c.102 §2; 1979 c.579 §4; 1991 c.457 §16a; 1995 c.556 §22; repealed by 2001 c.509 §19]

314.295 Apportionment or allocation where two or more organizations, trades or businesses are owned or controlled by the same interests. In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the De-

partment of Revenue may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if it determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses. [1957 c.632 §10 (enacted in lieu of 316.560 and 317.375); 1991 c.457 §16b]

314.296 Expense paid to related member for use of intangible property. (1) As used in this section:

(a) "Intangible expense" includes:

(A) Expenses, losses and costs for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before net operating loss deductions and special deductions for the taxable year under the Internal Revenue Code;

(B) Amounts directly or indirectly allowed as deductions under section 163 of the Internal Revenue Code for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to or in connection with the expenses, losses and costs described in subparagraph (A) of this paragraph;

(C) Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

(D) Royalty, patent, technical and copyright fees;

(E) Licensing fees; and

(F) Other similar expenses and costs.

(b) "Intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

(c) "Related entity" means:

(A) A stockholder who is an individual, or a member of the stockholder's family as defined in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

(B) A stockholder, partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts or corporations own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

(C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(d) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is:

(A) A related entity;

(B) A component member as defined in section 1563(b) of the Internal Revenue Code;

(C) A person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code; or

(D) A person that, notwithstanding the person's form of organization, bears the same relationship to the taxpayer as a person described in this paragraph.

(e) "Valid business purpose" means one or more business purposes, other than the evasion or improper avoidance of taxation, that alone or in combination constitute the primary motivation for a business activity or transaction, if the activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into a new business market.

(2) To derive Oregon taxable income there shall be added to federal taxable income amounts:

(a) That are intangible expenses;

(b) That are otherwise deductible;

(c) That have been received by one or more related members that are not included in the same state tax return as the taxpayer; and

(d) That have been directly or indirectly paid, accrued or incurred in connection with one or more direct or indirect transactions with one or more related members.

(3)(a) A taxpayer is allowed a credit against the taxes otherwise due under ORS chapter 317 or 318 if a related member pays tax on the same income that has been added back under subsection (2) of this section.

(b) The amount from which the credit shall be derived shall be the greater of:

(A) The tax paid by the related member with respect to the portion of the related member's income representing the intangible expense paid, accrued or incurred by the taxpayer; or

(B) The tax that would have been paid by the related member with respect to that portion of the related member's income if that portion had not been offset by expenses or losses and the resulting tax liability had not been offset by any other credit.

(c) If the taxpayer is subject to apportionment, the credit shall be calculated by multiplying the amount in paragraph (b) of this subsection by the taxpayer's apportionment factor provided by ORS 314.605 to 314.675.

(d) The credit may not exceed that portion of the taxpayer's liability that results from the net income taxed as a result of subsection (2) of this section.

(4) The adjustment required in subsection (2) of this section and the credit allowed in subsection (3) of this section do not apply to any portion of the intangible expense that the related member directly or indirectly paid, accrued or incurred to a person that is not a related member, if the transaction giving rise to the intangible expense was undertaken for a valid business purpose. [2009 c.402 §2]

314.297 Election for alternative determination of farm income; computation of income; rules. (1) As used in this section:

(a) "Farm income":

(A) Means taxable income attributable to a farming business; and

(B) Includes gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in the farming business for a substantial period of time.

(b) "Farming business" has the meaning given that term in section 263A(e)(4) of the Internal Revenue Code.

(c) "Taxable income" has the meaning given that term in ORS 316.022.

(d) "Taxpayer" means a person subject to tax under ORS chapter 316, but does not include an estate or trust.

(2) A taxpayer may elect to have personal income taxes for the tax year determined under this section in lieu of ORS chapter 316 if the individual is engaged in a farming business for the tax year and has farm income for the tax year.

(3) The taxpayer shall make the election in the manner provided by the Department of Revenue. In making the election, the taxpayer shall determine the amount of farm income that is to be considered elected farm income. The election shall apply only to the tax year for which the election is made.

(4) Upon making the election, the tax imposed under this section shall equal:

(a) The tax computed under ORS chapter 316 on the taxable income of the taxpayer reduced by the income that is elected farm income under subsection (3) of this section; plus

(b) The cumulative increase in the tax computed under ORS chapter 316 that would result if the taxable income of the taxpayer for each of the three prior tax years were increased by an amount equal to one-third of the income that is elected farm income under subsection (3) of this section.

(5) Any tax credit that would be allowable against the tax computed under ORS chapter 316 may be allowed against the tax computed under this section.

(6) The department shall:

(a) Prescribe the manner in which an election under this section is made; and

(b) Adopt rules on:

(A) The order and manner in which items of income, gain, deduction, loss or limitation on tax shall be taken into account in computing the tax under this section; and

(B) The treatment of a short tax year for purposes of this section. [2001 c.252 §2]

314.300 Passive activity loss; determination; treatment; rules. For purposes of applying section 469 of the Internal Revenue Code to the laws of this state imposing taxes upon or measured by income:

(1) Passive activity loss shall be determined with respect to the activities of the taxpayer under section 469 of the Internal Revenue Code and related federal law and then shall be adjusted by the additions, subtractions, modifications and other adjustments as allocated to passive activity loss under subsection (2) of this section.

(2) Those additions, subtractions, modifications and other adjustments required to be made to federal taxable income under this chapter or ORS chapters 316, 317 and 318, or other law governing the imposition of state taxes imposed upon or measured by income, shall be allocated to passive activity loss as provided by rule of the Department of Revenue.

(3) Passive activity loss, as determined under subsections (1) and (2) of this section, shall not be allowed for the taxable year of the taxpayer. Passive activity loss shall be treated as a deduction allocable to passive activity in the next succeeding year, and ex-

cept as otherwise adjusted under subsection (1) of this section, shall be treated in the same manner as passive activity loss is treated under section 469 of the Internal Revenue Code, and related sections.

(4) For state personal income tax purposes, in the case of a nonresident, passive activity loss attributable to Oregon sources shall be treated in the same manner as described under subsections (1) to (3) of this section. [1987 c.293 §64; 1995 c.556 §23]

314.302 Interest on deferred tax liabilities with respect to installment obligations; rules. (1) Subject to subsections (2) to (4) of this section, if interest on deferred tax liability with respect to an installment obligation is required to be paid for federal income tax purposes under section 453A of the Internal Revenue Code, then interest on that same deferred tax liability shall be paid in the same manner (including the pledging rules under section 453A(d) of the Internal Revenue Code) for state tax purposes and shall, in the amount added, increase the tax imposed under ORS chapter 316, 317 or 318, whichever is appropriate.

(2) Interest added to tax pursuant to subsection (1) of this section shall be determined in the same manner as interest is determined under section 453A(c) of the Internal Revenue Code except that in determining the interest to be added using section 453A(c) of the Internal Revenue Code:

(a) The interest rate in effect under ORS 305.220 for deficiencies for the month with or within which the taxable year of the taxpayer ends shall be substituted for the underpayment rate referred to in section 453A(c)(2)(B); and

(b) The maximum rate of tax in effect under ORS chapter 316, 317 or 318, whichever is appropriate, shall be substituted for the federal rates of tax referred to in section 453A(c)(3)(B).

(3) The Department of Revenue shall adopt rules consistent with those adopted under section 453A of the Internal Revenue Code and with laws of this state as may be necessary to carry out the provisions of this section, including rules providing for the application of this subsection in the case of contingent payments, short taxable years, pass-through entities and derivation, attribution or apportionment of installment obligations or income from installment obligations.

(4) In the case of a nonresident subject to taxation under ORS chapter 316, in determining whether or not interest is to be added to tax under this section, and the amount of interest to be added, only those installment obligations that arise from dispositions of property in this state shall be taken into consideration.

(5) For purposes of determining interest under ORS 314.395 or penalties under ORS 314.400 or other law, and for purposes of refund, estimated and other prepayments of tax, credits and all other purposes, the interest added under this section shall be considered as any other increase in the tax imposed under ORS chapter 316, 317 or 318, whichever is appropriate.

(6) The interest added to tax imposed under this section shall be assessed and collected under the applicable provisions of this chapter and ORS chapters 305, 316, 317 and 318 and 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. [1989 c.625 §57]

314.304 [1995 c.556 §42; 1999 c.21 §33; repealed by 1999 c.21 §34]

314.306 Income from discharge of indebtedness; bankruptcy; insolvency. (1) If a taxpayer excludes an amount from federal gross income by reason of the discharge of indebtedness of the taxpayer under section 108(a)(1)(A) of the Internal Revenue Code (relating to discharge of indebtedness in a bankruptcy declared under U.S.C. Title 11), then, with respect to that portion of the excluded amount that is apportioned to Oregon, the taxpayer shall apply the rules in 11 U.S.C. 346(j), as amended and in effect on April 15, 1995.

(2) If a taxpayer excludes an amount from federal gross income by reason of the discharge of indebtedness of the taxpayer under section 108(a)(1)(B) or (C) of the Internal Revenue Code (relating to discharge of indebtedness in insolvency or discharge of qualified farm indebtedness), then, with respect to that portion of the excluded amount that is apportioned to Oregon, the following paragraphs shall apply, in the following order:

(a) If the taxpayer has made the election under section 108(b)(5) of the Internal Revenue Code to first reduce the basis of the depreciable property of the taxpayer, the election shall also be effective for Oregon tax purposes. A corresponding reduction in the basis of the depreciable property of the taxpayer shall be made for Oregon tax purposes.

(b) The amount, if any, by which the following attributes are reduced under section 108(b)(1) of the Internal Revenue Code for federal tax purposes shall be added back for Oregon tax purposes:

(A) Federal net operating loss.

(B) Capital loss carryover.

(C) Basis of the property of the taxpayer, excluding amounts subject to the election

under section 108(b)(5) of the Internal Revenue Code.

(D) Passive activity loss carryover.

(c) Excluding amounts subject to the election in section 108(b)(5) of the Internal Revenue Code:

(A) Any Oregon net operating loss of an individual or corporate taxpayer, including a net operating loss carryover to the taxpayer, shall be reduced by the amount of discharged indebtedness.

(B) Any net capital loss for the taxable year of the discharge, and any capital loss carryover to the taxable year, shall be reduced by the amount of discharged indebtedness minus the total amount taken into account under subparagraph (A) of this paragraph.

(C) The basis of the property of the taxpayer shall be reduced by the amount of discharged indebtedness minus the total amount taken into account under subparagraphs (A) and (B) of this paragraph.

(D) The passive activity loss carryover under section 469(b) of the Internal Revenue Code from the taxable year of the discharge shall be reduced by the amount of discharged indebtedness minus the total amount taken into account under subparagraphs (A), (B) and (C) of this paragraph. [1995 c.556 §19]

314.307 Definitions; reportable transactions. As used in this section and ORS 314.308, 314.403, 314.404, 314.406 and 314.469:

(1) "Listed transaction" means any of the following transactions:

(a) A listed transaction under section 6707A of the Internal Revenue Code.

(b) A transaction without economic substance in which an Oregon taxable corporation:

(A) Transfers income-producing assets to a real estate investment trust owned directly or indirectly by the corporation; and

(B) With respect to dividends paid from the real estate investment trust, claims a dividend-received deduction and the real estate investment trust claims a dividend-paid deduction.

(c) A transaction without economic substance in which an Oregon taxable corporation:

(A) Transfers income-producing assets to a regulated investment company owned directly or indirectly by the corporation; and

(B) With respect to dividends paid from the regulated investment company, claims a dividend-received deduction and the regulated investment company claims a dividend-paid deduction.

(2) "Oregon taxable corporation" means a corporation:

(a) That does business in Oregon, is organized in Oregon or has income from Oregon sources; or

(b) That is owned by an Oregon income or corporate excise taxpayer.

(3) "Reportable transaction" means a transaction:

(a) That is a reportable transaction under section 6707A of the Internal Revenue Code; or

(b) That is a listed transaction.

(4) "Transaction without economic substance" means a transaction for which the taxpayer cannot demonstrate a business purpose other than tax savings. [2007 c.568 §2]

314.308 Reportable transactions; rules. (1) If required by rules adopted by the Department of Revenue:

(a) Any person who engages in a reportable transaction as a buyer or transferor shall report the transaction to the department.

(b) Any person who, as the result of a reportable transaction, acquires an interest in property, a present or future right to income, a present or future right to claim a loss, deduction, credit, exemption or other tax benefit or a present or future right to an adjustment to basis shall report the transaction to the department.

(c) Any person who is associated with a reportable transaction in an association that the department has by rule identified as an association that requires reporting shall report the transaction to the department.

(2) A reportable transaction shall be reported to the department in the time, form and manner prescribed by the department by rule. Rules adopted by the department under this section may not apply to a reportable transaction occurring in a tax year beginning before January 1, 2007. [2007 c.568 §3]

LIABILITY OF TRANSFEREE OR OWNER OF TRUST

314.310 Liability of transferee of taxpayer for taxes imposed on taxpayer. (1) When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this state (although subject to the courts of a state having comity or reciprocity with the State of Oregon), being indebted for taxes upon or measured by net income, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent

of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer.

(2) The amount for which a transferee of the property of a taxpayer is liable in respect of any such tax or deficiency in tax, including penalties and interest, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee and collected and paid in the same manner and subject to the same provisions and limitations as would apply to the taxpayer had the taxpayer or it continued subject to the jurisdiction of this state, except as provided in this section.

(3) As used in this section, the term "transferee" means one not a bona fide purchaser for value and includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation which is a party to a corporate reorganization, and persons acting on behalf of such transferees in a fiduciary capacity.

(4) The period of limitation for assessment of any such liability of a transferee shall be as follows:

(a) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer.

(b) In the case of the liability of a transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the taxpayer.

(c) If, before the expiration of the period of limitation for the assessment of the liability of the transferee, as set forth in paragraph (a) or (b) of this subsection, a court proceeding for the collection of the tax or liability in respect thereof has been filed against the taxpayer or last preceding transferee, then the period of limitation for assessment of the liability of the transferee shall expire one year after final judgment has been rendered in the court proceedings.

(d) If, before the expiration of the time prescribed in paragraph (a), (b) or (c) of this subsection for the assessment of the liability, both the Department of Revenue and the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.

(5) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period which would be in effect had death or termination of existence not occurred.

(6) In the absence of notice to the Department of Revenue of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax or deficiency in tax, including penalties and interest thereon, imposed upon or measured by net income, if mailed to the last-known address of the person subject to the liability, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. [1955 c.367 §2; 1969 c.493 §86; 1995 c.453 §4; 1997 c.325 §35]

314.330 Lien if grantor or other person determined to be owner of trust. (1) If a final determination treats the grantor of a trust or any other person as the owner of any portion of a trust pursuant to sections 671 to 679 of the federal Internal Revenue Code or any other law, the lien of the State of Oregon imposed by ORS 314.417 shall attach to all property and rights to property, whether real or personal, of that portion of the trust. The lien may be foreclosed pursuant to ORS 314.419 or collected by warrant pursuant to ORS 314.430.

(2) For the purposes of subsection (1) of this section, "final determination" means:

(a) An assessment which has become final due to failure to exercise or exhaust rights of appeal to the Oregon Tax Court.

(b) A decision of the Oregon Tax Court which has become final.

(c) A decision of the Oregon Supreme Court. [1985 c.149 §§2,3; 1995 c.556 §24; 1995 c.650 §31]

RETURNS

314.355 Returns when tax year changed. If a taxpayer changes the tax year on the basis of which net income is computed, the taxpayer shall, at the time and in the manner the Department of Revenue prescribes, make a separate return of net income received during the period intervening between the end of the former income year of the taxpayer and the beginning of the new income year. [1957 c.632 §6 (enacted in lieu of 316.520); 1987 c.293 §58]

314.360 Information returns. (1) Fiduciaries required to make returns under laws imposing tax upon or measured by net income, proprietorships, partnerships, corporations, joint stock companies or associations or insurance companies, having places of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, purchasers of stumpage and all officers and employees of the state or of any political subdivisions of the state, having the control, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, dividends, salaries, fees, wages, the purchase price of stumpage, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable, during any year to any taxpayer, shall make return thereof, under oath, to the Department of Revenue, under such regulations and in such form and manner and to such extent as it may prescribe.

(2)(a) Every person doing business as a broker shall, when required by the department, render a correct return duly verified under oath, under such rules and regulations as the department may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the department may require, as to each of such customers, as will enable the department to determine whether all income tax due on profits or gains of such customers has been paid.

(b) Every person who is required to file a return with respect to a real estate transaction under section 6045(e) of the Internal Revenue Code shall file a copy of that return with the department.

(3) The department may prescribe circumstances under which the filing requirements under this section are waived. [1957 c.632 §7 (enacted in lieu of 316.535); 1959 c.305 §1; 1987 c.293 §59; 1987 c.366 §3; 1997 c.839 §54]

314.362 Filing return on magnetic media or other machine-readable form; rules. (1) The information return and the employer's annual return, described in ORS 314.360 and 316.202 (3) shall be filed on magnetic media or other machine-readable form if the corresponding federal return is required to be filed on magnetic media or other machine-readable form by section 6011 (e) of the Internal Revenue Code and the regulations, revenue rulings and revenue procedures adopted pursuant to that section.

(2) The Department of Revenue may, by administrative rule, adopt the regulations, revenue rulings or revenue procedures which are adopted pursuant to section 6011 (e) of the Internal Revenue Code whenever such regulations, revenue rulings or revenue procedures may be adopted.

(3) The department may require that the magnetic media or other machine-readable forms filed with it meet specifications prescribed by the department. The department may allow an alternative method of filing if the person filing the return is unable to meet the specifications prescribed by the department. [1987 c.366 §2; 1991 c.457 §17; 1993 c.726 §12; 1995 c.556 §25; 1997 c.839 §55]

314.363 [1975 c.760 §2; repealed by 1984 c.1 §18]

314.365 [1957 c.632 §8 (enacted in lieu of 316.550 and 317.365); 1961 c.533 §51; repealed by 1985 c.266 §6]

314.370 Department requiring return or supplementary return. If the Department of Revenue is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it may require from the taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of the applicable tax law. If from a supplementary return, or otherwise, the department finds that any items of taxable income have been omitted from the original return it may require the items so omitted to be disclosed under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which the taxpayer may be liable under any provisions of law whether or not the department required a return or a supplementary return under this section. [1957 c.632 §9 (enacted in lieu of 316.555)]

314.380 Furnishing copy of federal or other state return or report; action required when return filed or changed or tax assessed. (1) Every taxpayer shall, upon request of the Department of Revenue, furnish a copy of the return for the corresponding year, which the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. Every taxpayer shall, upon request of the department, furnish a copy of any federal revenue agent's report or other audit report made upon any audit or adjustment of the taxpayer's federal income tax return or income tax return of another state.

(2)(a) The taxpayer shall report to the department any change in the taxpayer's taxable income that is subject to tax by this state or any change in the taxpayer's tax liability paid to or owing this state because:

(A) The Internal Revenue Service or other competent authority has changed or corrected the amount of a taxpayer's taxable income, tax credit or other amount taken into account in determining the taxpayer's tax liability as reported on a federal income tax return or an income tax return of another state for any taxable year; or

(B) The taxpayer:

(i) Files an original or amended return that is accepted by the Internal Revenue Service or the taxing authority of another state; or

(ii) Is assessed tax by the Internal Revenue Service or the taxing authority of another state for the failure to file a return as required.

(b) In the case of a change or correction made by the Internal Revenue Service or by the taxing authority of another state, the report shall either concede the accuracy of the determination or state wherein the taxpayer believes it to be erroneous. The report may be treated by the department as a claim for refund pursuant to ORS 314.415 if the department determines that the taxpayer's correct Oregon tax liability is a reduction from the taxpayer's Oregon tax liability prior to the filing of the report. Notwithstanding the limitations of ORS 314.415, a claim for refund under this paragraph shall be deemed timely if received by the department within two years after the federal or other state correction was made.

(c) In the case of a taxpayer filing an original or amended federal or other state return that reports a change in the taxpayer's taxable income that is subject to tax by this state or that results in a change in the taxpayer's tax liability paid to or owing this state, the report required by this subsection shall be an amended Oregon return. The taxpayer shall file the amended return with the department within 90 days thereafter.

(3) For purposes of this section:

(a) A change or correction of a taxpayer's taxable income is deemed to be made on the date of the audit report making the change or correction; and

(b) The date on which an original or amended return is accepted by the Internal Revenue Service or other state taxing authority is the date the original or amended return is filed if the return is subsequently accepted by the Internal Revenue Service or other state taxing authority.

(4) The provisions of ORS 305.305 shall constitute the exclusive remedy of a person whose notice of deficiency or assessment is based upon a change or correction of the person's taxable income under this section.

[1957 c.632 §11 (enacted in lieu of 316.565 and 317.380); 1963 c.509 §1; 1985 c.602 §3; 1989 c.414 §7; 1997 c.100 §2; 1999 c.74 §1; 2001 c.9 §4]

314.385 Form of returns; time for filing; alternative filing formats; rules. (1)(a) For purposes of ORS chapter 316, returns shall be filed with the Department of Revenue on or before the due date of the corresponding federal return for the tax year as prescribed under the Internal Revenue Code and the regulations adopted pursuant thereto, except that the final return of a decedent shall be filed at any time following the death of the decedent, to and including the 15th day of the fourth month after expiration of the regular tax year of the decedent.

(b) For purposes of ORS chapters 317 and 318, returns shall be filed with the department on or before the 15th day of the month following the due date of the corresponding federal return for the tax year, as prescribed under the Internal Revenue Code and the regulations adopted pursuant thereto.

(c) The department may allow further time for filing returns equal in length to the extension periods allowed under the Internal Revenue Code and its regulations.

(d) If no return is required to be filed for federal income tax purposes, the due date or extension period for a return shall be the same as the due date, or extension period, would have been if the taxpayer had been required to file a return for federal income tax purposes for the tax year. However, the due date for returns filed for purposes of ORS chapter 317 or 318 shall be on or before the 15th day of the month following what would have been the federal return due date for the tax year.

(2) There shall be annexed to the return a statement verified as provided under ORS 305.810 by a declaration of the taxpayer making the return to the effect that the statements contained therein are true.

(3) Returns shall be in such form as the department may, from time to time, prescribe. The department shall prepare blank forms for the returns and distribute them throughout the state. Such forms shall be furnished the taxpayer upon request, but failure to receive or secure a form shall not relieve the taxpayer from the obligation of making any return required by law.

(4)(a) The department may by rule authorize the filing of a return in alternative formats to those described in subsection (3) of this section and may prescribe the conditions, requirements and technical standards for a filing under this subsection.

(b) Notwithstanding subsections (1) to (3) of this section, the department may by rule

prescribe a different due date for a return filed in an alternative format.

(c) The policy of the Legislative Assembly in granting the department rulemaking authority under paragraph (b) of this subsection is to have the department prescribe due dates that mirror the due dates that apply to federal returns filed in alternative formats for federal tax purposes. [1957 c.632 §12 (enacted in lieu of 316.545 and 317.355); 1959 c.156 §1; last sentence of subsection (1) derived from 1959 c.156 §3; 1963 c.281 §1; 1987 c.293 §59a; 1989 c.625 §55; 1991 c.457 §17a; 1997 c.84 §1; 1997 c.839 §56; 2003 c.77 §10a]

314.395 Time for payment of tax; interest on delayed return. (1) The tax shall be paid to the Department of Revenue at the time fixed by ORS 314.385 for filing the return without regard to extensions.

(2) When the time for filing a return of income is extended at the request of the taxpayer, interest at the rate established under ORS 305.220 for each month or fraction of a month from the time the return was originally required to be filed to the time of payment shall be added and paid. [1969 c.166 §2; 1971 c.354 §3; 1973 c.402 §17; 1975 c.593 §13; 1980 c.20 §24; 1982 s.s.1 c.16 §6; 1987 c.293 §59b]

314.397 Manner of payment. The tax may be paid with uncertified check under any rules as the Department of Revenue shall adopt, but if a check so received is not paid by the financial institution on which it is drawn, the taxpayer by whom the check is tendered remains liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered. [1989 c.625 §61 (enacted in lieu of 316.407); 1997 c.631 §451]

314.400 Penalty for failure to file report or return or to pay tax when due; interest; limitation on penalty. (1) If a taxpayer fails to file a report or return or fails to pay a tax by the date on which the filing or payment is due, the Department of Revenue shall add to the amount required to be shown as tax on the report or return a delinquency penalty of five percent of the amount of the unpaid tax.

(2) In the case of a report or return that is required to be filed annually or for a one-year period, if the failure to file the report or return continues for a period in excess of three months after the due date:

(a) There shall be added to the amount of tax required to be shown on the report or return a failure to file penalty of 20 percent of the amount of the tax; and

(b) Thereafter the department may send a notice and demand to the person to file a report or return within 30 days of the mailing of the notice. If after the notice and demand no report or return is filed within the 30 days, the department may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the department and give written notice of the determination and assessment to the person required to make the filing.

(3) In the case of a report or return that is required to be filed more frequently than annually and the failure to file the report or return continues for a period in excess of one month after the due date:

(a) There shall be added to the amount of tax required to be shown on the report or return a failure to file penalty of 20 percent of the amount of the tax; and

(b) Thereafter the department may send a notice and demand to the person to file a report or return within 30 days of the mailing of the notice. If after the notice and demand no report or return is filed within the 30 days, the department may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the department and give written notice of the determination and assessment to the person required to make the filing.

(4) Notwithstanding subsections (2) and (3) of this section, if a taxpayer is required to file a federal income tax return for a period of less than 12 months under section 443 of the Internal Revenue Code, the Oregon personal income or corporate excise or income tax return required to be filed for that period shall be subject to subsection (2) of this section.

(5) If a report or return that is subject to a failure to file penalty described in subsection (2) or (3) of this section is filed before a notice of determination and assessment is issued by the department, the failure to file penalty referred to in subsection (2)(a) or (3)(a) of this section shall be added to the amount of tax shown on the report or return.

(6) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

(a) There is a failure to file a report or return with intent to evade the tax;

(b) A report or return was falsely prepared and filed with intent to evade the tax; or

(c) A false claim was intentionally filed under ORS 310.635, 310.657 and 310.706.

(7) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for each month or fraction of a month, computed from the time the tax became due, during which the tax remains unpaid.

(8) Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section and ORS 305.265 (13) with respect to any deficiency shall not exceed 100 percent of the deficiency.

(9) For purposes of subsections (1) to (3) of this section, the amount of tax required to be shown or that is shown on the report or return shall be reduced by the amount that is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax that is claimed on the report or return. If the amount required to be shown as tax on the report or return is less than the amount that is actually shown as tax on the report or return, this subsection shall be applied by substituting the lower amount.

(10) Notwithstanding subsection (1) of this section, the five percent penalty for failure to file a report or return or pay a tax at the time the tax becomes due may not be imposed if:

(a) The taxpayer pays the full amount of the tax plus accrued interest within 30 days of the date shown on the department's notice sent to the taxpayer; and

(b)(A) The taxpayer had filed an amended individual tax return or an amended corporate return of income or excise tax accompanied by less than full payment of the tax shown on the return plus accrued interest; or

(B) The department issues a notice of tax deficiency to the taxpayer under ORS 305.265. [1971 c.354 §2; 1975 c.593 §14; 1977 c.870 §41; 1980 c.7 §25; 1981 c.724 §4; 1982 s.s.1 c.16 §7; 1985 c.602 §4; 1987 c.158 §48a; 1993 c.726 §13; 1995 c.780 §5; 1997 c.170 §26; 2005 c.335 §1; 2007 c.322 §1]

314.401 De minimis tax payment not required. Notwithstanding ORS 314.395 and 314.400, if the balance of tax due as shown on the report or return filed by the taxpayer for the tax year is less than $1, payment of the amount shown shall not be required. [1999 c.73 §2]

314.402 Understatement of taxable income; penalty; waiver of penalty. (1) If the Department of Revenue determines that there is a substantial understatement of taxable income for any taxable year under any law imposing a tax on or measured by net income, there shall be added to the amount of tax required to be shown on the return a penalty equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income.

(2) A substantial understatement of taxable income exists for any taxable year if the amount of the understatement for the taxable year exceeds:

(a) Except as provided in paragraph (b) of this subsection, $15,000.

(b) In the case of a corporation other than an S corporation, as defined in section 1361 of the Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal Revenue Code, $25,000.

(3) In the case of any item attributable to an abusive tax shelter:

(a) No reduction of the amount of the understatement shall be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxpayer.

(b) No reduction of the amount of the understatement shall be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the taxpayer reasonably believed that the tax treatment of the item was more likely than not the proper treatment.

(4) As used in this section:

(a) "Abusive tax shelter" means any partnership, corporation or other organization or entity, any investment plan or arrangement or any other plan or arrangement, which has as its principal purpose the evasion or improper avoidance of federal or state income tax. "Abusive tax shelter" includes any investment or activity in connection with which tax benefits derived by investors are not clearly intended under the tax laws or any investment or activity that involves little or no economic reality, making use of unrealistic allocations of income or expenses, inflated appraisals of asset values, losses substantially in excess of investment, mismatching of income and expenses, financing techniques that do not conform to standard commercial business practice or mischaracterization of the substance of the investment or activity.

(b) "Understatement" means the excess of the amount of the taxable income required to be shown on the return for the taxable year over the amount of the taxable income which is shown on the return, reduced by any portion of the understatement that is attributable to:

(A) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or

(B) Any item with respect to which:

(i) The relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return; and

(ii) There is a reasonable basis for the tax treatment of the item by the taxpayer.

(5) The penalty imposed under this section is in addition to any other penalty imposed by law. A penalty imposed under this section shall be treated for all purposes as an additional deficiency subject to the provisions of ORS 305.265, but shall not bear interest.

(6) The department may waive all or any part of the penalty imposed under this section on a showing by the taxpayer that there was reasonable cause for the understatement, or any portion thereof, and that the taxpayer acted in good faith. [1987 c.843 §9; 1995 c.556 §25a]

314.403 Listed transaction understatement; penalty. (1) If a taxpayer has a listed transaction understatement for a tax year, there shall be added to the tax liability of the taxpayer for the tax year a penalty equal to 60 percent of the amount of the understatement.

(2) The penalty imposed under this section applies to listed transaction understatements discovered or reported on or after January 1, 2008, and is in addition to and not in lieu of any other penalty.

(3) As used in this section, "listed transaction understatement" means the sum of:

(a) The amount determined by multiplying the highest rate of tax imposed on the taxpayer under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, by any net increase in taxable income that results from a difference between the proper tax treatment of a listed transaction and the treatment of the transaction on the return of the taxpayer; and

(b) The amount of any decrease in the aggregate amount of credits determined for purposes of ORS chapter 316 or, if the taxpayer is a corporation, for purposes of ORS chapter 317 or 318, that results from the taxpayer's treatment of a listed transaction and the proper tax treatment of that transaction.

(4) The Department of Revenue may by rule further define "listed transaction understatement" consistent with ORS 314.307 and subsection (3) of this section. [2007 c.568 §8]

314.404 Penalty for failure to report reportable transaction. (1) If a taxpayer fails to report to the Department of Revenue a reportable transaction as required by ORS 314.308, there shall be added to the tax liability of the taxpayer for the tax year a penalty as follows:

(a) Individual taxpayers, $3,300.

(b) Corporation taxpayers, $16,700.

(2) If the reportable transaction is a listed transaction, in lieu of the penalty provided in subsection (1) of this section, the penalty shall be as follows:

(a) Individual taxpayers, $33,000.

(b) Corporation taxpayers, $66,000.

(3) This section applies to tax years beginning on or after January 1, 2007. [2007 c.568 §9]

314.405 [1957 c.632 §13 (enacted in lieu of 316.605 and 317.405); 1959 c.212 §1; subsection (8) derived from 1959 c.212 §3; 1961 c.504 §1; 1965 c.554 §1; 1969 c.166 §3; 1969 c.493 §87; 1971 c.333 §1; 1971 c.354 §4; 1973 c.402 §29; 1975 c.593 §15; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.405)]

314.406 Penalty for promotion of abusive tax shelter. (1) A penalty shall be imposed on a person who promotes a tax shelter if:

(a) The person is or would be subject to a penalty for promoting an abusive tax shelter under section 6700 of the Internal Revenue Code; and

(b) The tax shelter satisfies any of the following conditions:

(A) The tax shelter is organized in this state.

(B) The tax shelter is doing business in this state.

(C) The tax shelter derives income from sources in this state.

(D) At least one investor in the tax shelter is an Oregon personal income taxpayer or an Oregon corporate excise or income taxpayer.

(2) The amount of the penalty shall equal 100 percent of the amount of gross income derived by the person in promoting the tax shelter.

(3) A penalty imposed under this section shall be in addition to and not in lieu of any other penalty. [2007 c.568 §12]

COLLECTING DELINQUENT TAXES; LIENS; INTEREST AND ADDITIONS TO TAX; REFUNDS

314.407 Assessment of taxes owing but not submitted with return; time of assessment; recording of warrant. For the purposes of ORS 314.407 and 314.417 to 314.423:

(1) In the case of a return submitted to the Department of Revenue with payment of less than the amount of tax computed to be due, the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as "assessed" on the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(2) The term "time of assessment" means:

(a) In the case of an assessment made under ORS 305.265 and 314.410, 30 days after the date the notice of assessment is mailed to the taxpayer;

(b) In the case of an assessment made under ORS 314.440, five days after the date the notice of assessment is mailed to the taxpayer; or

(c) In the case of a tax assessed as described in subsection (1) of this section, the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(3) Unless a warrant has been recorded in the County Clerk Lien Record in the county in which property is located, no warrant shall be considered as a lien with respect to that property. [1971 c.215 §2; 1977 c.870 §42; 1987 c.586 §39; 1995 c.79 §154]

314.410 Time limit for notice of deficiency; circumstances when claim for refund may be reduced after time limit; time limit for refund or notice of deficiency for pass-through entity items. (1) At any time within three years after the return was filed, the Department of Revenue may give notice of deficiency as prescribed in ORS 305.265.

(2) 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) If the department finds that a return reports or reflects the use of a listed transaction, as defined in ORS 314.307, and that use of that listed transaction results in a deficiency in tax paid, notice of that deficiency may be given at any time within nine years after the return was filed.

(4)(a) The limitations to the giving of notice of a deficiency provided in this section do not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.

(b)(A) If the Commissioner of Internal Revenue or other authorized officer of the federal government or an authorized officer of another state's taxing authority makes a change or correction as described in ORS 314.380 (2)(a)(A) and, as a result of the change or correction, an assessment of tax or issuance of a refund is permitted under any provision of the Internal Revenue Code or applicable law of the other state, or pursuant to an agreement between the taxpayer and the federal or other state taxing authority that extends the period in which an assessment of federal or other state tax may be made, then notice of a deficiency under any Oregon law imposing tax upon or measured by income for the corresponding tax year may be mailed within two years after the department is notified by the taxpayer or the commissioner or other tax official of the correction, or within the applicable period prescribed in subsections (1) to (3) of this section, whichever period expires later.

(B) A notice of deficiency mailed pursuant to this paragraph may assert any adjustment necessary to arrive at the correct amount of Oregon taxable income and Oregon tax liability for the tax year for which the federal or other state change or correction is made.

(c) If the taxpayer files an original or amended federal or other state return as described in ORS 314.380 (2)(a)(B), the department may reduce any claim for refund as a result of a change in Oregon tax liability related to the original or amended federal or other state return, but may not give notice of a deficiency for an adjustment to Oregon tax liability following the expiration of the applicable period prescribed in subsections (1) to (3) of this section and paragraph (a) of this subsection.

(5) The tax deficiency must be assessed and notice of tax assessment mailed to the taxpayer or authorized representative, who is authorized in writing, within one year from the date of the notice of deficiency unless an extension of time is agreed upon as prescribed in subsection (7) of this section.

(6) Notwithstanding other provisions of this section, the period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence, as provided in section 1034 of the Internal Revenue Code (as in effect prior to the repeal of section 1034 of the Internal Revenue Code by the Taxpayer Relief Act of 1997 (P.L. 105-34)), does not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

(a) The cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain;

(b) The taxpayer's intention not to purchase a new residence; or

(c) A failure to purchase a new residence within the period prescribed in section 1034 of the Internal Revenue Code (as in effect prior to the repeal of section 1034 of the Internal Revenue Code by the Taxpayer Relief Act of 1997 (P.L. 105-34)).

(7) If, prior to the expiration of any period of time prescribed in this section for giving of notice of deficiency or of assessment, the department and the taxpayer con-

sent in writing to the notice of deficiency being mailed or deficiency being assessed after the expiration of such prescribed period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(8) In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback, notice of such deficiency may be mailed at any time before the expiration of the period within which notice of a deficiency for the taxable year of the net operating loss which results in such carryback may be mailed.

(9) Notwithstanding the other provisions of this section, if any taxpayer agreed with the United States Commissioner of Internal Revenue or the taxing authority of another state for an extension, or renewals thereof, of the period for giving notices of deficiencies and assessing deficiencies in income tax for any year, the period for mailing notices of deficiencies of tax for such years and the period for filing a claim for refund under ORS 314.380 (2)(b) shall expire on the later of:

(a) The expiration of an applicable period described in subsections (1) to (8) or (10) of this section; or

(b) Six months after the date of the expiration of the agreed period for assessing a deficiency.

(10)(a) Notwithstanding the other provisions of this section and ORS 314.415, the period for claiming a refund or giving a notice of deficiency with respect to an item that is shown or required to be shown on a taxpayer's return and that is attributable to a pass-through entity does not expire prior to three years from the date of the filing of the pass-through entity return to which the item on the taxpayer's return relates.

(b) As used in this subsection, "pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. [1957 c.632 §14 (enacted in lieu of 316.610 and 317.410); 1959 c.212 §2; 1959 c.591 §20; subsection (8) derived from 1959 c.212 §3 and 1959 c.591 §21; 1963 c.509 §2; 1963 c.627 §1 (referred and rejected); 1969 c.405 §1; 1969 c.493 §§88,88a; 1971 c.507 §1; 1977 c.870 §43; 1983 c.162 §53; 1985 c.602 §5; 1993 c.726 §14; 1997 c.100 §3; 1999 c.74 §3; 1999 c.90 §4a; 2001 c.9 §5; 2005 c.54 §1; 2007 c.568 §18]

314.412 Issuing of notice of deficiency attributable to involuntary conversion; time limit. Notwithstanding ORS 314.410, the period for issuing any notice of deficiency attributable to any part of the gain realized upon an involuntary conversion as provided in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969 or as provided in the corporate excise tax or corporate income tax laws, shall not expire prior to the expiration of three years from the date the Department of Revenue is notified by the taxpayer of:

(1) The replacement of the converted property which the taxpayer claims results in nonrecognition of any part of such gains; or

(2) The taxpayer's intention not to replace such property; or

(3) A failure of the taxpayer to replace the property within the period prescribed in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969, in the corporation excise tax laws or in the corporation income tax laws, whichever is applicable. [1975 c.705 §2; 1989 c.626 §3]

314.415 Refunds; interest; credits. (1) If the Department of Revenue determines pursuant to ORS 305.270 that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the department with interest at the rate established under ORS 305.220, for each month or fraction of a month during a period beginning 45 days after the due date of the return or the date the tax was paid, whichever is the later, to the time the refund is made.

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

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

(c) If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a suspension of the running of the periods specified for filing a claim for refund of federal income tax, the period specified in

paragraph (a) of this subsection shall also be suspended.

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

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

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

(g) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment, the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed from the date of payment to the department. Nothing in this subsection shall require that interest be paid upon any amount for any period for which interest upon the same amount for the same period is required to be paid under ORS 305.419.

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

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

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

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

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

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

(5)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a net capital loss carryback, in lieu of the three-year period of limitation prescribed in subsection (2) of this section, the period shall be the period that ends three years after the time prescribed by law for filing the return (including extensions) for the taxable year of the net operating loss or net capital loss that results in such carryback. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (1), (2) or (3) of this section, whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a net capital loss carryback is otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to closing agreements, the credit or

refund may be allowed or made if the claim for credit or refund is filed within the period provided in this subsection. To the extent that the carryback was not an issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has become final, the claimed credit or refund applicable to that carryback may be allowed or made under this subsection.

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

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

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

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

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

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

(8) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes. [1957 c.632 §15 (enacted in lieu of 316.615 and 317.415); 1969 c.166 §4; 1969 c.405 §2; 1971 c.354 §5; 1971 c.507 §2; 1975 c.593 §16; 1977 c.870 §44; 1982 s.s.1 c.16 §8; 1983 c.162 §54; 1985 c.61 §3; 1985 c.602 §6; 1985 c.603 §1; 1985 c.802 §19; 1987 c.293 §60; 1987 c.647 §1; 1989 c.626 §4; 1991 c.457 §17b; 1993 c.726 §16; 1995 c.650 §32; 1999 c.73 §4; 1999 c.90 §1a; 2001 c.641 §3; 2005 c.48 §1; 2005 c.210 §2; 2007 c.568 §20]

314.417 Unpaid tax or withholding lien at time of assessment. If any person neglects or refuses to pay an income tax at the time of assessment, or fails to pay to the Department of Revenue any amount required to be withheld under ORS 316.167 and 316.172, the amount of the unpaid tax including interest and penalty thereon shall be a lien in favor of the State of Oregon upon all property and rights to property, whether real or personal, belonging to the person. The lien shall arise at the time of assessment or the time the amount withheld is to be paid to the department and the lien shall continue until the liability for the taxes, with interest and penalty, is satisfied. [1971 c.215 §3; 1981 c.546 §1]

314.419 Foreclosure of lien. In addition to any other remedy provided by law the lien created by ORS 314.417 may be foreclosed in the following manner:

(1) The Director of the Department of Revenue shall issue an order directed to the sheriff of the county in which the property or interest in property subject to the lien is located, describing the property subject to the lien, and commanding the sheriff to seize the property specified and sell it to pay the amount shown on the order to be due. In the discretion of the director an order of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) If the property seized by the sheriff is personal property the sheriff shall utilize the procedures under ORS 311.640 to effect collection of the amount due.

(3) If the property seized by the sheriff is real property the sheriff shall proceed to sell the real property in the same manner that real property is sold under a writ of execution.

(4) Any property which has been sold under this section may be redeemed from the purchaser by the taxpayer or any junior lienor within 120 days from the date of the sale by paying to the purchaser the full purchase price paid plus an additional 20 percent of the purchase price.

(5) In any proceeding under this section to sell property to foreclose a lien, the taxpayer may claim any exemption to which the taxpayer is entitled under the laws of this state relating to property exempt from execution. [1971 c.215 §4]

314.420 [1957 c.632 §16 (enacted in lieu of 316.620, 317.370 and 317.420); 1969 c.166 §5; repealed by 1971 c.354 §7]

314.421 When lien valid. The lien imposed by ORS 314.417 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor or judgment creditor until a warrant is issued and recorded under ORS 314.430. [1971 c.215 §5; 1987 c.586 §40]

314.423 Status of lien. (1) After a warrant has been recorded under ORS 314.430, the lien imposed by ORS 314.417 shall be subordinate to:

(a) Any interest in real property to the same extent that a judgment recorded in the County Clerk Lien Record under ORS 18.152 at the same time the warrant was recorded would be subordinate to the interest; and

(b) Any interest in personal property to the same extent that a security agreement filed under the Uniform Commercial Code at the same time the warrant was filed would be subordinate to the interest.

(2) After a warrant has been recorded under ORS 314.430, the lien imposed by ORS 314.417 shall not be valid as to a purchaser, security interest holder or lienholder in a sale, security agreement or lien arising out of the following types of property or property transactions unless the purchaser, security interest holder or lienholder had actual knowledge of the lien:

(a) Securities as defined in ORS 78.1020;

(b) Retail purchases in the ordinary course of business;

(c) Casual sales of personal property;

(d) Attorney's liens;

(e) Insurance contract loans; or

(f) Passbook loans. [1971 c.215 §§6,7; 1987 c.586 §41; 1997 c.325 §36; 2003 c.576 §230]

314.425 Examining books, records or persons. (1) The Department of Revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The department shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the tax court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of any law imposing tax on or measured by net income.

(2) If any person fails to comply with any subpoena or order of the department or to produce or permit the examination or inspection of any books, papers or documents pertinent to any investigation or inquiry under this section, or to testify to any matter regarding which the person may be lawfully interrogated, the department may apply to the tax court for the county in which the person resides for an order to the person to attend and testify, or otherwise comply with the demand or request of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the request on demand of the department within 10 days after service of the order (or such further time as the court may grant) or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [1957 c.632 §17 (enacted in lieu of 316.625 and 317.425); 1995 c.650 §33]

314.430 Warrant for collection of taxes. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax is not paid within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the termination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department may issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record. [1957 c.632 §18 (enacted in lieu of 316.630 and 317.430); 1959 c.74 §1; 1959 c.234 §1; 1975 c.593 §17; 1983 c.696 §12; 1985 c.85 §12; 1985 c.761 §15; 1987 c.586 §42; 1989 c.625 §62; 1997 c.99 §52]

314.432 [1989 c.1036 §2; 1995 c.53 §2; renumbered 305.182 in 1995]

314.434 [1989 c.1036 §3; 1995 c.53 §3; renumbered 305.184 in 1995]

314.435 [1957 c.632 §19 (enacted in lieu of 316.635 and 317.435); 1959 c.147 §1; repealed by 1961 c.573 §2 (305.140 enacted in lieu of 314.435, 315.635 and 321.085)]

314.440 Tax as debt; termination of taxable period and immediate assessment of tax. (1) Every tax imposed by any law imposing a tax upon or measured by net income, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the State of Oregon, from the person or persons liable therefor.

(2) If the Department of Revenue finds that a taxpayer designs quickly to depart from the state or to remove the property of the taxpayer therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past tax year or the tax year then current unless such proceedings be brought without delay, the department shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the department, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding tax year (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any years open to assessment under the provisions of the applicable law. The department shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to the last-known address of the taxpayer. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the findings of the department, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design and the certificate of the department of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued. [1957 c.632 §20 (enacted in lieu of 316.640, 317.440 and 317.445)]

314.445 [1957 c.632 §21 (enacted in lieu of 316.650 and 317.455); 1959 c.234 §2; repealed by 1973 c.402 §30]

314.450 [Subsections (1) and (2) enacted as 1957 c.632 §22 (enacted in lieu of 316.655 and 317.460); subsection (3) enacted as 1957 c.545 §2; 1959 c.650 §1; 1969 c.520 §40; 1971 c.418 §11; repealed by 1973 c.402 §30]

314.455 [1957 c.632 §23 (enacted in lieu of 316.660 and 317.465); 1971 c.507 §3; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.455)]

314.460 [1957 c.632 §24 (enacted in lieu of 316.665 and 317.470); 1961 c.533 §52; 1967 c.78 §2; 1975 c.381 §4; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.460)]

314.465 [1957 c.632 §25 (enacted in lieu of 316.670 and 317.475); 1961 c.533 §53; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.465)]

314.466 Audits, deficiencies, assessments, refunds and appeals governed by ORS chapter 305. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of taxes, penalties and interest imposed under this chapter and ORS chapters 315, 316, 317 and 318, except where the context requires oth-

erwise. [1977 c.870 §23 (enacted in lieu of 314.405, 314.455, 314.460 and 314.465); 1995 c.650 §34]

314.469 Treatment of moneys collected under ORS 314.406. Moneys collected under ORS 314.406 shall be considered net revenue from the tax imposed under ORS chapter 316 for purposes of ORS 316.502. [2007 c.568 §13]

(Temporary provisions relating to tax amnesty program)

Note: Sections 1 to 5 and 7, chapter 710, Oregon Laws 2009, provide:

Sec. 1. (1) The Department of Revenue shall develop and administer a tax amnesty program for taxpayers.

(2) The tax amnesty program shall be conducted during the period beginning on the effective date of this 2009 Act [September 28, 2009] or October 1, 2009, whichever is later, and ending November 19, 2009.

(3) The tax amnesty program applies to tax years, reporting periods and estates for which the department could issue a notice of deficiency under ORS 305.265 or 314.410, as amended and in effect on the day before the effective date of this 2009 Act.

(4) The department shall publicize the tax amnesty program through appropriate outreach and media activities in order to maximize public awareness of and participation in the program.

(5) The department may prescribe forms, issue instructions, conduct public meetings and undertake any other action necessary to maximize public participation in and compliance with the tax amnesty program and the collection of tax liabilities to which the program applies. [2009 c.710 §1]

Sec. 2. (1) A taxpayer who meets all of the following requirements during the period described in section 1 (2) of this 2009 Act may participate in the tax amnesty program:

(a) The taxpayer was required to:

(A) File a tax return under ORS chapter 314, 316, 317 or 318 for a tax year that begins before January 1, 2008;

(B) Pay personal income tax imposed under ORS chapter 316 for a tax year or reporting period that begins before January 1, 2008;

(C) Pay tax imposed under ORS chapter 317 or 318 for a tax year or reporting period that begins before January 1, 2008;

(D) File a return under ORS chapter 118 and pay any required tax, if the return was due prior to January 1, 2008; or

(E) Pay any tax imposed on net earnings from self-employment pursuant to ORS 267.385, if required to do so prior to January 1, 2008;

(b) The taxpayer files a completed amnesty application with the department, signed under penalty of perjury, to participate in the tax amnesty program; and

(c) Within 60 days after the conclusion of the tax amnesty program, the taxpayer does all of the following:

(A) Files a completed tax return or report for all tax years or reporting periods described in paragraph (a) of this subsection for which the taxpayer had not previously done so;

(B) Files a completed amended tax return or report for all tax years or reporting periods described in paragraph (a) of this subsection for which the taxpayer underreported or underpaid the tax liability of the taxpayer; and

(C) Pays in full the taxes due, and 50 percent of the interest due, for all tax years or reporting periods described in paragraph (a) of this subsection or applies for an installment payment agreement under subsection (5) of this section that applies to the taxes and interest due for all tax years or reporting periods described in paragraph (a) of this subsection for which taxes remain unpaid.

(2) Notwithstanding subsection (1) of this section, a taxpayer may not participate in the tax amnesty program if, prior to the starting date of the period described in section 1 (2) of this 2009 Act, the department has issued a notice of deficiency to the taxpayer or has assessed a tax for a tax year for which the taxpayer could otherwise apply for amnesty under this section.

(3) In addition to the other requirements in subsection (1) of this section, a taxpayer who has filed a petition for bankruptcy protection under Title 11 of the United States Code may participate in the tax amnesty program if the taxpayer submits an order from a United States Bankruptcy Court allowing the taxpayer to participate in the tax amnesty program.

(4) A taxpayer who participates in the tax amnesty program described in this section may not request a refund with respect to any tax paid under the tax amnesty program and waives any right to appeal any tax reported on a tax return or report filed or paid under subsection (1) of this section or pursuant to an installment payment agreement entered into under subsection (5) of this section.

(5)(a) A taxpayer may apply for an installment payment agreement for the payment of taxes reported and due under subsection (1) of this section. The application shall be made on a form prescribed by the department and shall be due at the time the taxpayer applies for amnesty under subsection (1) of this section.

(b) The department shall enter into an installment payment agreement with a taxpayer who has applied under paragraph (a) of this subsection and shall establish a payment schedule if the department concludes that the agreement will facilitate the efficient collection of the outstanding tax liability.

(c) Any interest that remains unpaid upon a taxpayer's entering an installment payment agreement shall be reduced by 50 percent.

(d) Under any installment payment agreement entered into under this subsection, all outstanding taxes and interest must be paid on or before May 31, 2011. [2009 c.710 §2]

Sec. 3. (1) For any taxpayer who fully complies with the tax amnesty program described in section 2 of this 2009 Act, the Department of Revenue shall waive all applicable penalties, including criminal penalties that would otherwise apply under ORS 314.075 and 314.991 (1), that would otherwise apply to the taxes being reported and paid under section 2 of this 2009 Act, and shall waive 50 percent of any interest otherwise due.

(2)(a) If the department has entered into an installment payment agreement with the taxpayer, the failure of the taxpayer to fully comply with the terms of the installment payment agreement renders the waiver of penalties under subsection (1) of this section and the installment payment agreement void. The total amount of tax, interest and all applicable penalties becomes immediately due and payable. The reduced interest rate applicable under section 2 (5)(c) of this 2009 Act is voided and replaced by the rate established under ORS 305.220, which is applicable to any amount that remains unpaid by the taxpayer.

(b) This subsection does not apply if the department determines that the failure to fully comply with the terms of the installment payment agreement is due to reasonable causes. [2009 c.710 §3]

Sec. 4. (1) An amount equal to 25 percent of the total amount of unpaid tax that is otherwise due is added to the amount of outstanding tax liability for any tax year or reporting period for which amnesty could be sought under section 2 of this 2009 Act and for which the taxpayer failed to apply for amnesty and:

(a) Failed to file a return or report; or

(b) Filed an original or amended return that failed to report or underreported tax liability.

(2) If, following the closure of the amnesty period specified in section 1 (2) of this 2009 Act, the Department of Revenue issues a notice of deficiency with respect to an unreported or underreported tax liability for a tax year for which an amnesty application was filed under section 2 of this 2009 Act, an amount equal to 25 percent of the total amount of unpaid tax that is otherwise due is added to the amount of outstanding tax liability.

(3) The penalties imposed under subsections (1) and (2) of this section do not apply to any additional tax liability that results from an adjustment made to a return by the Internal Revenue Service, unless the service has finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code.

(4) The penalties imposed under this section are in addition to and not in lieu of any other penalty. [2009 c.710 §4]

Sec. 5. (1) Sections 1 to 4 and 7 of this 2009 Act are repealed January 2, 2014.

(2) The Tax Amnesty Fund established under section 7 of this 2009 Act is abolished January 2, 2014.

(3) The unexpended moneys remaining in the Tax Amnesty Fund on January 2, 2014, shall be transferred to the General Fund. [2009 c.710 §5]

Sec. 7. (1) The Tax Amnesty Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Tax Amnesty Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Revenue.

(2)(a) Except as provided in paragraph (b) of this subsection, all moneys received by the Department of Revenue under sections 1 to 4 of this 2009 Act shall be deposited in the Tax Amnesty Fund. The department shall be reimbursed from the fund for costs incurred by the department to administer sections 1 to 4 of this 2009 Act. The total amount of costs paid under this subsection may not exceed $1 million.

(b) Moneys received by the department under sections 1 to 4 of this 2009 Act with respect to taxes imposed under ORS 267.385 on net earnings from self-employment and any penalties imposed on those taxes shall be paid to the transit district that imposed the tax, as provided in ORS 305.620. Costs incurred by the department to administer sections 1 to 4 of this 2009 Act on behalf of transit districts may be recovered by the department as provided in ORS 305.620.

(3) The department shall certify to the Emergency Board, or to the Legislative Assembly if it is in session, the costs that are incurred by the department in carrying out the purposes of sections 1 to 4 of this 2009 Act.

(4) The unexpended moneys remaining in the Tax Amnesty Fund on June 30, 2011, shall be transferred to the General Fund. [2009 c.710 §7]

314.470 [1957 c.632 §26 (enacted in lieu of 316.675 and 317.480); repealed by 1961 c.20 §1]

ESTIMATED TAX PROCEDURE

314.505 Estimate of tax liability by corporations; rules. (1) Every corporation expecting to have a tax liability under either ORS chapter 317 or 318 of $500 or more shall make an estimate of tax liability for the corporation's tax year and pay the amount of tax determined as provided in ORS 314.515.

(2) The Department of Revenue shall by rule provide for the payment of estimated tax liability by a group of affiliated corporations filing a consolidated return.

(3) As used in ORS 314.505 to 314.525, the term "estimated tax liability" means the tax computed under ORS chapter 317 or 318 less the credits allowed for purposes of ORS chapter 317 or 318. [1973 c.292 §1; 1984 c.1 §16; 1993 c.730 §41; 1997 c.299 §5]

314.515 Installment schedule for payment of estimated tax. (1) A corporation required under ORS 314.505 to make payments of estimated tax shall make the payments to the Department of Revenue in installments as follows:

(a) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the fourth month of the taxable year.

(b) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the sixth month of the taxable year.

(c) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the ninth month of the taxable year.

(d) The balance of the estimated tax shall be paid on or before the 15th day of the 12th month of the taxable year.

(2) Any payment of estimated tax received by the department for which the corporation has made no designation of the quarterly installment to which the payment is to be applied, shall first be applied to underpayments of estimated tax due for any prior quarter of the taxable year. Any excess amount shall be applied to the installment that next becomes due after the payment was received. [1973 c.292 §2; 1981 c.678 §4; 1985 c.603 §2]

314.518 Estimated tax payments by electronic funds transfer; phase-in; rules. (1) A corporation required to make a payment of estimated tax under ORS 314.505 to 314.525 shall make the payment by means of electronic funds transfer if:

(a) For payment periods beginning on or after July 1, 2001, and before January 1, 2002, the corporation's annual total amount of estimated tax liability exceeds $50,000.

(b) For payment periods beginning on or after January 1, 2002, the corporation is required to make federal estimated tax payments electronically.

(2) The Department of Revenue may adopt rules that provide exemptions from the requirement that estimated tax 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 a corporation that is not required to pay by means of electronic funds transfer.

(4) As used in this section, "electronic funds transfer" has the meaning given that term in ORS 293.525. [1997 c.299 §4; 1999 c.21 §35; 2001 c.28 §5; 2001 c.114 §30]

314.520 State agency authority over certain electronic funds transfer payments. ORS 314.505, 314.518 and 316.198 do not alter the authority under ORS 293.525 of a state agency to require by rule that certain payments to the agency be made by electronic funds transfer. [1997 c.299 §6; 2001 c.114 §39; 2005 c.28 §2]

Note: 314.520 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.525 Underpayment of estimated tax; interest; nonapplicability of penalties. (1) An underpayment of estimated tax under ORS 314.505 to 314.525 will be considered to have occurred if the estimated tax is not paid as required.

(2) Notwithstanding subsection (1) of this section, there shall be no underpayment of estimated tax if the estimated tax paid equals or exceeds the amount described in any one of the following paragraphs:

(a) The amount which would be required to be paid if the estimated tax liability were equal to 100 percent of the tax shown on the return for the taxable year or, if no return was filed, 100 percent of the tax for such taxable year.

(b) The amount which would be required to be paid if the estimated tax liability were equal to 100 percent of the tax shown on the return for the preceding taxable year, and the preceding taxable year was a taxable year of 12 months.

(c)(A) An amount equal to 100 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(ii) For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(iii) For the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and

(iv) For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph the taxable income shall be placed on an annualized basis by:

(i) Multiplying by 12 the taxable income referred to in subparagraph (A) of this paragraph; and

(ii) Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or 11, as the case may be) referred to in subparagraph (A) of this paragraph.

(d) An amount equal to 100 percent of the amount obtained by applying section 6655(e) (3)(C) of the Internal Revenue Code to Oregon taxable income.

(e) An election made under section 6655(e) (2)(C) of the Internal Revenue Code (relating to annualization periods) for federal tax purposes shall also apply for purposes of estimated tax under ORS 314.505 to 314.525.

(3) Interest shall accrue on the underpayment of estimated tax under ORS 314.505 to 314.525 at the rate established under ORS 305.220, for each month or fraction thereof during which period the estimated tax or any installment thereof remains unpaid. The penalty provisions contained in this chapter and ORS chapters 317 and 318 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 314.505 to 314.525.

(4) For purposes of subsection (3) of this section, the underpayment of estimated tax shall be the excess of:

(a) The amount of the installment which would be required to be paid if the estimated tax were equal to the lowest of the payments required under subsection (2) of this section (and allowed to be made by the taxpayer under subsection (5) of this section), over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(5) In the case of a large corporation, subsection (2)(b) of this section shall apply only to determine the amount of the first required installment for any taxable year. Any reduction in the first installment by reason of this subsection shall be added to the amount of the next required installment determined without regard to subsection (2)(b) of this section. For purposes of this subsection, a "large corporation" is any corporation that had federal taxable income, determined without regard to any amount carried to any

of the three taxable years under section 172 or 1212(a) of the Internal Revenue Code, of $1 million or more in any of the three taxable years immediately preceding the taxable year involved.

(6) The application of this section to taxable years of less than 12 months shall be in accordance with rules adopted by the Department of Revenue. [1973 c.292 §3; 1981 c.678 §5; 1982 s.s.1 c.16 §9; 1983 c.162 §78; 1985 c.603 §3; 1987 c.293 §61a; 1989 c.625 §63; 1995 c.556 §26; 1997 c.839 §57; 2001 c.660 §33]

DIVISION OF INCOME FOR TAX PURPOSES

(General Provisions)

314.605 Short title; construction. (1) ORS 314.605 to 314.675 may be cited as the Uniform Division of Income for Tax Purposes Act.

(2) ORS 314.610 to 314.670 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1965 c.152 §§20,21]

314.606 Status of ORS 314.605 to 314.675 when in conflict with Multistate Tax Compact. In any case in which the provisions of ORS 314.605 to 314.675 are inconsistent with the provisions of ORS 305.655, the provisions of ORS 314.605 to 314.675 shall control. [1993 c.726 §20]

314.610 Definitions for ORS 314.605 to 314.675. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

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

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

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

(4) "Financial institution" means a person, corporation or other business entity that is any of the following:

(a) A bank holding company under the laws of this state or under the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended.

(b) A savings and loan holding company under the National Housing Act, 12 U.S.C. 1701 et seq., as amended.

(c) A national bank organized and existing as a national bank association under the National Bank Act, 12 U.S.C. 21 et seq., as amended.

(d) A savings association, as defined in 12 U.S.C. 1813(b)(1), as amended.

(e) A bank or thrift institution incorporated or organized under the laws of any state.

(f) An entity organized under the provisions of 12 U.S.C. 611 to 631, as amended.

(g) An agency or branch of a foreign bank, as defined in 12 U.S.C. 3101, as amended.

(h) A state credit union with loan assets that exceed $50,000,000 as of the first day of the taxable year of the state credit union.

(i) A production credit association subject to 12 U.S.C. 2071 et seq., as amended.

(j) A corporation, more than 50 percent of the voting stock of which is owned, directly or indirectly, by a person, corporation or other business entity described in paragraphs (a) to (i) of this subsection, provided that the corporation is not an insurer taxable under ORS 317.655.

(k) An entity that is not otherwise described in this subsection, that is not an insurer taxable under ORS 317.655 and that derives more than 50 percent of its gross income from activities that a person, corporation or entity described in paragraph (c), (d), (e), (f), (g), (h), (i) or (L) of this subsection is authorized to conduct, not taking into account any income derived from nonrecurring extraordinary sources.

(L) A person that derives at least 50 percent of the person's annual average gross income, for financial accounting purposes for the current tax year and the two preceding tax years, from finance leases, excluding any gross income from incidental or occasional transactions. For purposes of this paragraph, "finance lease" means:

(A) A lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks of the ownership of the leased property;

(B) A direct financing lease or a leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13; or

(C) Any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles.

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

(6) "Public utility" means any business entity whose principal business is ownership

and operation for public use of any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(7) "Sales" means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

(8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. [1965 c.152 §2; 1997 c.631 §452; 2009 c.403 §1]

Note: See note under 314.280.

314.615 When allocation and apportionment of net income from business activity required. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial institution or public utility or the rendering of purely personal services by an individual, shall allocate and apportion the net income of the taxpayer as provided in ORS 314.605 to 314.675. Taxpayers engaged in activities as a financial institution or public utility shall report their income as provided in ORS 314.280 and 314.675. [1965 c.152 §3; 2001 c.793 §6; 2001 c.933 §5; 2009 c.403 §6]

Note: See note under 314.280.

314.620 When taxpayer is considered taxable in another state. For purposes of allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. [1965 c.152 §4]

(Allocation of Nonbusiness Income)

314.625 Certain nonbusiness income to be allocated. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, or prizes awarded by the Oregon State Lottery, to the extent that they constitute nonbusiness income, shall be allocated as provided in ORS 314.625 to 314.645. [1965 c.152 §5; 1995 c.79 §155; 1999 c.143 §1]

314.630 Allocation to this state of net rents and royalties. (1) Net rents and royalties from real property located in this state are allocable to this state.

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

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. [1965 c.152 §6]

314.635 Allocation to this state of capital gains and losses. (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

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

(3) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Gain or loss from the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than 50 percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this state in accordance with the sales factor of the partnership for its first full tax year immediately preceding its tax year during which the partnership interest was sold. [1965 c.152 §7; 1989 c.625 §64]

314.640 Allocation to this state of interest and dividends. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. [1965 c.152 §8]

314.642 Allocation to this state of lottery prizes. (1) Prizes awarded by the Oregon State Lottery are allocable to this state.

(2) A prize awarded by a multistate lottery association of which the Oregon State Lottery is a member is allocable to this state if the ticket upon which the prize is awarded was sold in this state. [1999 c.143 §2]

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

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

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located. [1965 c.152 §9]

(Apportionment of Business Income)

314.647 Policy. The Legislative Assembly finds and declares it to be the policy of this state to carry out a comprehensive review of business income apportionment whenever federal legislation changes the nexus standard for state imposition of taxes based on business activity within state borders. [2001 c.793 §12]

Note: 314.647 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.650 Business income apportionment. All business income shall be apportioned to this state by multiplying the income by the sales factor. [1965 c.152 §10; 1989 c.626 §5; 1989 c.1088 §1; 1995 c.79 §156; 2001 c.793 §1; 2003 c.739 §§1,5; 2005 c.832 §§48,49; 2009 c.842 §1]

314.655 Determination of property factor. (1) For purposes of ORS 317.391, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

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

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Department of Revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property. [1965 c.152 §§11,12,13; 2001 c.793 §3; 2001 c.933 §2; 2009 c.842 §2]

314.660 Determination of payroll factor. (1) For purposes of ORS 317.391, the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) Compensation is paid in this state if:

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

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

(c) Some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. [1965 c.152 §§14,15; 2001 c.793 §4; 2001 c.933 §3; 2009 c.842 §3]

314.665 Determination of sales factor; inclusions and exclusions; definitions. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

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

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

(A) The sale of goods shipped from a public warehouse is not considered to take place in this state if:

(i) The taxpayer's only activity in Oregon is the storage of the goods in the public warehouse prior to shipment; or

(ii) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products; and

(B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an affiliate of the person storing goods in a public warehouse or a person that is related under section 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

(3) Subsection (2)(b) of this section shall not apply to sales of tangible personal property if:

(a) The sales are included in the numerator of a formula used to apportion business income to another state of the United States, a foreign country or the District of Columbia; and

(b) The other state, a foreign country or the District of Columbia has imposed a tax on or measured by the apportioned business income.

(4) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are consistent with the determination of the sales factor under this section.

(6) For purposes of this section, "sales":

(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible assets, including but not limited to securities, unless those receipts are derived from the taxpayer's primary business activity.

(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from the primary business activity of the taxpayer but included in the taxpayer's business income.

(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets used in the regular course of the taxpayer's trade or business if a substantial amount of the gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state.

(7) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.

(8) As used in this section, "public warehouse":

(a) Means a warehouse owned or operated by a person that does not own the goods stored in the warehouse; and

(b) Does not include a warehouse that is owned by a person that is related to the person that owns goods that are stored in the warehouse, as determined under section 267 of the Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the warehouse. [1965 c.152 §§16,17,18; 1993 c.813 §4; 1995 c.176 §1; 1999 c.143 §8; 2001 c.793 §5; 2001 c.933 §4; 2005 c.832 §3]

(Procedure Where Ordinary Determination Not Satisfactory)

314.670 Additional methods to determine extent of business activity in this state; rules. (1) If the application of the allocation and apportionment provisions of ORS 314.605 to 314.675 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for and the Department of Revenue may permit, or the department may require, in respect to all or any part of the taxpayer's business activity:

(a) Separate accounting;

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

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

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

(2) The department may adopt rules to promote uniformity and consistency with other states in the application of the Uniform Division of Income for Tax Purposes Act. [1965 c.152 §19; 1984 c.1 §17; 1995 c.79 §157; 1999 c.143 §9]

(Apportionment of Net Loss)

314.675 Apportionment of net loss; net loss deduction; limitations. If the operations of a taxpayer subject to ORS 314.280 or 314.615 result in a net loss, that net loss shall be apportioned in the same manner as the net income so as fairly and accurately to reflect the net loss of the business done within this state. The net loss applicable to Oregon income pursuant to this section shall then become the net loss deduction for subsequent years which may be deducted from apportioned net income in the same manner as set forth in the Personal Income Tax Act of 1969, and in ORS chapters 317 and 318. The limitations as to the amount deductible and the time limitations in those statutes shall apply to the apportioned net loss deduction computed pursuant to this section. [1965 c.152 §23; 1969 c.493 §89; 1983 c.162 §55]

(Apportionment of Income of Interstate Broadcasters)

314.680 Definitions for ORS 314.680 to 314.690; rules. As used in ORS 314.680 to 314.690, unless the context requires otherwise:

(1) "Broadcasting" means the activity of transmitting any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

(2) "Gross receipts from broadcasting" means all gross receipts of an interstate broadcaster from transactions and activities in the regular course of its trade or business except receipts from sales of real or tangible personal property.

(3) "Interstate broadcaster" means a taxpayer that engages in the for-profit business of broadcasting to subscribers or to an audience located both within and without this state. The audience or subscribers ratio shall be determined by rule of the Department of Revenue. [1989 c.792 §3; 1995 c.79 §159]

314.682 Method of apportionment of interstate broadcaster income. (1) Notwithstanding any provisions of ORS 314.605 to 314.675 to the contrary, ORS 314.680, 314.684 and 314.686 shall apply to the apportionment of the income of an interstate broadcaster.

(2) Except as provided in subsection (1) of this section, all other provisions of ORS 314.605 to 314.675 shall apply to the apportionment of the income of an interstate broadcaster. [1989 c.792 §2; 1995 c.79 §160]

314.684 Determination of sales factor. (1) The sales factor for an interstate broadcaster shall be determined as provided in this section.

(2) The denominator of the sales factor shall include the total gross receipts derived by the interstate broadcaster from transactions and activities in the regular course of its trade or business, except receipts excluded under rules of the Department of Revenue.

(3) The numerator of the sales factor shall include all gross receipts attributable to this state, with gross receipts from broadcasting to be included as specified in subsection (4) of this section.

(4) Gross receipts from broadcasting of an interstate broadcaster which engages in income-producing activity in this state shall be included in the numerator of the sales factor in the ratio that the interstate broadcaster's audience or subscribers located in this state bears to its total audience and subscribers located both within and without this state. [1989 c.792 §4]

314.686 Determination of net income attributable to business done in state. If an interstate broadcaster has gross receipts from broadcasting, the determination of net income taxable by this state shall be based upon the business activity within this state, and the Department of Revenue shall require either the segregated method of reporting or the apportionment method of reporting described in ORS 314.680 to 314.690, under the rules adopted by the department, so as fairly and accurately to reflect the net income of the interstate broadcaster's business done within this state. [1989 c.792 §5; 1995 c.79 §161]

314.688 Rules. The Department of Revenue may adopt such rules as it deems necessary for the administration and enforcement of ORS 314.680 to 314.690. [1989 c.792 §6; 1995 c.79 §162]

314.690 Scope of provisions. The provisions of ORS 314.680 to 314.688 are not intended to change the meaning of the terms "income-producing activity," "sources within this state," "business activity" taxable in this state or "doing business" in this state contained in this chapter or ORS chapter 317 or 318. [1989 c.792 §7]

(Application)

314.695 Application of ORS 314.280 and 314.605 to 314.675. The provisions of ORS 314.280 and 314.605 to 314.675 apply to the allocation and apportionment of the income of corporations and nonresident individuals, and do not apply to the income of resident individuals, resident estates, and resident trusts taxable as provided in the Personal Income Tax Act of 1969. [1967 c.60 §2; 1969 c.493 §90]

EFFECT OF MULTISTATE TAX COMPACT

314.705 Computation of tax when income reported as percentage of sales volume. Any taxpayer electing in any year to report and pay an income tax on the basis of a percentage of sales volume, pursuant to Article III, section 2 of the Multistate Tax Compact, shall pay a tax computed at one-fourth of one percent of the dollar volume of gross sales in Oregon, except that if the taxpayer's return on sales for its business is less than five percent, it shall pay a tax computed on the basis of one-eighth of one percent of such volume. [1967 c.242 §2]

314.710 Application to allocation and apportionment of income. The provisions of Articles III and IV of the Multistate Tax Compact apply to the allocation and apportionment of the income of corporations and nonresident individuals and do not apply to income of resident individuals, resident estates and resident trusts, taxable as provided in the Personal Income Tax Act of 1969. [1967 c.242 §7; 1969 c.493 §91]

TAXATION OF PARTNERSHIPS AND S CORPORATIONS

(Partnerships)

314.712 Partnerships not subject to income tax; exceptions. (1) Except as provided in ORS 314.722 or 314.723, a partnership as such is not subject to the tax imposed by ORS chapter 316, 317 or 318. Partnership income shall be computed pursuant to section 703 of the Internal Revenue Code, with the modifications, additions and subtractions provided in this chapter and ORS chapter 316. Persons carrying on business as partners are liable for the tax imposed by ORS chapter 316, 317 or 318 on their distributive shares of partnership income only in their separate or individual capacities.

(2) If a partner engages in a transaction with a partnership other than in the partner's capacity as a member of the partnership, the transaction shall be treated in the manner described in section 707 of the Internal Revenue Code.

(3) If a partnership is an electing large partnership under section 775 of the Internal Revenue Code, the modifications of law applicable to an electing large partnership for federal tax purposes are applicable to the electing large partnership for purposes of the tax imposed by this chapter or ORS chapter 316, 317 or 318. [1989 c.625 §28 (enacted in lieu of 316.342); 1999 c.90 §5]

314.714 Character of partnership income; procedure if partner's treatment of item inconsistent with partnership treatment; rules. (1) Each item of partnership income, gain, loss or deduction has the same character for a partner as it has for federal income tax purposes. If an item is not characterized for federal income tax purposes, it has the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(2) A partner's distributive share of an item of partnership income, gain, loss or deduction (or item thereof) shall be that partner's distributive share of partnership income, gain, loss or deduction (or item thereof) for federal income tax purposes as determined under section 704 of the Internal Revenue Code and adjusted for the modifications, additions and subtractions provided in this chapter and ORS chapters 316, 317 and 318.

(3) A partner shall, on the partner's return, treat a partnership item in a manner that is consistent with the treatment of the partnership item on the partnership return, unless the partner notifies the Department of Revenue of the inconsistency. The department shall prescribe by rule the method for notification of an inconsistency. A partner of an electing large partnership under section 775 of the Internal Revenue Code must treat a partnership item in a manner that is consistent with the treatment of the partnership item on the partnership return. [1989 c.625 §30 (enacted in lieu of 316.347); 1993 c.726 §22; 1999 c.90 §6]

314.716 Basis of partner's interest; gain or loss on sale; election to adjust basis. (1) The adjusted basis of a partner's interest in a partnership shall be determined pursuant to the method described in sections 704(c)(1)(B)(iii), 705 and 733 of the Internal Revenue Code, and shall be increased or decreased as provided in this chapter and ORS chapter 316, 317 or 318, whichever is applicable.

(2) Upon the sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner pursuant to section 741 of the Internal Revenue Code.

(3) If a partnership elects to adjust the basis of its assets under section 754 of the Internal Revenue Code, then upon a transfer of an interest in the partnership by sale or exchange or upon a death of a partner, that election shall also be effective for Oregon income tax purposes. [1989 c.625 §36; 1991 c.457 §19]

314.718 Treatment of contributions to partnership. (1) Amounts paid or incurred to organize a partnership may be deducted in the manner provided in section 709(b) of the Internal Revenue Code.

(2) No gain or loss shall be recognized upon a contribution of property to a partnership in exchange for an interest in a partnership, unless allowed pursuant to section 721(b) of the Internal Revenue Code.

(3) The partnership's basis in property contributed to it by a partner is the adjusted basis of the property to that partner at the time of the contribution, plus the amount (if any) of gain recognized by that partner as a result of the transfer of property to the partnership. The partnership's holding period includes the period during which the property was held by the partner.

(4) Any increase in a partner's share of partnership liabilities shall be considered as a contribution of money by the partner to the partnership, pursuant to section 752 of the Internal Revenue Code.

(5) Section 724 of the Internal Revenue Code shall be applied in determining the character of gain or loss recognized by a partnership upon the disposition of contributed unrealized receivables, inventory items and capital loss property. [1989 c.625 §37]

314.720 Treatment of distributions from partnership. (1) Gain or loss shall not be recognized by a partner upon a distribution by a partnership to that partner, except to the extent provided in section 731 of the Internal Revenue Code.

(2) The character of gain or loss on the disposition by a distributee partner of unrealized receivables or inventory items shall be determined pursuant to section 735 of the Internal Revenue Code.

(3) The basis of property (other than money) distributed by a partnership to a partner shall be determined pursuant to sections 704(c)(1)(B)(iii) and 732 of the Internal Revenue Code, and shall be increased or decreased as provided in ORS chapter 316.

(4) If a partnership makes the election to adjust the basis of its assets under section 754 of the Internal Revenue Code, then upon a distribution of property to a partner, that election shall also be effective for Oregon income tax purposes.

(5) Payments made by a partnership in liquidation of the interest of a retiring partner or a deceased partner shall be accorded the treatment provided under section 736 of the Internal Revenue Code.

(6) Any decrease in a partner's share of partnership liabilities or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of the partner's individual liabilities, shall be considered to be a distribution of money to the partner by the partnership under section 752 of the Internal Revenue Code. [1989 c.625 §38; 1991 c.457 §20; 1995 c.556 §29]

314.722 Publicly traded partnerships taxed as corporations. (1) As used in this section, "publicly traded partnership" means a partnership treated as a corporation for federal income tax purposes under section 7704 of the Internal Revenue Code for the tax year.

(2) Persons carrying on business as partners in a publicly traded partnership are not subject to tax under ORS chapter 316, 317 or 318 on their distributive shares of partnership income, but the publicly traded partnership is taxable as a corporation under ORS chapter 317 or 318 as provided under ORS chapter 317 or 318. [1989 c.625 §39]

314.723 Electing large partnerships subject to tax; rules. (1) If a partnership is an electing large partnership under section 775 of the Internal Revenue Code and an adjustment is made with respect to a partnership item for federal tax purposes that results in partnership liability to the United States Internal Revenue Service for payment of the federal tax under section 6242 of the Internal Revenue Code, the amount subject to federal tax at the partnership level shall also be subject to a state tax, to the extent the amount is allocated or apportioned to the State of Oregon.

(2) The rate of tax shall be the highest marginal rate of tax applicable to personal income taxpayers under ORS 316.037 for the tax year for which the adjustment is taken into account for federal tax purposes under section 6242 of the Internal Revenue Code.

(3) The Department of Revenue may determine by rule the method by which the amount described in this section is allocated and apportioned to the State of Oregon. [1999 c.90 §3]

314.724 Information return; penalty; rules. (1) Every partnership having a resident partner or having any income derived from sources in this state, determined in accordance with the applicable rules as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction,

and the names and addresses of the individuals (whether residents or nonresidents) who would be entitled to share in the net income, if distributed, and the amount of the distributive share of each individual, and such other pertinent information as the Department of Revenue may prescribe by regulations and instructions. Such return shall be filed on or before the 15th day of the fourth month following the close of each taxable year. For purposes of this section, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under ORS chapter 316.

(2) If a partnership transacting business in this state is required to make a return under subsection (1) of this section and fails to file the return or files a return which fails to show the information required under subsection (1) of this section, the Department of Revenue shall assess a penalty against the partnership in the amount specified in subsection (3) of this section for each month or part of a month during which the failure continues.

(3) The amount of the penalty imposed under subsection (2) of this section shall be determined by the department by rule. However, the amount of the penalty imposed for each month shall not exceed the product of $50 multiplied by the number of persons who were partners in the partnership during any part of the taxable year, and the total amount of the penalty shall not exceed five times the monthly penalty.

(4) The penalty imposed under this section is in addition to any other penalty provided by law. Any partnership against which 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.

(5) The department may waive all or any part of the penalty imposed under this section if the failure was due to reasonable cause. [Formerly 316.467; 1995 c.650 §35]

Note: Chapter 745, Oregon Laws 2009, was referred to the people by referendum petition for their approval or rejection at a special election to be held throughout this state on January 26, 2010. See section 8, chapter 714, Oregon Laws 2009. Section 3, chapter 745, Oregon Laws 2009, provides:

Sec. 3. Privilege tax applicable to partnerships. Each partnership transacting business in this state shall, for the privilege of carrying on or doing business by it within this state, include with the filing of the return required under ORS 314.724 payment of a minimum tax of $150. [2009 c.745 §3]

314.726 Application of ORS 314.724. ORS 314.724 shall apply to both corporate and noncorporate partners. [1989 c.625 §34]

314.727 Disclosure of partnership items to partner. The Department of Revenue may disclose to a partner of a partnership those items of partnership gain, loss or other particulars relating to the partnership that are necessary to determine or administer the tax imposed by ORS chapter 316, 317 or 318 if the department considers the disclosure necessary to facilitate the audit of the partner's income or excise tax return. [1997 c.100 §5]

(S Corporations)

314.730 "C corporation" and "S corporation" defined for this chapter and ORS chapters 316, 317 and 318. For purposes of this chapter and ORS chapters 316, 317 and 318:

(1) "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(2) "S corporation" means, with respect to any taxable year, a corporation for which an election under section 1362(a) of the Internal Revenue Code is in effect for such year. [1989 c.625 §41]

314.732 Taxation of S corporation; application of Internal Revenue Code; carryforward and carryback. (1) Except as otherwise provided in ORS 314.740, 314.742 and 317.090, an S corporation shall not be subject to the taxes imposed by ORS chapter 316, 317 or 318.

(2)(a) Subject to paragraphs (b) to (d) of this subsection, the taxable income of an S corporation shall be computed pursuant to section 1363(b) of the Internal Revenue Code, with the modifications, additions and subtractions provided in this chapter and ORS chapter 316.

(b) Except as otherwise provided under this chapter and ORS chapter 316, 317 or 318, and except as inconsistent with ORS 314.730 to 314.752, subchapter C, chapter 1, Internal Revenue Code, shall apply to an S corporation and its shareholders for Oregon tax purposes. For Oregon tax purposes, the provisions of section 1371 of the Internal Revenue Code shall apply, subject to the modifications, additions and subtractions under this chapter or ORS chapter 316, 317 or 318 and any provisions to the contrary in this chapter or ORS chapter 316, 317 or 318.

(c) Notwithstanding ORS 317.476, 317.478 or 317.479, no carryforward, arising for a taxable year for which a corporation is a C corporation, may be carried to a taxable year for which such corporation is an S corporation.

(d) Notwithstanding ORS 317.476 or other law, no carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation. [1989 c.625 §42; 1991 c.457 §21]

314.734 Taxation of shareholder's income; computation; character of income, gain, loss or deduction. (1) The shareholder's pro rata share of the income of an S corporation is subject to tax under ORS chapter 316. In determining the tax imposed under ORS chapter 316 of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate that terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's separately stated items of income, loss or deduction and nonseparately computed income or loss, as determined under or for purposes of section 1366 of the Internal Revenue Code (including but not limited to section 1366(d) and (e) of the Internal Revenue Code), with the modifications, additions and subtractions provided under this chapter and ORS chapter 316.

(2) Each item of shareholder income, gain, loss or deduction has the same character for a shareholder under this chapter and ORS chapter 316 as it has for federal income tax purposes. If an item is not characterized for federal income tax purposes, it has the same character for a shareholder as if realized directly from the source from which realized by the S corporation or incurred in the same manner as incurred by the S corporation.

(3) In any case where it is necessary to determine the gross income of a shareholder for purposes of ORS chapter 316, such gross income shall include the shareholder's pro rata share of the gross income of the S corporation.

(4) If any tax is imposed under ORS 314.740 for any taxable year on an S corporation, for purposes of subsection (1) of this section, the amount of each recognized built-in gain for such taxable year shall be reduced by its proportionate share of such tax.

(5) If any tax is imposed under ORS 314.742 on an S corporation, for purposes of subsection (1) of this section, each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as the amount of such item bears to the total passive investment income for the taxable year. [1989 c.625 §43; 1991 c.457 §22; 1997 c.839 §60]

314.736 Treatment of distributions by S corporation. A distribution of property made by an S corporation with respect to its stock shall be treated in the manner provided under section 1368 of the Internal Revenue Code, subject to modifications, additions and subtractions under ORS chapter 316, 317 or 318. [1989 c.625 §44]

314.738 Employee fringe benefits; foreign income. (1) For purposes of employee fringe benefits, and subject to this chapter and ORS chapters 305, 316, 317 and 318 and ORS 314.712 to 314.722, 314.726 and 316.124, section 1372 of the Internal Revenue Code shall apply to an S corporation and its shareholders.

(2) For purposes of foreign income, and subject to this chapter and ORS chapters 305, 316, 317 and 318 and ORS 314.712 to 314.722, 314.726 and 316.124, section 1373 of the Internal Revenue Code shall apply to an S corporation and its shareholders. [1989 c.625 §45]

314.740 Tax on built-in gain. (1) If, for any taxable year beginning in the recognition period, an S corporation has a net recognized built-in gain, there is hereby imposed a tax on the income of such corporation for such taxable year.

(2) The amount of the tax imposed under subsection (1) of this section shall be computed by applying the rate of tax specified in ORS 317.061 to the net recognized built-in gain of the S corporation for the taxable year.

(3) The tax imposed under subsection (1) shall be considered a tax imposed under ORS chapter 317 or 318, whichever is applicable, and shall be returned, estimated, assessed and collected and otherwise treated in the same manner as the tax imposed under ORS chapter 317 or 318. The allocation and apportionment rules of this chapter and ORS chapter 305 apply to the income subject to the tax imposed under this section. The proceeds from the tax shall be distributed in the same manner as the tax imposed under ORS chapter 317 or 318, whichever is applicable.

(4) ORS 317.476, 317.478 and 317.479 shall not apply to the tax imposed under this section. Notwithstanding ORS 314.732 (2)(c), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of the tax imposed under this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income.

(5)(a) Except for estimated and other advance tax payments and except as provided under paragraph (b) of this subsection, no credits shall be allowed against the tax imposed under this section.

(b) Notwithstanding ORS 314.732 (2)(c), any credit carryforward under ORS chapter 317 or 318 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed under this section in the same manner as if it were the tax imposed under ORS chapter 317 or 318.

(6) To the extent applicable, the definitions, special rules and interpretations and other provisions of section 1374 of the Internal Revenue Code that relate to the measurement of built-in gain shall apply to the tax imposed under this section. [1989 c.625 §46; 1997 c.839 §61]

314.742 Tax on excess net passive income. (1) If for the taxable year an S corporation has the following, then there is hereby imposed a tax on the income of such corporation for the taxable year:

(a) Accumulated earnings and profits at the close of the taxable year; and

(b) Gross receipts more than 25 percent of which are passive investment income.

(2) The tax imposed under subsection (1) of this section shall be computed by multiplying the excess net passive income by the rate specified under ORS 317.061.

(3) The tax imposed under subsection (1) shall be considered a tax imposed under ORS chapter 317 or 318, whichever is applicable, and shall be returned, estimated, assessed and collected and otherwise treated in the same manner as the tax imposed under ORS chapter 317 or 318. The allocation and apportionment of income rules of this chapter and ORS chapter 305 apply to the income subject to the tax imposed under this section. The proceeds from the tax shall be distributed in the same manner as the tax imposed under ORS chapter 317 or 318, whichever is applicable.

(4) Notwithstanding subsection (6) of this section, the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in ORS 314.738.

(5) Except for estimated and other advance tax payments, no credits shall be allowed against the tax imposed under this section.

(6) To the extent applicable, the definitions, special rules and interpretations and other provisions of section 1375 of the Internal Revenue Code that relate to the measurement of excess net passive income shall apply to the tax imposed under this section.

(7) Section 1375(d) shall apply to the tax imposed under this section, except that "department" shall be substituted for the word "secretary" wherever that word appears. [1989 c.625 §47; 1997 c.839 §62]

314.744 S corporation or shareholder elections; rules. (1) Subject to subsection (2) of this section, if the Internal Revenue Code requires or permits an election or revocation to be made by an S corporation, then that election or revocation shall apply for Oregon tax purposes. If the Internal Revenue Code requires or permits an election or revocation to be made by a shareholder or shareholders of an S corporation, then that election or revocation shall apply for Oregon tax purposes.

(2) The Department of Revenue may adopt rules that contravene subsection (1) of this section if the election or revocation does not carry out the purposes of this chapter and ORS chapter 305, 316, 317 or 318. [1989 c.625 §48]

314.746 Application of sections 1377 and 1379 of Internal Revenue Code. The definitions and special and transitional rules of sections 1377 and 1379 of the Internal Revenue Code apply for Oregon tax purposes. [1989 c.625 §49]

314.748 [1989 c.625 §50; repealed by 1997 c.839 §69]

314.749 Disclosure of S corporation items to shareholder. The Department of Revenue may disclose to the shareholder of an S corporation those items of S corporation gain, loss or other particulars relating to the S corporation that are necessary to administer the tax imposed by ORS chapter 316, 317 or 318 if the department considers the disclosure necessary to facilitate the audit of the shareholder's income tax return. [1997 c.100 §6]

Note: 314.749 was added to and made a part of ORS chapter 314 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

314.750 Recapture of LIFO benefits. (1) Any increase in tax by reason of a recapture of LIFO benefits under section 1363(d) of the Internal Revenue Code shall be payable in four equal installments.

(2)(a) The first installment shall be paid on or before the due date for the return of the tax for the last taxable year for which the corporation was a C corporation and the three succeeding installments shall be paid on or before the due date for the corpo-

ration's return for the three succeeding taxable years.

(b) For purposes of this subsection, the due date for returns shall be determined without regard to extensions.

(3) Notwithstanding ORS 314.400 (7), for purposes of ORS 314.400 (7), interest on each installment that is not paid on or before the date prescribed under subsection (2) of this section for payment of that installment shall accrue only from the due date for that installment.

(4) This section applies in the case of S corporation elections made after December 17, 1987. No refund or interest shall accrue to any taxpayer on account of the retroactive application under this subsection. [1989 c.625 §58; 2007 c.322 §2]

314.752 Business tax credits; allowance to shareholders; rules. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, bypass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel). [1991 c.877 §36; 1993 c.730 §5; 1997 c.170 §34; 1997 c.534 §2; 1999 c.21 §36; 2001 c.674 §11; 2001 c.868 §9; 2001 c.932 §10; 2001 c.957 §18; 2005 c.80 §1; 2005 c.94 §80; 2007 c.625 §13; 2007 c.739 §7; 2007 c.883 §3; 2009 c.33 §§14,15,16]

314.760 [1989 c.625 §54; repealed by 2005 c.387 §8]

PASS-THROUGH ENTITIES

314.775 Definitions for ORS 314.775 to 314.784. As used in ORS 314.775 to 314.784:

(1) "Distributive income" means the net amount of income, gain, deduction or loss of a pass-through entity for the tax year of the entity.

(2) "Lower-tier pass-through entity" means a pass-through entity, an ownership interest of which is held by another pass-through entity.

(3) "Nonresident" means:

(a) An individual who is not a resident of this state;

(b) A corporation, partnership or other business entity that has a commercial domicile, as defined in ORS 314.610, that is outside this state; or

(c) A trust that is not a resident trust or qualified funeral trust under ORS 316.282.

(4) "Owner" means a person that owns an interest in a pass-through entity.

(5) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. "Pass-through entity" does not include any trust except a form of trust that the Department of Revenue has determined by rule to

have been established or maintained primarily for tax avoidance purposes.

(6) "Upper-tier pass-through entity" means a pass-through entity that owns an interest in another pass-through entity. [2005 c.387 §1; 2009 c.33 §17]

314.778 Composite returns of pass-through entities; election; effect of election on nonresident owners. (1) A pass-through entity having distributive income attributable to Oregon sources shall file a composite return of personal income and corporate income and excise tax on behalf of owners that elect to be included in the composite return filed by the entity.

(2) A pass-through entity shall file a composite return under this section only if one or more owners that are nonresidents make an election under this section.

(3) The election shall be made by owners in the time, form and manner prescribed by the Department of Revenue.

(4) The composite return shall report the share of distributive income of each electing owner, the share of distributive income from Oregon sources of each electing owner, the amount of tax withheld under ORS 314.781 on behalf of each electing owner and any other information required by the department. The composite return shall be filed with the department in the time, form and manner prescribed by the department.

(5)(a) An electing owner may file a nonresident personal income tax return or a corporate excise or income tax return for the tax year of the electing owner in which the electing owner's share of distributive income reported on the composite return is properly reportable.

(b) An electing owner that files a return under this subsection shall receive credit for any tax paid on behalf of the owner by the pass-through entity. [2005 c.387 §2]

314.781 Withholding; required returns and statements; pass-through entity liability. (1) A pass-through entity shall withhold tax as prescribed in this section if:

(a) The pass-through entity has distributive income from Oregon sources; and

(b) One or more owners of the entity are nonresidents and do not have other Oregon source income.

(2) For each taxpayer described in subsection (1)(b) of this section who is subject to tax under ORS chapter 316, the entity shall withhold tax at the highest marginal rate applicable for the tax year under ORS 316.037. The withheld tax shall be computed based on the taxpayer's share of the entity's distributive income from Oregon sources for the entity's tax year.

(3) For each corporation described in subsection (1)(b) of this section, the entity shall withhold tax at the rate applicable for the tax year under ORS 317.061 and 318.020. The tax shall be computed based on the corporation's share of the entity's distributive income from Oregon sources for the entity's tax year.

(4) A pass-through entity that is required to withhold tax under this section shall file a withholding return or report with the Department of Revenue setting forth the share of Oregon source distributive income of each nonresident owner, the amount of tax withheld under this section and any other information required by the department. The return shall be filed with the department on the form and in the time and manner prescribed by the department. Taxes withheld under this section shall be paid to the department in the time and manner prescribed by the department.

(5) A pass-through entity that is required to withhold tax under this section shall furnish a statement to each owner on whose behalf tax is withheld. The statement shall state the amount of tax withheld on behalf of the owner for the tax year of the entity. The statement shall be made on a form prescribed by the department and shall contain any other information required by the department.

(6) The department shall apply taxes withheld under this section by a lower-tier pass-through entity on distributions to an upper-tier pass-through entity to the withholding required by the upper-tier pass-through entity under this section.

(7) A pass-through entity is liable to the State of Oregon for amounts of tax required to be withheld and paid under this section. A pass-through entity is not liable to an owner of the pass-through entity for amounts required to be withheld under this section that were paid to the department as prescribed in this section. [2005 c.387 §3]

314.784 Circumstances when pass-through entity withholding is not required; rules. (1) A pass-through entity is not required to withhold taxes under ORS 314.781 on behalf of a nonresident owner if:

(a) The nonresident owner has a share of distributive income that is less than $1,000 for the tax year of the pass-through entity;

(b) Withholding is not required pursuant to a rule adopted under this section;

(c) The owner makes a timely election under ORS 314.778 to have taxes on the owner's distributive share of income paid and reported on the composite return described in ORS 314.778, and the composite return is filed by the pass-through entity;

(d) The pass-through entity is a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, that is treated as a partnership for federal tax purposes and that agrees to file an annual information return on the form and in the time and manner prescribed by the Department of Revenue and containing the information required by the department, including but not limited to the name, address and taxpayer identification number of each person with an ownership interest in the entity that results in the person receiving Oregon source income of more than $500; or

(e) The nonresident owner files an affidavit with the department, in the form and manner prescribed by the department, under which the nonresident owner agrees to allow the department and the courts of this state to have personal jurisdiction over the nonresident owner for the purpose of determining and collecting any taxes imposed under ORS chapter 316, 317 or 318 that are attributable to the nonresident owner's distributive share of taxable income from the pass-through entity. The department may reject the affidavit if the taxpayer fails to comply with Oregon law requiring the filing of a tax return or the payment of any tax.

(2) The department may adopt rules setting forth circumstances under which pass-through entities are not required to withhold taxes under ORS 314.781. [2005 c.387 §4]

ADMINISTRATIVE PROVISIONS

314.805 Department to administer and enforce laws; enforcement districts; branch offices. The Department of Revenue shall administer and enforce the tax imposed by any law imposing tax upon or measured by net income. For this purpose the department may divide the state into districts. In each district a branch office may be established. The department may, from time to time, change the limits of such districts. [1957 c.632 §27 (enacted in lieu of 316.705 and 317.505)]

314.810 Administering oaths and taking acknowledgments. All officers empowered by law to administer oaths, the Director of the Department of Revenue and any agents, auditors and other employees as the director may designate, shall have the power to administer an oath to or take the acknowledgment of any person in respect of any return or report required by statute or the rules and regulations of the department. [1957 c.632 §29 (enacted in lieu of 316.715); 1999 c.21 §37]

314.815 Rules and regulations. The Department of Revenue may, from time to time, make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to enforce income tax laws. [1957 c.632 §30 (enacted in lieu of 316.720 and 317.505)]

314.820 [1957 c.632 §31 (enacted in lieu of 316.725 and 317.520); 1969 c.97 §2; repealed by 1973 c.402 §30]

314.825 [1957 c.632 §32 (enacted in lieu of 316.730 and 317.525); repealed by 1973 c.402 §30]

314.830 [1957 c.632 §33 (enacted in lieu of 316.735 and 317.530); repealed by 1965 c.44 §1]

314.835 Divulging particulars of returns and reports prohibited. (1) Except as otherwise specifically provided in rules adopted under ORS 305.193 or in other law, it shall be unlawful for the Department of Revenue or any officer or employee of the department to divulge or make known in any manner the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return required in the administration of ORS 310.630 to 310.706, required in the administration of any local tax pursuant to ORS 305.620, or required under a law imposing a tax upon or measured by net income. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 314.840 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number, employer identification number or other taxpayer identification number and the amount of refund claimed by or granted to a taxpayer. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.789 §13; 1979 c.690 §1; 1993 c.726 §25; 1999 c.580 §1; 2003 c.541 §4]

314.840 Disclosure of information; persons to whom information may be furnished. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under

ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report, return or claim required in the administration of ORS 310.630 to 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this subparagraph only if:

(i) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

(ii) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

(b) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

(c) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;

(B) A city, county or other political subdivision of a state;

(C) The District of Columbia; or

(D) An association established exclusively to provide services to federal, state or local taxing authorities.

(d) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

(e) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the per-

formance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(g) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(i) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(k) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

(A) Identification numbers.

(B) Names and addresses.

(C) Inception date as employer.

(D) Nature of business.

(E) Entity changes.

(F) Date of last payroll.

(L) The Director of Human Services to determine that a person has the ability to pay for care that includes services provided by the Eastern Oregon Training Center or the Department of Human Services to collect any unpaid cost of care as provided by ORS chapter 179.

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

(n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(p) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

(q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee,

the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(s) The United States Financial Management Service, for purposes of facilitating the reciprocal offsets described in ORS 305.612.

(t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS 314.843.

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (e) to (k) or (n) to (q) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(r) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(r) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection (2)(k) to (m) and (o) to (q) of this section from the respective agencies. [1957 c.632 §35 (enacted in lieu of 316.745 and 317.540); 1959 c.114 §1; 1971 c.682 §2; 1973 c.106 §1; 1975 c.368 §9; 1975 c.789 §19; 1977 c.430 §3; 1979 c.690 §2; 1981 c.827 §1; 1985 c.605 §20; 1987 c.94 §102; 1987 c.647 §9; 1987 c.884 §1; 1989 c.348 §15; 1989 c.901 §6; 1991 c.362 §3; 1991 c.374 §1; 1991 c.882 §14; 1993 c.18 §76; 1993 c.694 §42; 1993 c.726 §26; 1997 c.170 §43; 1999 c.224 §3; 1999 c.580 §2; 1999 c.656 §1; 2001 c.3 §1; 2001 c.28 §4; 2003 c.541 §5; 2007 c.321 §1; 2009 c.595 §203; 2009 c.640 §2]

Note: Legislative Counsel has substituted "chapter 694, Oregon Laws 1993," for the words "this 1993 Act" in section 42, chapter 694, Oregon Laws 1993, which amended 314.840. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 20 of ORS.

314.843 Reporting of information to consumer reporting agency; rules. (1) As used in this section, "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(2)(a) Notwithstanding ORS 314.835, and subject to rules established by the Department of Revenue, if a taxpayer has neglected or refused to pay any tax and has not filed in good faith an appeal to the tax court within the period required by ORS 305.280 contesting the tax, the department may:

(A) Report periodically to consumer reporting agencies the name of any taxpayer who is delinquent in the payment of taxes and the amount owed by the taxpayer; and

(B) Otherwise make available to a consumer reporting agency upon its request information regarding the amount of delinquent taxes owed by a taxpayer.

(b) The department shall provide advance notice to the taxpayer concerning the proposed reporting of information to the consumer reporting agencies. The notice must inform the taxpayer:

(A) Of the amount of the tax liability that the department will report to the consumer reporting agencies;

(B) That the department will continue to report the amount of tax liability owed without sending additional notice to the parties;

(C) Of the taxpayer's right to request an administrative review within 30 days after the date of the notice; and

(D) Of the issues that may be considered on review.

(3) The department shall report information under subsection (2) of this section only to a person that has furnished evidence satisfactory to the department that the person is a consumer reporting agency.

(4) When the department has made a report to a consumer reporting agency under subsection (2) of this section, the department shall promptly notify the consumer reporting agency when the department's records show that the taxpayer no longer owes delinquent taxes. [2009 c.640 §7]

314.845 Certificate of department as evidence. The certificate of the Department of Revenue to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under any law imposing a tax upon or measured by net income, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied. [1957 c.632 §36 (enacted in lieu of 316.750 and 317.545)]

314.850 Statistics. The Department of Revenue shall prepare and publish annually statistics, reasonably available, with respect to the operation of income tax laws, including amounts collected, classification of taxpayers and other facts considered pertinent and valuable. [1957 c.632 §37 (enacted in lieu of 316.755)]

314.855 Rewards for information. The Department of Revenue may pay rewards to persons, other than officers or employees of the department, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of income tax laws. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of returns or from other information available to the department. [1957 c.632 §38 (enacted in lieu of 316.760 and 317.550)]

314.860 Disclosure of elderly rental assistance information to assist in recovery of public assistance overpayments; requests for information public record. (1) The Department of Revenue may disclose certain information relative to applicants for elderly rental assistance to the Director of Human Services or to employees of the Department of Human Services. The information disclosed by the Department of Revenue shall be confined to the names, addresses and Social Security numbers of applicants under ORS 310.630 to 310.706 for the current and preceding calendar year. The information requested shall be confined to those names, addresses and Social Security numbers which will assist in the collection of debts due and owing to the State of Oregon arising from client-caused overpayments of public assistance and shall be used solely for such purpose and shall not be used or disclosed for any other purpose. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

(2) Disclosure under this section shall be given only upon written request of the Director of Human Services. The form for the request shall be prescribed by the Director of Human Services and approved by the Director of the Department of Revenue.

(3) The Department of Revenue shall keep on file the requests for disclosure made pursuant to this section. The requests constitute a public record within the meaning of ORS 192.410 to 192.505. [1979 c.690 §18; 1997 c.170 §27]

Note: 314.860 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.865 Use of certain information for private benefit prohibited. A person granted access to information described in ORS 314.835 under ORS 314.840 (2)(a)(B) for the purpose of preparing revenue estimates shall not knowingly or intentionally use the information disclosed or the information to which access is given for any purpose if the effect of the use is private pecuniary benefit for the person or for a member of the person's household. [1981 c.827 §2]

Note: 314.865 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.870 Time for performing certain acts postponed by reason of service in a combat zone. (1) Section 7508 of the Internal Revenue Code, insofar as it describes periods of time to be disregarded with respect to the performance of acts relative to federal income tax liability of an individual (or individual and spouse) who performs service in an area designated as a combat zone, or is hospitalized as a result of injury received while serving in such area, shall apply as appropriate to the same or similar acts for purposes of the tax imposed by this chapter and ORS chapter 316.

(2) If an individual is entitled to the benefits of subsection (1) of this section with respect to any return and if the return is timely filed (determined after the application of subsection (1) of this section), then notwithstanding ORS 314.415 or other law, any overpayment of tax with respect to such return shall bear interest from the due date of the return (determined without the application of subsection (1) of this section).

(3) If the federal income tax liability of any taxpayer is forgiven under section 692 of the Internal Revenue Code for any tax period, then the Oregon income tax liability for the same tax period shall be forgiven in the same manner. [1991 c.177 §4; 1997 c.839 §63; 1999 c.224 §10]

314.875 [1995 c.780 §2; repealed by 1999 c.532 §3]

PENALTIES

314.990 [Repealed by 1953 c.310 §3]

314.991 Penalties. (1) A person or an officer or employee of a corporation or a member or employee of a partnership who violates ORS 314.075 is liable to a penalty of not more than $1,000, to be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction, and is also guilty of a Class C felony. The penalties provided in this subsection shall be additional to all other penalties in this chapter.

(2) Violation of ORS 314.835 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [1957 c.632 §39 (enacted in lieu of 316.990 and 317.990); 1971 c.682 §3; 1973 c.402 §26; 1981 c.724 §1]