

A-Engrossed
House Bill 2542

Ordered by the House March 29
Including House Amendments dated March 29

Sponsored by COMMITTEE ON REVENUE (at the request of Department of Revenue)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes connection date of December 31, 2004, for changes to Internal Revenue Code that are unrelated to definition of taxable income. Adopts connection to 2005 federal law permitting early deduction for tsunami relief contribution.

Authorizes Department of Revenue to adopt rules establishing who may represent taxpayers in proceedings before department. Requires department to model rule after federal regulation establishing who may represent taxpayers before Internal Revenue Service.

Conforms definition of "qualifying child" for tax credit purposes to federal law.

Requires taxpayer that elects to deduct state and local sales taxes for federal tax purposes to make same election for state tax purposes and to add amount deducted to federal taxable income for state tax purposes.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to connection to federal tax law; creating new provisions; amending ORS 305.230, 305.494,
3 305.690, 307.130, 307.147, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 315.262, 316.012,
4 316.099, 317.010 and 317.267; and prescribing an effective date.

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

6 **SECTION 1.** ORS 305.230 is amended to read:

7 305.230. (1) Notwithstanding ORS 9.320:

8 (a) Any person who is qualified to practice law or public accountancy in this state, any person
9 who has been granted active enrollment to practice before the Internal Revenue Service and who
10 is qualified to prepare tax returns in this state or any person who is the authorized employee of a
11 taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer be-
12 fore a tax court magistrate or the Department of Revenue in any conference or proceeding with
13 respect to the administration of any tax.

14 (b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from
15 such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer
16 before a tax court magistrate or the department in any conference or proceeding with respect to the
17 administration of any tax on or measured by net income.

18 (c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue
19 Code, as amended and in effect on December 31, [2002] **2004**, may represent the corporation in any
20 proceeding before a tax court magistrate or the department in the same manner as if the share-
21 holder were a partner and the S corporation were a partnership. The S corporation must designate
22 in writing a tax matters shareholder authorized to represent the S corporation.

23 (d) Any person who is licensed as a real estate broker or principal real estate broker under ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a reg-
2 istered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the
3 department in any conference or proceeding with respect to the administration of any ad valorem
4 property tax.

5 (e) A general partner who has been designated by members of a partnership as their tax matters
6 partner under ORS 305.242 may represent those partners in any conference or proceeding with re-
7 spect to the administration of any tax on or measured by net income.

8 (f) In a small claims procedure, a taxpayer may be represented by any of the persons described
9 in paragraphs (a) to (e) of this subsection or by any other person permitted by the tax court.

10 **(g) Any person authorized under rules adopted by the department may represent a tax-**
11 **payer before the department in any conference or proceeding with respect to any tax. Rules**
12 **adopted under this paragraph, to the extent feasible, shall be consistent with federal law that**
13 **governs representation before the Internal Revenue Service, as federal law is amended and**
14 **in effect on December 31, 2004.**

15 (2) *[No person shall]* **A person may not** be recognized as representing a taxpayer pursuant to
16 this section unless there is first filed with the magistrate or department a written authorization, or
17 unless it appears to the satisfaction of the magistrate or department that the representative does in
18 fact have authority to represent the taxpayer. A person recognized as an authorized representative
19 under rules or procedures adopted by the tax court shall be considered an authorized representative
20 by the department.

21 (3) A taxpayer represented by someone other than an attorney is bound by all things done by
22 the authorized representative, and may not thereafter claim any proceeding was legally defective
23 because the taxpayer was not represented by an attorney.

24 (4) Prior to the holding of a conference or proceeding before the tax court magistrate or de-
25 partment, written notice shall be given by the magistrate or department to the taxpayer of the
26 provisions of subsections (1)(f) and (3) of this section.

27 **SECTION 2.** ORS 305.494 is amended to read:

28 305.494. Notwithstanding ORS 9.320, any shareholder of an S corporation as defined in section
29 1361 of the Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**, may
30 represent the corporation in any proceeding before the Oregon Tax Court in the same manner as
31 if the shareholder were a partner and the S corporation were a partnership.

32 **SECTION 3.** ORS 305.690 is amended to read:

33 305.690. As used in ORS 305.690 to 305.753, unless the context otherwise requires:

34 (1) "Biennial years" means the two income tax years of individual taxpayers that begin in the
35 two calendar years immediately following the calendar year in which a list is certified under ORS
36 305.715.

37 (2) "Commission" means the Oregon Charitable Checkoff Commission.

38 (3) "Department" means the Department of Revenue.

39 (4) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect
40 on December 31, [2002] **2004**.

41 **SECTION 4.** ORS 307.130 is amended to read:

42 307.130. (1) Upon compliance with ORS 307.162, the following property owned or being pur-
43 chased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable
44 and scientific institutions shall be exempt from taxation:

45 (a) Except as provided in ORS 748.414, only such real or personal property, or proportion

1 thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or
2 scientific work carried on by such institutions.

3 (b) Parking lots used for parking or any other use as long as that parking or other use is per-
4 mitted without charge for no fewer than 355 days during the tax year.

5 (c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including
6 inventory. As used in this subsection, "rehabilitation facility" means either those facilities defined
7 in ORS 344.710 or facilities which provide physically, mentally or emotionally disabled individuals
8 with occupational rehabilitation activities of an educational or therapeutic nature, even if
9 remuneration is received by the individual.

10 (d) All real and personal property of a retail store dealing exclusively in donated inventory,
11 where the inventory is distributed without cost as part of a welfare program or where the proceeds
12 of the sale of any inventory sold to the general public are used to support a welfare program. As
13 used in this subsection, "welfare program" means the providing of food, shelter, clothing or health
14 care, including dental service, to needy persons without charge.

15 (e) All real and personal property of a retail store if:

16 (A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

17 (B) The individuals who operate the retail store are all individuals who work as volunteers; and

18 (C) The inventory is either distributed without charge as part of a welfare program, or sold to
19 the general public and the sales proceeds used exclusively to support a welfare program. As used
20 in this paragraph, "primarily" means at least one-half of the inventory.

21 (f) The real and personal property of an art museum that is used in conjunction with the public
22 display of works of art or used to educate the public about art, but not including any portion of the
23 art museum's real or personal property that is used to sell, or hold out for sale, works of art, re-
24 productions of works of art or other items to be sold to the public.

25 (g) All real and personal property of a volunteer fire department that is used in conjunction with
26 services and activities for providing fire protection to all residents within a fire response area.

27 (2) An art museum or institution shall not be deprived of an exemption under this section solely
28 because its primary source of funding is from one or more governmental entities.

29 (3) An institution shall not be deprived of an exemption under this section because its purpose
30 or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

31 (4) As used in this section:

32 (a) "Art museum" means a nonprofit corporation organized to display works of art to the public.

33 (b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect
34 on December 31, [2002] **2004**.

35 (c) "Nonprofit corporation" means a corporation that:

36 (A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter
37 65; or

38 (B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

39 (d) "Volunteer fire department" means a nonprofit corporation organized to provide fire pro-
40 tection services in a specific response area.

41 **SECTION 5.** ORS 307.147 is amended to read:

42 307.147. (1) For purposes of this section:

43 (a) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect
44 on December 31, [2002] **2004**.

45 (b) "Nonprofit corporation" means a corporation that:

1 (A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter
2 65; or

3 (B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

4 (c) "Senior services center" means property that:

5 (A) Is owned or being purchased by a nonprofit corporation; and

6 (B) Is actually and exclusively used to provide services and activities (including parking) pri-
7 marily to or for persons over 50 years of age; and

8 (C) Is open generally to all persons over 50 years of age; and

9 (D) Is not used primarily for fund-raising activities; and

10 (E) Is not a residential or dwelling place.

11 (2) Upon compliance with ORS 307.162, a senior services center is exempt from ad valorem
12 property taxation.

13 **SECTION 6.** ORS 310.140 is amended to read:

14 310.140. The Legislative Assembly finds that section 11b, Article XI of the Oregon Constitution,
15 was drafted by citizens and placed before the voters of the State of Oregon by initiative petition.
16 Section 11b, Article XI of the Oregon Constitution, uses terms that do not have established legal
17 meanings and require definition by the Legislative Assembly. Section 11b, Article XI of the Oregon
18 Constitution, was amended by section 11 (11), Article XI of the Oregon Constitution. This section is
19 intended to interpret the terms of section 11b, Article XI of the Oregon Constitution, as originally
20 adopted and as amended by section 11 (11), Article XI of the Oregon Constitution, consistent with
21 the intent of the people in adopting these provisions, so that the provisions of section 11b, Article
22 XI of the Oregon Constitution, may be given effect uniformly throughout the State of Oregon, with
23 minimal confusion and misunderstanding by citizens and affected units of government. As used in the
24 revenue and tax laws of this state, and for purposes of section 11b, Article XI of the Oregon Con-
25 stitution:

26 (1) "Actual cost" means all direct or indirect costs incurred by a government unit in order to
27 deliver goods or services or to undertake a capital construction project. The "actual cost" of pro-
28 viding goods or services to a property or property owner includes the average cost or an allocated
29 portion of the total amount of the actual cost of making a good or service available to the property
30 or property owner, whether stated as a minimum, fixed or variable amount. "Actual cost" includes,
31 but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition,
32 permits, engineering, financing, reasonable program delinquencies, return on investment, required
33 fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, re-
34 pair or replacement and debt service, including debt service payments or payments into reserve ac-
35 counts for debt service and payment of amounts necessary to meet debt service coverage
36 requirements.

37 (2) "Assessment for local improvement" means any tax, fee, charge or assessment that does not
38 exceed the actual cost incurred by a unit of government for design, construction and financing of
39 a local improvement.

40 (3) "Bonded indebtedness" means any formally executed written agreement representing a
41 promise by a unit of government to pay to another a specified sum of money, at a specified date or
42 dates at least one year in the future.

43 (4) "Capital construction":

44 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any
45 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or

1 contractually obligated to be spent prior to June 20, 1997, means the construction, modification,
2 replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is ex-
3 pected to have a useful life of more than one year, and includes, but is not limited to:

4 (A) Acquisition of land, or a legal interest in land, in conjunction with the capital construction
5 of a structure.

6 (B) Acquisition, installation of machinery or equipment, furnishings or materials that will be-
7 come an integral part of a structure.

8 (C) Activities related to the capital construction, including planning, design, authorizing, issuing,
9 carrying or repaying interim or permanent financing, research, land use and environmental impact
10 studies, acquisition of permits or licenses or other services connected with the construction.

11 (D) Acquisition of existing structures, or legal interests in structures, in conjunction with the
12 capital construction.

13 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any
14 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or
15 contractually obligated to be spent before June 20, 1997, has the meaning given that term in para-
16 graph (a) of this subsection, except that "capital construction":

17 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years
18 or more; and

19 (B) Does not include:

20 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

21 (ii) Supplies and equipment that are not intrinsic to the structure; or

22 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
23 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
24 cause of damage or destruction of the structure.

25 (5) "Capital improvements":

26 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any
27 bonded indebtedness approved by electors before December 5, 1996, that were spent or contractually
28 obligated to be spent before June 20, 1997, means land, structures, facilities, as that term is defined
29 in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.

30 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any
31 bonded indebtedness approved by electors prior to December 5, 1996, that were spent or
32 contractually obligated to be spent before June 20, 1997, has the meaning given that term in para-
33 graph (a) of this subsection, except that "capital improvements":

34 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years
35 or more; and

36 (B) Does not include:

37 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

38 (ii) Supplies and equipment that are not intrinsic to the structure; or

39 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
40 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
41 cause of damage or destruction of the structure.

42 (6) "Direct consequence of ownership" means that the obligation of the owner of property to pay
43 a tax arises solely because that person is the owner of the property, and the obligation to pay the
44 tax arises as an immediate and necessary result of that ownership without respect to any other in-
45 tervening transaction, condition or event.

1 (7)(a) "Exempt bonded indebtedness" means:

2 (A) Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

3 (B) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
4 ments that was issued as a general obligation of the issuing governmental unit on or before No-
5 vember 6, 1990;

6 (C) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
7 ments that was issued as a general obligation of the issuing governmental unit after November 6,
8 1990, with the approval of the electors of the issuing governmental unit; or

9 (D) Bonded indebtedness incurred or to be incurred for capital construction or capital improve-
10 ments, if the issuance of the bonds is approved by voters on or after December 5, 1996, in an election
11 that is in compliance with the voter participation requirements of section 11 (8), Article XI of the
12 Oregon Constitution.

13 (b) "Exempt bonded indebtedness" includes bonded indebtedness issued to refund or refinance
14 any bonded indebtedness described in paragraph (a) of this subsection.

15 (8)(a) "Incurred charge" means a charge imposed by a unit of government on property or upon
16 a property owner that does not exceed the actual cost of providing goods or services and that can
17 be controlled or avoided by the property owner because:

18 (A) The charge is based on the quantity of the goods or services used, and the owner has direct
19 control over the quantity;

20 (B) The goods or services are provided only on the specific request of the property owner; or

21 (C) The goods or services are provided by the government unit only after the individual property
22 owner has failed to meet routine obligations of ownership of the affected property, and such action
23 is deemed necessary by an appropriate government unit to enforce regulations pertaining to health
24 or safety.

25 (b) For purposes of this subsection, an owner of property may control or avoid an incurred
26 charge if the owner is capable of taking action to affect the amount of a charge that is or will be
27 imposed or to avoid imposition of a charge even if the owner must incur expense in so doing.

28 (c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control
29 over the quantity of goods or services if the owner of property has the ability, whether or not that
30 ability is exercised, to determine the quantity of goods or services provided or to be provided.

31 (9)(a) "Local improvement" means a capital construction project, or part thereof, undertaken by
32 a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance or resol-
33 ution prescribing the procedure to be followed in making local assessments for benefits from a local
34 improvement upon the lots that have been benefited by all or a part of the improvement:

35 (A) That provides a special benefit only to specific properties or rectifies a problem caused by
36 specific properties;

37 (B) The costs of which are assessed against those properties in a single assessment upon the
38 completion of the project; and

39 (C) For which the property owner may elect to make payment of the assessment plus appropriate
40 interest over a period of at least 10 years.

41 (b) For purposes of paragraph (a) of this subsection, the status of a capital construction project
42 as a local improvement is not affected by the accrual of a general benefit to property other than the
43 property receiving the special benefit.

44 (10) "Maintenance and repairs, the need for which could be reasonably anticipated":

45 (a) Means activities, the type of which may be deducted as an expense under the provisions of

1 the federal Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**, that keep
2 the property in ordinarily efficient operating condition and that do not add materially to the value
3 of the property nor appreciably prolong the life of the property;

4 (b) Does not include maintenance and repair of property that is required by damage, destruction
5 or defect in design, or that was otherwise not reasonably expected at the time the property was
6 constructed or acquired, or the addition of material that is in the nature of the replacement of
7 property and that arrests the deterioration or appreciably prolongs the useful life of the property;
8 and

9 (c) Does not include street and highway construction, overlay and reconstruction.

10 (11) "Projected useful life" means the useful life, as reasonably estimated by the unit of gov-
11 ernment undertaking the capital construction or capital improvement project, beginning with the
12 date the property was acquired, constructed or reconstructed and based on the property's condition
13 at the time the property was acquired, constructed or reconstructed.

14 (12) "Routine obligations of ownership" means a standard of operation, maintenance, use or care
15 of property established by law, or if established by custom or common law, a standard that is rea-
16 sonable for the type of property affected.

17 (13) "Single assessment" means the complete assessment process, including preassessment, as-
18 sessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a
19 local ordinance or resolution that provides the procedure to be followed in making local assessments
20 for benefits from a local improvement upon lots that have been benefited by all or part of the im-
21 provement.

22 (14) "Special benefit only to specific properties" shall have the same meaning as "special and
23 peculiar benefit" as that term is used in ORS 223.389.

24 (15) "Specific request" means:

25 (a) An affirmative act by a property owner to seek or obtain delivery of goods or services;

26 (b) An affirmative act by a property owner, the legal consequence of which is to cause the de-
27 livery of goods or services to the property owner; or

28 (c) Failure of an owner of property to change a request for goods or services made by a prior
29 owner of the property.

30 (16) "Structure" means any temporary or permanent building or improvement to real property
31 of any kind that is constructed on or attached to real property, whether above, on or beneath the
32 surface.

33 (17) "Supplies and equipment intrinsic to a structure" means the supplies and equipment that
34 are necessary to permit a structure to perform the functions for which the structure was con-
35 structed, or that will, upon installation, constitute fixtures considered to be part of the real property
36 that is comprised, in whole or part, of the structure and land supporting the structure.

37 (18) "Tax on property" means any tax, fee, charge or assessment imposed by any government
38 unit upon property or upon a property owner as a direct consequence of ownership of that property,
39 but does not include incurred charges or assessments for local improvements. As used in this sub-
40 section, "property" means real or tangible personal property, and intangible property that is part
41 of a unit of real or tangible personal property to the extent that such intangible property is subject
42 to a tax on property.

43 **SECTION 7.** ORS 310.630 is amended to read:

44 310.630. As used in ORS 310.630 to 310.706:

45 (1) "Contract rent" means rental paid to the landlord for the right to occupy a homestead, in-

1 cluding the right to use the personal property located therein. "Contract rent" does not include
2 rental paid for the right to occupy a homestead that is exempt from taxation, unless payments in lieu
3 of taxes of 10 percent or more of the rental exclusive of fuel and utilities are made on behalf of the
4 homestead. "Contract rent" does not include advanced rental payments for another period and rental
5 deposits, whether or not expressly set out in the rental agreement, or payments made to a nonprofit
6 home for the elderly described in ORS 307.375. If a landlord and tenant have not dealt with each
7 other at arm's length, and the Department of Revenue is satisfied that the contract rent charged
8 was excessive, it may adjust the contract rent to a reasonable amount for purposes of ORS 310.630
9 to 310.706.

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

11 (3) "Fuel and utility payments" includes payments for heat, lights, water, sewer and garbage
12 made solely to secure those commodities or services for the homestead of the taxpayer. "Fuel and
13 utility payments" does not include telephone service.

14 (4) "Gross rent" means contract rent paid plus the fuel and utility payments made for the
15 homestead in addition to the contract rent, during the calendar year for which the claim is filed.

16 (5) "Homestead" means the taxable principal dwelling located in Oregon, either real or personal
17 property, rented by the taxpayer, and the taxable land area of the tax lot upon which it is built.

18 (6) "Household" means the taxpayer, the spouse of the taxpayer and all other persons residing
19 in the homestead during any part of the calendar year for which a claim is filed.

20 (7) "Household income" means the aggregate income of the taxpayer and the spouse of the tax-
21 payer who reside in the household, that was received during the calendar year for which the claim
22 is filed. "Household income" includes payments received by the taxpayer or the spouse of the tax-
23 payer under the federal Social Security Act for the benefit of a minor child or minor children who
24 are members of the household.

25 (8) "Income" means "adjusted gross income" as defined in the federal Internal Revenue Code,
26 as amended and in effect on December 31, [2002] **2004**, even when the amendments take effect or
27 become operative after that date, relating to the measurement of taxable income of individuals, es-
28 tates and trusts, with the following modifications:

29 (a) There shall be added to adjusted gross income the following items of otherwise exempt in-
30 come:

31 (A) The gross amount of any otherwise exempt pension less return of investment, if any.

32 (B) Child support received by the taxpayer.

33 (C) Inheritances.

34 (D) Gifts and grants, the sum of which are in excess of \$500 per year.

35 (E) Amounts received by a taxpayer or spouse of a taxpayer for support from a parent who is
36 not a member of the taxpayer's household.

37 (F) Life insurance proceeds.

38 (G) Accident and health insurance proceeds, except reimbursement of incurred medical expenses.

39 (H) Personal injury damages.

40 (I) Sick pay which is not included in federal adjusted gross income.

41 (J) Strike benefits excluded from federal gross income.

42 (K) Worker's compensation, except for reimbursement of medical expense.

43 (L) Military pay and benefits.

44 (M) Veteran's benefits.

45 (N) Payments received under the federal Social Security Act which are excluded from federal

- 1 gross income.
- 2 (O) Welfare payments, except as follows:
- 3 (i) Payments for medical care, drugs and medical supplies, if the payments are not made directly
- 4 to the welfare recipient;
- 5 (ii) In-home services authorized and approved by the Department of Human Services; and
- 6 (iii) Direct or indirect reimbursement of expenses paid or incurred for participation in work or
- 7 training programs.
- 8 (P) Nontaxable dividends.
- 9 (Q) Nontaxable interest not included in federal adjusted gross income.
- 10 (R) Rental allowance paid to a minister that is excluded from federal gross income.
- 11 (S) Income from sources without the United States that is excluded from federal gross income.
- 12 (b) Adjusted gross income shall be increased due to the disallowance of the following deductions:
- 13 (A) The amount of the net loss, in excess of \$1,000, from all dispositions of tangible or intangible
- 14 properties.
- 15 (B) The amount of the net loss, in excess of \$1,000, from the operation of a farm or farms.
- 16 (C) The amount of the net loss, in excess of \$1,000, from all operations of a trade or business,
- 17 profession or other activity entered into for the production or collection of income.
- 18 (D) The amount of the net loss, in excess of \$1,000, from tangible or intangible property held for
- 19 the production of rents, royalties or other income.
- 20 (E) The amount of any net operating loss carryovers or carrybacks included in federal adjusted
- 21 gross income.
- 22 (F) The amount, in excess of \$5,000, of the combined deductions or other allowances for depre-
- 23 ciation, amortization or depletion.
- 24 (G) The amount added or subtracted, as required within the context of this section, for adjust-
- 25 ments made under ORS 316.680 (2)(d) and 316.707 to 316.737.
- 26 (c) "Income" does not include any of the following:
- 27 (A) Any governmental grant which must be used by the taxpayer for rehabilitation of the
- 28 homestead of the taxpayer.
- 29 (B) The amount of any payments made pursuant to ORS 310.630 to 310.706.
- 30 (C) Any refund of Oregon personal income taxes that were imposed under ORS chapter 316.
- 31 (9) "Payments for heat" means those payments made to secure the commodities or services to
- 32 be used as the principal source of heat for the homestead of the taxpayer and includes payments for
- 33 natural gas, oil, firewood, coal, sawdust, electricity, steam or other materials that are capable of use
- 34 as a primary source of heat for the homestead.
- 35 (10) "Statement of gross rent" means a declaration by the applicant, under penalties of false
- 36 swearing, that the amount of contract rent and fuel and utility payments designated is the actual
- 37 amount both incurred and paid during the year for which elderly rental assistance is claimed.
- 38 (11) "Taxpayer" means an individual who is a resident of this state on December 31 of the year
- 39 for which elderly rental assistance is claimed and whose homestead, as of the same December 31
- 40 and during all or a portion of the year ending on the same December 31, is rented and while rented
- 41 is the subject, directly or indirectly, of property tax levied by this state or a political subdivision
- 42 or of payments made in lieu of taxes.
- 43 **SECTION 8.** ORS 310.800 is amended to read:
- 44 310.800. (1) As used in this section:
- 45 (a) "Authorized representative" means a senior citizen who is authorized by a tax-exempt entity

1 to perform charitable or public service on behalf of a senior citizen who has entered into a contract
2 under subsection (2) of this section.

3 (b) "Homestead" means an owner-occupied principal residence.

4 (c) "Senior citizen" means a person who is 60 years of age or older.

5 (d) "Tax-exempt entity" means an entity that is exempt from federal income taxes under section
6 501 (c) of the Internal Revenue Code, as amended and in effect on December 31, [2002] **2004**.

7 (e) "Taxing unit" means any county, city or common or union high school district, community
8 college service district or community college district within this state with authority to impose ad
9 valorem property taxes.

10 (2) A tax-exempt entity may establish a property tax work-off program pursuant to which a
11 senior citizen may contract to perform charitable or public service in consideration of payment of
12 property taxes extended against the homestead of the senior citizen and billed to the senior citizen.
13 For purposes of ORS chapters 316 and 656, and notwithstanding ORS 314.013 or 670.600 or other
14 law, a senior citizen who enters into a contract under this subsection shall be considered an inde-
15 pendent contractor and not a worker or employee with respect to the services performed pursuant
16 to the contract. Nothing in this section precludes a taxing unit from being considered an employer,
17 for purposes of unemployment compensation under ORS chapter 657, of a senior citizen who enters
18 into a contract under this section.

19 (3) A taxing unit may enter into an agreement with a tax-exempt entity that has established a
20 property tax work-off program. Pursuant to the agreement the taxing unit may accept, as volunteer
21 and public service, the services of a senior citizen who has entered into a contract described in
22 subsection (2) of this section or an authorized representative.

23 (4) A taxing unit may provide funds or make grants to any tax-exempt entity that has established
24 a property tax work-off program for use to carry out the program.

25 **SECTION 9.** ORS 311.689 is amended to read:

26 311.689. (1) Notwithstanding ORS 311.668 or any other provision of ORS 311.666 to 311.701, if
27 the individual or, in the case of two or more individuals electing to defer property taxes jointly, all
28 of the individuals together, or the spouse who has filed a claim under ORS 311.688, has federal ad-
29 justed gross income that exceeds \$32,000 for the tax year that began in the previous calendar year,
30 then for the tax year next beginning, the amount of taxes for which deferral is allowed shall be re-
31 duced by \$0.50 for each dollar of federal adjusted gross income in excess of \$32,000.

32 (2) Prior to June 1 of each year, and notwithstanding ORS 314.835, the Department of Revenue
33 shall review returns filed under ORS chapter 314 and 316 to determine if subsection (1) of this sec-
34 tion is applicable for a homestead for the tax year next beginning. If subsection (1) of this section
35 is applicable, the department shall notify by mail the taxpayer or spouse electing deferral, and the
36 taxes otherwise to be deferred for the tax year next beginning shall be reduced as provided in sub-
37 section (1) of this section or, if federal adjusted gross income in excess of \$32,000 exceeds the
38 amount of property taxes by a factor of two, the property taxes shall not be deferred.

39 (3) If the taxpayer or spouse does not file a return for purposes of ORS chapters 314 and 316
40 and the department has reason to believe that the federal adjusted gross income of the taxpayer or
41 spouse exceeds \$32,000 for the tax year that began in the previous calendar year, the department
42 shall notify by mail the taxpayer or spouse electing deferral. If, within 30 days after the notice is
43 mailed, the taxpayer or spouse does not file a return under ORS chapter 314 or 316 or otherwise
44 satisfy the department that federal adjusted gross income does not exceed \$32,000, the department
45 shall again notify the taxpayer or spouse, and the taxes otherwise to be deferred for the tax year

1 next beginning shall not be deferred.

2 (4) For tax years beginning on or after July 1, 2002, the federal adjusted gross income limit set
3 forth in subsections (1) to (3) of this section shall be recomputed by multiplying \$32,000 by the in-
4 dexing factor described in ORS 311.668 (7)(a)(A), and rounding the amount so computed to the
5 nearest multiple of \$500.

6 (5) Nothing in this section shall affect the continued deferral of taxes that have been deferred
7 for tax years beginning prior to the tax year next beginning or the right to deferral of taxes for a
8 tax year beginning after the tax year next beginning if subsection (1) is not applicable for that tax
9 year for the homestead.

10 (6) As used in this section, "federal adjusted gross income" means federal adjusted gross income
11 of the individual or, in the case of two or more individuals electing to defer property tax jointly, the
12 combined federal adjusted gross income of the individuals, or the federal adjusted gross income of
13 the spouse who has filed a claim under ORS 311.688, all as determined for the tax year beginning
14 in the calendar year prior to which a determination is required under subsection (2) of this section.
15 "Federal adjusted gross income" shall be determined under the Internal Revenue Code, as amended
16 and in effect on December 31, [2002] 2004, without any of the additions, subtractions or other mod-
17 ifications or adjustments required under ORS chapter 314 or 316.

18 (7)(a) If, after an initial determination under this section has been made by the department, upon
19 audit or examination or otherwise, it is discovered that the taxpayer or spouse had federal adjusted
20 gross income in excess of the limitation provided under subsection (1) of this section, the department
21 shall determine the amount of taxes deferred that should not have been deferred and give notice to
22 the taxpayer or spouse of the amount of taxes that should not have been deferred. The provisions
23 of ORS chapters 305 and 314 shall apply to a determination of the department under this section in
24 the same manner as those provisions are applicable to an income tax deficiency. The amount of de-
25 ferred taxes that should not have been deferred shall bear interest from the date paid by the de-
26 partment until paid at the rate established under ORS 305.220 for deficiencies. A deficiency shall
27 not be assessed under this section if notice required under this section is not given to the taxpayer
28 or spouse within three years after the date that the department has paid the deferred taxes to the
29 county. Upon payment of the amount assessed as deficiency, and interest, the department shall ex-
30 ecute a release in the amount of the payment and the release shall be conclusive evidence of the
31 removal and extinguishment of the lien under ORS 311.666 to 311.701 to the extent of the payment.

32 (b) If, after an initial determination under this section has been made by the department, upon
33 claim for refund, audit or examination or otherwise, it is discovered that the taxpayer or spouse had
34 federal adjusted gross income in the amount of or less than the limitation provided under subsection
35 (1) of this section, the department shall determine the amount of taxes deferred that should have
36 been deferred and give notice to the taxpayer or spouse of the amount of taxes that should have
37 been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the
38 department under this section in the same manner as those provisions are applicable to an income
39 tax refund. The amount of the taxes that should have been deferred shall bear interest from the
40 date paid by the taxpayer to the county at the rate established under ORS 305.220 for refunds until
41 paid. Claim for refund under this paragraph must be filed within three years after the earliest date
42 that the taxpayer or spouse is notified by the department that the taxes are not deferred.

43 (8) This section applies to all tax-deferred property, notwithstanding that election to defer taxes
44 is made under ORS 311.666 to 311.701 before or after October 3, 1989.

45 **SECTION 10.** ORS 314.011 is amended to read:

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

3 (2)(a) As used in this chapter, any term has the same meaning as when used in a comparable
4 context in the laws of the United States relating to federal income taxes, unless a different meaning
5 is clearly required or the term is specifically defined in this chapter.

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

9 (A) On December 31, [2002] **2004**; or

10 *[(B) If related to the definition of taxable income and attributable to a change in the laws of the*
11 *United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable*
12 *to the tax year of the taxpayer.]*

13 *[(c) A reference to the laws of the United States or to the Internal Revenue Code refers to the laws*
14 *of the United States or to the Internal Revenue Code as they are amended and in effect and applicable*
15 *for the tax year of the taxpayer, if the reference relates to:]*

16 *[(A) Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock*
17 *ownership plans, individual retirement accounts (including Roth individual retirement accounts), med-*
18 *ical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or*
19 *tax-exempt savings programs benefiting individuals; or]*

20 *[(B) The allowance and amount of a deduction under section 167 or 168 or another provision of*
21 *the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable as-*
22 *sets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depre-*
23 *ciated or expensed for federal tax purposes.]*

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

26 *[(d)]* (c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures),
27 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410,
28 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, except those
29 described in *[paragraphs (b) and (c)]* **paragraph (b)** of this subsection, any reference in this chapter
30 to the laws of the United States or to the Internal Revenue Code means the laws of the United
31 States relating to income taxes or the Internal Revenue Code as they are amended on or before
32 December 31, [2002] **2004**, even when the amendments take effect or become operative after that
33 date, except where the Legislative Assembly has specifically provided otherwise.

34 (3) Insofar as is practicable in the administration of this chapter, the department shall apply and
35 follow the administrative and judicial interpretations of the federal income tax law. When a pro-
36 vision of the federal income tax law is the subject of conflicting opinions by two or more federal
37 courts, the department shall follow the rule observed by the United States Commissioner of Internal
38 Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of
39 the department to audit the return of any taxpayer or to determine any fact relating to the tax li-
40 ability of any taxpayer.

41 (4) When portions of the Internal Revenue Code incorporated by reference as provided in sub-
42 section (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury,
43 then such rules or regulations shall be regarded as rules adopted by the department under and in
44 accordance with the provisions of this chapter, whenever they are prescribed or amended.

45 (5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in

1 subsection (2) of this section are later corrected by an Act or a Title within an Act of the United
2 States Congress designated as an Act or Title making technical corrections, then notwithstanding
3 the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so
4 corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided
5 in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title
6 (in which case the provisions shall take effect as indicated in the Act or Title), as if originally in-
7 cluded in the provisions of the Act being technically corrected. If, on account of this subsection, any
8 adjustment is required to an Oregon return that would otherwise be prevented by operation of law
9 or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the
10 manner provided under ORS 314.135.

11 (b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an
12 Act or Title.

13 **SECTION 11.** ORS 315.004 is amended to read:

14 315.004. (1) Except when the context requires otherwise, the definitions contained in ORS
15 chapters 314, 316, 317 and 318 are applicable in the construction, interpretation and application of
16 the personal and corporate income and excise tax credits contained in this chapter.

17 (2)(a) For purposes of the tax credits contained in this chapter, any term has the same meaning
18 as when used in a comparable context in the laws of the United States relating to federal income
19 taxes, unless a different meaning is clearly required or the term is specifically defined for purposes
20 of construing, interpreting and applying the credit.

21 (b) With respect to the tax credits contained in this chapter, any reference to the laws of the
22 United States or to the Internal Revenue Code means the laws of the United States relating to in-
23 come taxes or the Internal Revenue Code as they are amended on or before December 31, [2002]
24 **2004**, even when the amendments take effect or become operative after that date.

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

32 (4) When portions of the Internal Revenue Code incorporated by reference as provided in sub-
33 section (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury,
34 then such rules or regulations shall be regarded as rules adopted by the department under and in
35 accordance with the provisions of this chapter, whenever they are prescribed or amended.

36 (5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in
37 subsection (2) of this section are later corrected by an Act or a Title within an Act of the United
38 States Congress designated as an Act or Title making technical corrections, then notwithstanding
39 the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so
40 corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided
41 in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title
42 (in which case the provisions shall take effect as indicated in the Act or Title), as if originally in-
43 cluded in the provisions of the Act being technically corrected. If, on account of this subsection, any
44 adjustment is required to an Oregon return that would otherwise be prevented by operation of law
45 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.

SECTION 12. ORS 315.262 is amended to read:

315.262. (1) As used in this section:

(a) “Child care” means care provided to a qualifying child of the taxpayer for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis, except that the term does not include care provided by:

(A) The child’s parent or guardian, unless the care is provided [*by the parent*] in a certified or registered child care facility; or

(B) [*A child of the taxpayer*] **A person who has a relationship to the taxpayer that is described in section 152(a) of the Internal Revenue Code** who has not yet attained 19 years of age at the close of the tax year.

(b) “Child care expenses” means the costs associated with providing child care to a qualifying child of a qualified taxpayer.

(c) “Earned income” has the meaning given that term in section 32 of the Internal Revenue Code.

(d) “Qualified taxpayer” means a taxpayer:

(A) With at least \$6,000 of earned income for the tax year;

(B) With federal adjusted gross income for the tax year that does not exceed 250 percent of the federal poverty level; and

(C) Who does not have more than the maximum amount of disqualified income under section 32(i) of the Internal Revenue Code that is allowed to a taxpayer entitled to the earned income tax credit for federal tax purposes.

(e) “Qualifying child” [*means a child of the taxpayer*] **has the meaning given that term in section 152 of the Internal Revenue Code except that it is limited to an individual** who is under 13 years of age, or who is a disabled child, as that term is defined in ORS 316.099.

(2) A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer’s child care expenses (rounded to the nearest \$50).

(3) The applicable percentage to be used in calculating the amount of the credit provided in this section shall be determined in accordance with the following table:

Applicable Percentage	Federal Adjusted Gross Income as Percent of Federal Poverty Level
40	200 or less
36	Greater than 200 and less than or equal to 210
32	Greater than 210 and less than or equal to 220
24	Greater than 220 and less than or equal to 230

1	16	Greater than 230 and less than
2		or equal to 240
3	8	Greater than 240 and less than
4		or equal to 250
5	0	Greater than 250 percent
6		of federal poverty level

8
9 (4) The credit shall be claimed on such form and containing such information as may be pre-
10 scribed by the Department of Revenue.

11 (5) In the case of a credit allowed under this section:

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

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

17 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
18 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
19 lowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

20 (d) In the case of a qualified taxpayer who is married, a credit shall be allowed under this sec-
21 tion only if:

22 (A) The taxpayer files a joint return;

23 (B) The taxpayer files a separate return and is legally separated or subject to a separate main-
24 tenance agreement; or

25 (C) The taxpayer files a separate return and the taxpayer and the taxpayer's spouse reside in
26 separate households on the last day of the tax year with the intent of remaining in separate
27 households in the future.

28 (6) If the amount allowable as a credit under this section, when added to the sum of the amounts
29 allowable as payment of tax under ORS 316.187 (withholding), ORS 316.583 (estimated tax), other tax
30 prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chap-
31 ters 314 and 316 for the tax year (reduced by any nonrefundable credits allowable for purposes of
32 ORS chapter 316 for the tax year), the amount of the excess shall be refunded to the taxpayer as
33 provided in ORS 316.502.

34 (7)(a) The minimum amount of earned income a taxpayer must earn in order to be a qualified
35 taxpayer shall be adjusted for tax years beginning in each calendar year by multiplying \$6,000 by
36 the ratio of the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive
37 months ending August 31 of the prior calendar year over the monthly averaged index for the second
38 quarter of the calendar year 1998.

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

42 (c) If any adjustment determined under paragraph (a) of this subsection is not a multiple of \$50,
43 the adjustment shall be rounded to the nearest multiple of \$50.

44 (d) Notwithstanding paragraphs (a) to (c) of this subsection, the adjusted minimum amount of
45 earned income a taxpayer must earn may not exceed the amount an individual would earn if the

1 individual worked 1,040 hours at the minimum wage established under ORS 653.025 and in effect on
 2 January 1 of the calendar year in which begins the tax year of the taxpayer, rounded to the next
 3 lower multiple of \$50.

4 **SECTION 13.** ORS 316.012 is amended to read:

5 316.012. Any term used in this chapter has the same meaning as when used in a comparable
 6 context in the laws of the United States relating to federal income taxes, unless a different meaning
 7 is clearly required or the term is specifically defined in this chapter. Except where the Legislative
 8 Assembly has provided otherwise, any reference in this chapter to the laws of the United States or
 9 to the Internal Revenue Code[:]

10 [(1)] refers to the laws of the United States or to the Internal Revenue Code as they are
 11 amended and in effect:

12 [(a)] (1) On December 31, [2002] **2004**; or

13 [(b) *If related to the definition of taxable income and attributable to a change in the laws of the*
 14 *United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable*
 15 *to the tax year of the taxpayer.*]

16 [(2) *Refers to the laws of the United States or to the Internal Revenue Code as they are amended*
 17 *and in effect and applicable for the tax year of the taxpayer, if the reference relates to:*]

18 [(a) *Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock*
 19 *ownership plans, individual retirement accounts (including Roth individual retirement accounts), med-*
 20 *ical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or*
 21 *tax-exempt savings programs benefiting individuals; or]*

22 [(b) *The allowance and amount of a deduction under section 167 or 168 or another provision of the*
 23 *Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable assets*
 24 *under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depreciated*
 25 *or expensed for federal tax purposes.*]

26 **(2) If related to the definition of taxable income, as applicable to the tax year of the**
 27 **taxpayer.**

28 **SECTION 14.** ORS 316.099 is amended to read:

29 316.099. (1) As used in this section, unless the context requires otherwise:

30 (a) “Early intervention services” means programs of treatment and habilitation designed to ad-
 31 dress a child’s developmental deficits in sensory, motor, communication, self-help and socialization
 32 areas.

33 (b) “Disabled child” means a **qualifying** child [*from the age of identification of the disability to*
 34 *the age of 18*] **under section 152 of the Internal Revenue Code** who has been determined eligible
 35 for early intervention services or is diagnosed for the purposes of special education as being men-
 36 tally retarded, multidisabled, visually impaired, hearing impaired, deaf-blind, orthopedically impaired
 37 or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in
 38 accordance with State Board of Education rules.

39 (c) “Special education” means specially designed instruction to meet the unique needs of a dis-
 40 abled child, including regular classroom instruction, instruction in physical education, home in-
 41 struction and instruction in hospitals, institutions and special schools.

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

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

6 (4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section
 7 may claim the credit on the personal income tax return. However, the claim shall be substantiated
 8 by any proof of entitlement to the credit as may be required by the state board by rule.

9 **SECTION 14a. Section 14b of this 2005 Act is added to and made a part of ORS chapter**
 10 **316.**

11 **SECTION 14b. (1) A taxpayer that elects to deduct state and local sales taxes under**
 12 **section 164(b)(5) of the Internal Revenue Code for federal tax purposes must make the same**
 13 **election for purposes of the tax imposed by this chapter.**

14 **(2) A taxpayer that elects to deduct state and local sales taxes under section 164(b)(5)**
 15 **of the Internal Revenue Code for federal tax purposes shall add the amount deducted to**
 16 **federal taxable income for purposes of the tax imposed by this chapter.**

17 **SECTION 15.** ORS 317.010 is amended to read:

18 317.010. As used in this chapter, unless the context requires otherwise:

19 (1) "Centrally assessed corporation" means every corporation the property of which is assessed
 20 by the Department of Revenue under ORS 308.505 to 308.665.

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

22 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a
 23 group of affiliated corporations under section 1501 of the Internal Revenue Code.

24 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

25 (4) "Doing business" means any transaction or transactions in the course of its activities con-
 26 ducted within the state by a national banking association, or any other corporation; provided, how-
 27 ever, that a foreign corporation whose activities in this state are confined to purchases of personal
 28 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
 29 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
 30 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-
 31 termined as provided in section 1504 of the Internal Revenue Code.

32 (5) "Excise tax" means a tax measured by or according to net income imposed upon national
 33 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing
 34 and business corporations for the privilege of carrying on or doing business in this state.

35 (6) "Financial institution" or "financial corporation" means a bank or trust company organized
 36 under ORS chapter 707, national banking association or production credit association organized
 37 under federal statute, building and loan association, savings and loan association, mutual savings
 38 bank, and any other corporation whose principal business is in direct competition with national and
 39 state banks.

40 [(7) "*Internal Revenue Code*," except where the Legislative Assembly has provided otherwise:]

41 [(a) *Refers to the laws of the United States or to the Internal Revenue Code as they are amended*
 42 *and in effect:*]

43 [(A) *On December 31, 2002; or*]

44 [(B) *If related to the definition of taxable income and attributable to a change in the laws of the*
 45 *United States or in the Internal Revenue Code that is enacted after December 31, 2005, as applicable*

1 *to the tax year of the taxpayer.]*

2 *[(b) Refers to the laws of the United States or to the Internal Revenue Code as they are amended*
3 *and in effect and applicable for the tax year of the taxpayer, if the reference relates to:]*

4 *[(A) Pension, profit-sharing or stock bonus plans, deferred compensation plans, employee stock*
5 *ownership plans, individual retirement accounts (including Roth individual retirement accounts), med-*
6 *ical savings accounts, education IRAs, qualified tuition savings programs or other tax-deferred or*
7 *tax-exempt savings programs benefiting individuals; or]*

8 *[(B) The allowance and amount of a deduction under section 167 or 168 or another provision of*
9 *the Internal Revenue Code, to the allowance and amount of a deduction for expensing depreciable as-*
10 *sets under section 179 of the Internal Revenue Code or to the adjusted basis of an asset that is depre-*
11 *ciated or expensed for federal tax purposes.]*

12 **(7) “Internal Revenue Code,” except where the Legislative Assembly has provided other-**
13 **wise, refers to the laws of the United States or to the Internal Revenue Code as they are**
14 **amended and in effect:**

15 **(a) On December 31, 2004; or**

16 **(b) If related to the definition of taxable income, as applicable to the tax year of the**
17 **taxpayer.**

18 (8) “Oregon taxable income” means taxable income, less the deduction allowed under ORS
19 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
20 ORS 317.650 to 317.665.

21 (9) “Oregon net loss” means taxable loss, except as otherwise provided with respect to insurers
22 in subsection (11) of this section and ORS 317.650 to 317.665.

23 (10) “Taxable income or loss” means the taxable income or loss determined, or in the case of a
24 corporation for which no federal taxable income or loss is determined, as would be determined, un-
25 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States
26 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,
27 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-
28 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or
29 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a
30 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of
31 income from transactions or activities carried on both within and without the state) applies, to
32 derive taxable income or loss, the following shall occur:

33 (a) From the amount otherwise determined under this subsection, subtract nonbusiness income,
34 or add nonbusiness loss, whichever is applicable.

35 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-
36 portionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The
37 resulting product shall be Oregon apportioned income or loss.

38 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this
39 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to
40 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to
41 314.645. The resulting figure is “taxable income or loss” for those corporations carrying on taxable
42 transactions or activities both within and without Oregon.

43 (11) As used in ORS 317.122 and 317.650 to 317.665, “insurer” means any domestic, foreign or
44 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-
45 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting

1 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or
2 interinsurance exchange. However, "insurer" does not include title insurers or health care service
3 contractors operating pursuant to ORS 750.005 to 750.095.

4 **SECTION 15a. Section 15b of this 2005 Act is added to and made a part of ORS chapter**
5 **317.**

6 **SECTION 15b. (1) A taxpayer that elects to deduct state and local sales taxes under**
7 **section 164(b)(5) of the Internal Revenue Code for federal tax purposes must make the same**
8 **election for purposes of the tax imposed by this chapter.**

9 **(2) A taxpayer that elects to deduct state and local sales taxes under section 164(b)(5)**
10 **of the Internal Revenue Code for federal tax purposes shall add the amount deducted to**
11 **federal taxable income for purposes of the tax imposed by this chapter.**

12 **SECTION 16. (1) Except as provided in subsections (2) and (3) of this section, the**
13 **amendments to statutes by sections 1 to 14 and 15 of this 2005 Act and sections 14b and 15b**
14 **of this 2005 Act apply to transactions or activities occurring on or after January 1, 2005, in**
15 **tax years beginning on or after January 1, 2005.**

16 **(2) The effective and applicable dates, and the exceptions, special rules and coordination**
17 **with the Internal Revenue Code, as amended, relative to those dates, contained in the Vet-**
18 **erans Benefits Act of 2002 (P.L. 107-330), the Jobs and Growth Tax Relief Reconciliation Act**
19 **of 2003 (P.L. 108-27), the Military Family Tax Relief Act of 2003 (P.L. 108-121), the Working**
20 **Families Tax Relief Act of 2004 (P.L. 108-311), the American Jobs Creation Act of 2004 (P.L.**
21 **108-357) and other federal law amending the Internal Revenue Code apply for Oregon personal**
22 **income and corporate excise and income tax purposes, to the extent they can be made ap-**
23 **licable, in the same manner as they are applied under the Internal Revenue Code and re-**
24 **lated federal law.**

25 **(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before**
26 **January 1, 2005, and the deficiency or any portion thereof is attributable to any retroactive**
27 **treatment under the amendments to statutes by sections 1 to 14 and 15 of this 2005 Act and**
28 **sections 14b and 15b of this 2005 Act, then any interest or penalty assessed under ORS**
29 **chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall**
30 **be canceled.**

31 **(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2005, and**
32 **the refund or any portion thereof is due the taxpayer on account of any retroactive treat-**
33 **ment under the amendments to statutes by sections 1 to 14 and 15 of this 2005 Act and**
34 **sections 14b and 15b of this 2005 Act, then notwithstanding ORS 305.270 or 314.415 or other**
35 **law, the refund or portion thereof shall be paid without interest.**

36 **(c) Any changes required because of the amendments to statutes by sections 1 to 14 and**
37 **15 of this 2005 Act and sections 14b and 15b of this 2005 Act for a tax year beginning before**
38 **January 1, 2005, shall be made by filing an amended return within the time prescribed by law.**

39 **(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection,**
40 **the Department of Revenue shall make any changes under paragraph (c) of this subsection**
41 **on the return to which the changes relate within the period specified for issuing a notice of**
42 **deficiency or claiming a refund as otherwise provided by law with respect to that return, or**
43 **within one year after a return for a tax year beginning on or after January 1, 2005, and be-**
44 **fore January 1, 2006, is filed, whichever period expires later.**

45 **SECTION 17. ORS 317.267 is amended to read:**

1 317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income
2 amounts received as dividends from corporations deducted for federal purposes pursuant to section
3 243 or 245 of the Internal Revenue Code, except **section 245(c)** of the Internal Revenue Code,
4 amounts paid as dividends by a public utility or telecommunications utility and deducted for federal
5 purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under
6 Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by
7 members of an affiliated group that are eliminated from a consolidated federal return pursuant to
8 ORS 317.715 (2).

9 (2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of
10 this section, there shall be subtracted from federal taxable income an amount equal to 70 percent
11 of dividends (determined without regard to section 78 of the Internal Revenue Code) received or
12 deemed received from corporations if such dividends are included in federal taxable income. How-
13 ever:

14 (a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of
15 the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the
16 same conditions and in same amount as the dividends received deduction otherwise allowable for
17 federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

18 (b) No subtraction shall be allowed under this subsection if the dividends received or deemed
19 received are from the Oregon Capital Corporation established pursuant to ORS 284.750 to 284.770.

20 (c) In the case of any dividend received from a 20 percent owned corporation, as defined in
21 section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting “80
22 percent” for “70 percent.”

23 **(d) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the**
24 **Internal Revenue Code may not be treated as a dividend for purposes of this subsection.**

25 **(e) If a dividends received deduction is not allowed for federal tax purposes because of**
26 **section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this**
27 **subsection for received dividends that are described in section 246(a) or (c) of the Internal**
28 **Revenue Code.**

29 (3) There shall be excluded from the sales factor of any apportionment formula employed to at-
30 tribute income to this state any amount subtracted from federal taxable income under subsection (2)
31 of this section.

32 **SECTION 18. The amendments to ORS 317.267 by section 17 of this 2005 Act apply to tax**
33 **years beginning on or after January 1, 2006.**

34 **SECTION 18a. Notwithstanding ORS 317.267, a dividends received deduction allowed under**
35 **section 965 of the Internal Revenue Code for federal tax purposes shall be allowed in deter-**
36 **mining taxable income under ORS chapter 317 for the same tax year as the deduction is al-**
37 **lowed for federal tax purposes.**

38 **SECTION 18b. Section 18a of this 2005 Act is repealed on January 2, 2008.**

39 **SECTION 18c. Nothing in the repeal of section 18a of this 2005 Act by section 18b of this**
40 **2005 Act affects the allowance of a deduction under section 18a of this 2005 Act for a tax year**
41 **beginning before January 1, 2007.**

42 **SECTION 19. Section 20 of this 2005 Act is added to and made a part of ORS chapter 314.**

43 **SECTION 20. Public Law 109-1 applies for purposes of computing federal taxable income**
44 **for Oregon tax purposes under ORS chapter 316, 317 or 318.**

45 **SECTION 21. This 2005 Act takes effect on the 91st day after the date on which the**

1 **regular session of the Seventy-third Legislative Assembly adjourns sine die.**

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