

## CHAPTER 114

AN ACT

SB 1534

Relating to taxation; creating new provisions; amending ORS 316.043, 316.099, 316.127, 316.202, 316.693, 316.749, 316.758, 317.283 and 323.455 and section 7, chapter 753, Oregon Laws 2013, and section 7, chapter 5, Oregon Laws 2013 (special session); and prescribing an effective date.

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

**SECTION 1.** ORS 316.693 is amended to read:

316.693. (1)(a) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount paid for medical care of an individual and not compensated for by insurance or otherwise, as described in section [213(a)] **213** of the Internal Revenue Code, if the individual meets the age requirement for the tax year under subsection (2) of this section. The amount subtracted under this section may not exceed:

(A) \$3,600 for a joint return if both spouses meet the age requirement for the tax year under subsection (2) of this section, with no more than \$1,800 attributable to the medical care of either spouse;

(B) \$1,800 for a joint return if only one spouse meets the age requirement for the tax year under subsection (2) of this section, with no more than \$1,800 attributable to the medical care of that spouse; or

(C) \$1,800 for each individual filing a return who meets the age requirement for the tax year under subsection (2) of this section, with no more than \$1,800 attributable to the medical care of that individual.

(b) The subtraction under this section may not include amounts that have previously been deducted in the calculation of Oregon taxable income.

(2) The subtraction under this section is available only if the individual has attained the following age before the close of the tax year:

(a) For tax years beginning on or after January 1, 2013, and before January 1, 2014, an individual must attain 62 years of age before the close of the tax year.

(b) For tax years beginning on or after January 1, 2014, and before January 1, 2016, an individual must attain 63 years of age before the close of the tax year.

(c) For tax years beginning on or after January 1, 2016, and before January 1, 2018, an individual must attain 64 years of age before the close of the tax year.

(d) For tax years beginning on or after January 1, 2018, and before January 1, 2020, an individual must attain 65 years of age before the close of the tax year.

(e) For tax years beginning on or after January 1, 2020, an individual must attain 66 years of age before the close of the tax year.

(3) Notwithstanding the amount calculated under subsection (1) of this section, the maximum amount allowed for a subtraction under this section may not exceed:

(a) \$1,400 per individual, if the federal adjusted gross income of the taxpayer for the tax year is \$50,000 or more and less than \$100,000 for a taxpayer who files a return jointly, as a head of household or as a surviving spouse, or for all other taxpayers, \$25,000 or more and less than \$50,000.

(b) \$1,000 per individual, if the federal adjusted gross income of the taxpayer for the tax year is \$100,000 or more [and less than] **but does not exceed** \$200,000 for a taxpayer who files a return jointly, as a head of household or as a surviving spouse, or for all other taxpayers, \$50,000 or more [and less than] **but does not exceed** \$100,000.

(4) A subtraction may not be claimed under this section if the federal adjusted gross income of the taxpayer for the tax year exceeds:

(a) \$200,000 for joint return filers, a surviving spouse or a head of household; or

(b) \$100,000 for an individual who is not a married individual and is not a surviving spouse, or is a married individual who files a separate return.

**SECTION 2.** ORS 317.283 is amended to read:

317.283. (1) To derive Oregon taxable income, federal taxable income shall be modified to the extent necessary to not recognize for Oregon tax purposes any transaction between the taxpayer and a related domestic international sales corporation. The taxpayer shall be considered to have entered directly into any transactions with third parties that are treated for federal income tax purposes as having been entered into by a related domestic international sales corporation. To satisfy the requirements of this section:

(a) No deduction shall be allowed to any taxpayer for any payment to a related domestic international sales corporation;

(b) No income or expense that would be attributed to a taxpayer but for the provisions of sections 991 to 996 of the Internal Revenue Code shall be treated as attributable to a related domestic international sales corporation; and

(c) No deduction shall be allowed to a taxpayer for interest on DISC-related deferred tax liability paid pursuant to section 995(f) of the Internal Revenue Code.

(2) Notwithstanding subsection (1) of this section, **if a domestic international sales corporation is formed on or before January 1, 2014:**

(a) A tax shall be imposed under this chapter at a rate of 2.5 percent on any commission received by [a] **the domestic international sales corporation on or after January 1, 2013;** and

(b) A deduction shall be allowed for commission payments to [a] **the domestic international sales corporation**, *if the domestic international sales corporation is formed on or before January 1, 2014* **made on or after January 1, 2013, if the tax in**

**paragraph (a) of this subsection is imposed on the commission.**

(3) As used in this section, “domestic international sales corporation” means a domestic international sales corporation as defined in section 992 of the Internal Revenue Code.

**SECTION 3.** ORS 316.749 is amended to read:

316.749. (1) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any dividend received by the taxpayer **on or after January 1, 2013, from a domestic international sales corporation formed on or before January 1, 2014, and subject to the tax imposed under ORS 317.283 (2)(a).**

(2) As used in this section, “domestic international sales corporation” means a domestic international sales corporation as defined in section 992 of the Internal Revenue Code.

**SECTION 4.** Section 7, chapter 5, Oregon Laws 2013 (special session), is amended to read:

**Sec. 7.** (1) [Sections 4 and 6c of this 2013 special session Act] **ORS 316.693** and the amendments to ORS 316.085, 316.695, 317.061[, 317.283] and 317.635 by sections 1, 2, 5[, and 6 [and 6a of this 2013 special session Act], **chapter 5, Oregon Laws 2013 (special session),** apply to tax years beginning on or after January 1, 2013.

(2) The amendments to ORS 315.266 by section 6d [of this 2013 special session Act], **chapter 5, Oregon Laws 2013 (special session),** apply to tax years beginning on or after January 1, 2014.

**SECTION 5.** ORS 323.455 is amended to read:

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. The department may pay expenses for administration and enforcement of ORS 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account. After the payment of administrative and enforcement expenses and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

(2) The moneys appropriated to cities and counties under subsection (1) of this section shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such

apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under [subsection (1)] **subsections (1) and (5)(b)** of this section, 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for the medical assistance program under ORS chapter 414, or to funding the maintenance of the benefits available under the program, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

(5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, the balance shall be credited as follows:

(a) 76.92 percent to the Oregon Health Authority Fund established by ORS 413.101, for the purpose of providing the services described in ORS 430.630.

(b) 23.08 percent [according to the distribution formula provided in subsection (4) of this section] **to the General Fund.**

**SECTION 6.** ORS 316.043 is amended to read:

316.043. (1) As used in this section:

(a) **“Material participation” has the meaning given that term in section 469 of the Internal Revenue Code.**

[(a)] (b) “Nonpassive income” means income other than income from passive activity as determined under section 469 of the Internal Revenue Code. “Nonpassive income” does not include wages, interest, dividends or capital gains.

[(b)] (c) “Nonpassive loss” means loss other than loss from passive activity as determined under section 469 of the Internal Revenue Code.

(2) If a taxpayer that meets the conditions of subsection (6) of this section has nonpassive income attributable to any partnership or S corporation after reduction for nonpassive losses, that portion of the taxpayer’s income that meets the conditions of subsection (6) of this section shall be taxed at [a rate of]:

(a) **The rate applicable under ORS 316.037; or**  
**(b) At the election of the taxpayer, a rate of:**

[(a)(A)] **(A)** Seven percent of the first \$250,000 of taxable income, or fraction thereof;

**(B)** Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding \$500,000;

(C) Seven and six-tenths percent of taxable income exceeding \$500,000 but not exceeding \$1 million;

(D) Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;

(E) Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and

(F) Nine and nine-tenths percent of taxable income exceeding \$5 million; or].

*[(b) At the election of the taxpayer, the rate otherwise applicable under ORS 316.037.]*

(3) The reduced rates allowed under subsection [(2)] **(2)(b)** of this section may be adjusted as provided in ORS 316.044.

(4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which the taxpayer uses the reduced rates allowed under subsection [(2)] **(2)(b)** of this section shall be any depreciation adjustment directly related to the partnership or S corporation.

(5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection [(2)] **(2)(b)** of this section, the calculation of income shall be substantiated on a form prescribed by the Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other time and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates available under subsection [(2)] **(2)(b)** of this section may not join in the filing of a composite return under ORS 314.778.

(6) The rates listed in subsection [(2)] **(2)(b)** of this section apply to nonpassive income attributable to a partnership or S corporation only if:

(a) The taxpayer materially participates in *[the day-to-day operations of]* the trade or business;

(b) The partnership or S corporation employs at least one person who is not an owner, member or limited partner of the partnership or S corporation; and

(c) At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of this subsection and who are employed by the partnership or S corporation. In determining whether this requirement is met, only hours worked in a week in which a worker works at least 30 hours may be considered.

(7)(a) A nonresident may apply the reduced rates allowed under subsection [(2)] **(2)(b)** of this section only to income earned in Oregon.

(b) A part-year resident shall calculate the tax due using the reduced rates allowed under subsection [(2)] **(2)(b)** of this section by first applying those rates to the taxpayer's nonpassive income that meets the requirements of subsection (6) of this section, and then multiplying that amount by the ratio of the

taxpayer's nonpassive income in Oregon divided by nonpassive income from all sources.

**SECTION 7. Section 24, chapter 5, Oregon Laws 2013 (special session), applies to tax years beginning on or after January 1, 2013, and before January 1, 2014.**

**SECTION 8.** ORS 316.099 is amended to read: 316.099. (1) As used in this section, unless the context requires otherwise:

(a) "Child with a disability" means a qualifying child under section 152 of the Internal Revenue Code who has been determined eligible for early intervention services or is diagnosed for the purposes of special education as being mentally retarded, multidisabled, visually impaired, hard of hearing, deaf-blind, orthopedically impaired or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in accordance with State Board of Education rules.

(b) "Early intervention services" means programs of treatment and habilitation designed to address a child's developmental deficits in sensory, motor, communication, self-help and socialization areas.

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

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

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent of the taxpayer, there shall be allowed an additional personal exemption credit for a child with a disability if the child is a child with a disability at the close of the tax year. The amount of the credit **allowed for the dependent for the tax year** shall be *[equal to the amount allowed as the personal exemption credit for the dependent for state personal income tax purposes for the tax year]* **calculated as provided in ORS 316.085, except that the amount may not be reduced on the basis of income under ORS 316.085 (5).**

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

**SECTION 9.** ORS 316.758 is amended to read: 316.758. In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes, there shall be allowed an addi-

tional personal exemption credit for the taxpayer if the taxpayer has a severe disability at the close of the taxable year. The amount of the credit **allowed for the tax year** shall be *[equal to the amount allowed as the personal exemption credit for the taxpayer for state personal income tax purposes for the taxable year]* **calculated as provided in ORS 316.085, except that the amount may not be reduced on the basis of income under ORS 316.085 (5).**

**SECTION 10.** The amendments to ORS 316.099 and 316.758 by sections 8 and 9 of this 2014 Act apply to tax years beginning on or after January 1, 2013.

**SECTION 11.** Every bridge that passes over a river or body of water forming a boundary between this state and another state, and that has been constructed or acquired and is being operated by the other state or by any county, city or other municipality of the other state, shall, together with its approaches, be exempt from all property and other taxes in this state, if the other state exempts from all taxation every such interstate bridge, together with its approaches, constructed or acquired and operated by this state or by any county, city or other municipality of this state.

**SECTION 12.** Section 11 of this 2014 Act is operative retroactively to January 1, 2008, and the operation and effect of section 11 of this 2014 Act shall continue unaffected from January 1, 2008, to the effective date of this 2014 Act and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under authority of section 11 of this 2014 Act after January 1, 2008, and before the effective date of this 2014 Act is ratified and approved.

**SECTION 13.** ORS 316.127 is amended to read: 316.127. (1) The adjusted gross income of a nonresident derived from sources within this state is the sum of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Is owned by the United States;

(b) Is located on the Columbia River; and

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

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

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

(10) Compensation for the performance of duties described in this subsection that is paid to a non-resident does not constitute income derived from sources within this state if the individual:

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

(b) Performs regularly assigned duties while engaged as a master, officer or member of a crew on a vessel operating [on] in the navigable waters of more than one state.

**SECTION 14.** ORS 316.202 is amended to read:

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

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

(3) The employer shall make an annual return to the department on forms provided or approved by it, summarizing the total compensation paid and the taxes withheld for all employees during the calendar year and shall file the same with the department on or before the due date of the corresponding federal return for the year for which report is made. Failure to file the annual report without reasonable excuse on or before the 30th day after notice has been given to the employer of failure subjects the employer to a penalty of \$100. The department may by rule require additional information the department finds necessary to substantiate the annual return, including but not limited to copies of federal form W-2 for individual employees, and may prescribe circumstances under which the filing requirement imposed by this subsection is waived.

(4) Notwithstanding the provisions of subsection (2) of this section, employers of agricultural employees may submit returns annually showing the number of payments made and the withheld taxes paid. However, such employers shall make and file a combined quarterly tax report with respect to other tax programs, as required by ORS 316.168.

(5) In addition to [the penalty required under subsection (3) of this section and] any other penalty required by law:

*[(a) A person who fails to file a report required under this section, or who files an incomplete or incorrect report, shall be subject to a penalty of \$50 per report after the date on which the report is due, up to a maximum penalty of \$2,500.]*

*[(b) A person who knowingly fails to file a report required under this section, or who knowingly files an incomplete, false or misleading report, shall be subject to a penalty of \$250 per report after the date on which the report is due, up to a maximum penalty of \$25,000.]*

**(a) A person who fails to substantiate a report required under subsection (3) of this section, or who files incomplete or incorrect substantiation, shall be subject to a penalty of \$50 per federal form W-2 after the date on which the substantiation is due, up to a maximum penalty of \$2,500.**

**(b) A person who knowingly fails to substantiate a report required under subsection (3) of this section, or who knowingly files incomplete or incorrect substantiation, shall be subject to a penalty of \$250 per federal form W-2 after the date on which the substantiation is due, up to a maximum penalty of \$25,000.**

**SECTION 15. (1) The amendments to ORS 316.127 by section 13 of this 2014 Act apply to tax years beginning on or after January 1, 2014.**

**(2) The amendments to ORS 316.202 by section 14 of this 2014 Act apply to payments made in tax years beginning on or after January 1, 2014.**

**SECTION 16.** Section 7, chapter 753, Oregon Laws 2013, is amended to read:

**Sec. 7. (1) To carry out the purposes of sections 2 to 6, chapter 753, Oregon Laws 2013 [of this 2013 Act], counties within the area covered by the proclamation made pursuant to section 2, chapter 753, Oregon Laws 2013, [of this 2013 Act] may impose a tax:**

(a) Upon the entire taxable income of every resident of the area who is subject to tax under ORS chapter 316 and upon the taxable income of every nonresident that is derived from sources within the area which income is subject to tax under ORS chapter 316; or

(b) On or measured by the net income of a mercantile, manufacturing, business, financial, centrally assessed, investment, insurance or other corporation or entity taxable as a corporation doing business, located, or having a place of business or office or having income derived from sources, within the area which income is subject to tax under ORS chapter 317 or 318.

(2) A tax imposed pursuant to this section shall require the adoption of an ordinance by the governing body of each county authorizing a tax under this section. The Governor may not act on behalf of a county governing body in authorizing a tax under this section.

(3) The tax may be imposed and collected as a surtax upon the state personal income or corporate income or excise tax.

(4) Any tax imposed pursuant to this section shall require a nonresident, corporation or other entity taxable as a corporation having income from activity both within and without the area taxable under subsection (1) of this section to allocate and apportion such net income to the area in the manner required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675.

**(5) If a tax is imposed pursuant to this section upon the taxable income of a nonresident individual, items of income, gain, loss or deduction shall be prorated as provided in ORS 316.117.**

~~[(5)]~~ (6) If a county governing body adopts an ordinance under this section, the ordinance shall be

compatible with any state law establishing taxable income or relating to the administration, collection or enforcement of any tax law of this state, and with any rules adopted by the Department of Revenue under ORS 305.620 or otherwise.

~~[(6)]~~ (7) An ordinance adopted under this section may not declare an emergency.

~~[(7)]~~ (8) This section does not apply to a county that is subject to a charter that prohibits the imposition of county income taxes.

**SECTION 17. This 2014 Act takes effect on the 91st day after the date on which the 2014 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

Approved by the Governor April 1, 2014

Filed in the office of Secretary of State April 2, 2014

Effective date June 6, 2014

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