

CHAPTER 43

AN ACT

HB 2275

Relating to income that is apportionable for corporate tax purposes; creating new provisions; amending ORS 314.610, 314.625, 314.647, 314.650, 314.665, 314.668, 314.669, 314.671, 317.010 and 317.090; and prescribing an effective date.

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

SECTION 1. ORS 314.610 is amended to read:

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

(1) **“Apportionable income” means:**

(a)(A) **Income arising from transactions and activity in the regular course of the taxpayer’s trade or business;**

(B) **Income arising from the acquisition, management, employment, development or disposition of tangible and intangible property if the acquisition, management, employment, development or disposition is related to the operation of the taxpayer’s trade or business; and**

(C) **Any other income that is apportionable under the Constitution of the United States and not allocated under the laws of this state; and**

(b) **Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to the laws of this state.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) **“Nonbusiness income”** **“Nonapportionable income”** means all income other than *[business]* apportionable income.

(6) **“Public utility”** means any business entity whose principal business is ownership and operation for public use of any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

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

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

SECTION 2. ORS 314.625 is amended to read:

314.625. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, or prizes awarded by the Oregon State Lottery, to the extent that they

constitute [nonbusiness] **nonapportionable** income, shall be allocated as provided in ORS 314.625 to 314.645.

SECTION 3. ORS 314.647 is amended to read:

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

SECTION 4. ORS 314.650 is amended to read:

314.650. All [business] **apportionable** income shall be apportioned to this state by multiplying the income by the sales factor.

SECTION 5. ORS 314.665 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(4) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing

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

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

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

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

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

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

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

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

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

(b) Does not include a warehouse that is owned by a person that is related to the person that owns goods that are stored in the warehouse, as determined under section 267 of the Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

SECTION 6. ORS 314.668 is amended to read:

314.668. As used in ORS 314.668 to 314.673:

(1) "Actual cost" means the costs of labor, materials, supplies, equipment rental, real or personal property acquisition, permits, engineering, financing, required fees, insurance, administration, accounting, maintenance, repair or replacement and debt service, and all other direct or indirect costs incurred by a person in order to undertake a capital project, or of more than one capital project undertaken by the

same taxpayer as part of the same qualifying investment.

(2) “Capital project” means a project within this state for the construction, modification, replacement, repair, remodeling or renovation of a structure or structures, addition to a structure or structures, or other capital improvement, that qualifies as a qualifying investment, including but not limited to:

(a) Acquisition of a legal interest or right in land or property in conjunction with the capital improvement, including but not limited to the purchase, lease or occupancy of real property, including the buildings, structures, infrastructure and leasehold improvements on the land or property;

(b) Acquisition of existing structures, or legal interests or rights in structures, in conjunction with the capital improvement;

(c) Acquisition and installation of machinery or equipment, furnishings, fixtures or other personal property or materials, in conjunction with the capital improvement; or

(d) Services and activities performed in relation to the capital improvement, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, study of land use and environmental impacts, acquiring permits or licenses, or other services connected with the capital improvement, and costs associated with the performance of these services and activities.

(3) “Debt service” includes debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

(4) “Qualifying investment” means expenditures made by the taxpayer relating to a capital project:

(a) The actual cost of which exceeds \$150 million within a five-year period measured from the commencement of the term of the qualifying investment contract; and

(b) That result in the taxpayer employing at least 500 more full-time equivalent employees in this state than the taxpayer employed in this state when the qualifying investment was commenced.

(5) “Qualifying investment contract” means a contract between the State of Oregon and a taxpayer that meets the requirements of ORS 314.671.

(6) “Single sales factor method” means the method of *[business]* income apportionment required under ORS 314.650 and 314.665 and the rules adopted thereunder, as in effect on the date a qualifying investment contract is executed.

(7) “Term of the qualifying investment contract” means the duration of the parties’ obligations under a qualifying investment contract.

SECTION 7. ORS 314.669 is amended to read:

314.669. (1) The Legislative Assembly finds that:

(a) The State of Oregon has a compelling interest in promoting and stimulating economic development within this state to better provide for the welfare of its residents, in encouraging businesses to make significant capital investments within this state and in creating certainty in the apportionment of

[business] income for purposes of income and corporate excise taxation that achieves these ends;

(b) Use of the single sales factor method to apportion *[business]* income promotes an economic development climate that encourages businesses to locate and remain within this state, encourages existing Oregon businesses to expand their operations in Oregon and creates incentives for businesses to make significant capital investments within this state;

(c) Qualifying investments will create significant, long-term economic benefits and serve as the catalyst for additional economic expansion within the State of Oregon;

(d) It is in the interest of the State of Oregon to authorize the Governor, in consultation with the Director of the Oregon Business Development Department and the Director of the Department of Revenue, to enter into qualifying investment contracts for purposes of stimulating economic development through qualifying investments;

(e) In consideration for making qualifying investments, taxpayers should be entitled to rely on the continued application of the single sales factor method to apportion their *[business]* income for tax purposes;

(f) Factors to be considered in determining the duration of the term of a qualifying investment contract should include, without limitation, the number of new employees to be added to the Oregon workforce of the taxpayer when the qualifying investment is complete, the duration and compensation of the new jobs created, other economic development incentives received by the company and the extent to which the qualifying investment will create employment opportunities in rural Oregon; and

(g) The State of Oregon has a compelling interest in contractually guaranteeing to taxpayers making qualifying investments that such taxpayers may rely on the single sales factor method as the applicable method to determine the portion of *[business]* **apportionable** income subject to income or corporate excise tax in the State of Oregon.

(2) The purposes of ORS 314.668 to 314.673 are:

(a) To promote and stimulate economic development by creating an incentive for qualifying investments;

(b) To authorize the Governor, in consultation with the Director of the Oregon Business Development Department and the Director of the Department of Revenue, to enter into qualifying investment contracts on behalf of this state; and

(c) To ratify any qualifying investment contracts entered into on or after December 14, 2012.

(3) The intent of the Legislative Assembly is for ORS 314.668 to 314.673 to establish a contractually binding obligation under which taxpayers that execute qualifying investment contracts with the State of Oregon may rely on the single sales factor method of apportionment to apportion their *[business]* **apportionable** income for each tax year of the taxpayer that ends during the term of the qualifying investment contract.

SECTION 8. ORS 314.671 is amended to read:

314.671. (1) The Governor, in consultation with the Director of the Oregon Business Development Department and the Director of the Department of Revenue, may enter into, on behalf of the State of Oregon, a qualifying investment contract with any taxpayer according to the provisions of ORS 314.668 to 314.673.

(2) Any contract executed pursuant to subsection (1) of this section on or after December 14, 2012, and before March 15, 2013, that meets the requirements of a qualifying investment contract is ratified by ORS 314.668 to 314.673.

(3) A taxpayer may not satisfy the requirement that a qualifying investment result in an increase in the number of employees of the taxpayer by gain of another entity's existing Oregon employees through a merger or acquisition of any portion of that entity.

(4) A qualifying investment contract executed under ORS 314.668 to 314.673 may not be less than five years' duration and may not exceed 30 years' duration.

(5) The obligations of the State of Oregon under a qualifying investment contract:

(a) Include the promise of this state that, if the taxpayer commences a qualifying investment, the taxpayer's Oregon [*business income*] **corporate** tax liability may not exceed the amount the taxpayer would pay or owe under the single sales factor method for each tax year that ends during the term of the qualifying investment contract; and

(b) May not be abridged, impaired, limited or modified by any subsequent law.

(6) If a taxpayer that has executed a qualifying investment contract files a report or return with the Department of Revenue for a tax year ending during the term of the qualifying investment contract and reporting personal income taxes or corporate excise or income taxes imposed under ORS chapter 316, 317 or 318, that are determined in whole or part by apportioning [*business*] income using the single sales factor method, the department may not assess a deficiency against the taxpayer that is attributable to the use of a different method of apportionment.

(7) An action for a breach of a qualifying investment contract may be brought against the State of Oregon.

(8) The sole and exclusive remedies for the State of Oregon in an action for breach of a qualifying investment contract brought by the state shall be:

(a) A judgment rescinding the qualifying investment contract; and

(b) A judgment awarding an amount equal to the difference, if any, between:

(A) The amount of taxes due from the taxpayer under the single sales factor method from the date of breach through termination of the qualifying investment contract; and

(B) The amount of taxes due from the taxpayer during the same period using the method of apportioning [*business*] income:

(i) Under the tax laws that would have applied to the taxpayer but for the qualifying investment contract; or

(ii) Identified in the judgment as fairly representing the extent of the taxpayer's business activity in this state.

SECTION 9. ORS 317.010, as amended by section 20, chapter 33, Oregon Laws 2016, is amended to read:

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

(1) "Centrally assessed corporation" means every corporation the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.681.

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

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

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

(4) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation; provided, however, that a foreign corporation whose activities in this state are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon. Whether or not corporations are affiliated shall be determined as provided in section 1504 of the Internal Revenue Code.

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

(6) "Financial institution" has the meaning given that term in ORS 314.610 except that it does not include a credit union as defined in ORS 723.006, an interstate credit union as defined in ORS 723.001 or a federal credit union.

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

(a) On December 31, 2015; or

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

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

(9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers in

subsection (11) of this section and ORS 317.650 to 317.665.

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

(a) From the amount otherwise determined under this subsection, subtract [*nonbusiness*] **nonapportionable** income, or add [*nonbusiness*] **nonapportionable** loss, whichever is applicable.

(b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon apportionment percentage defined under ORS 314.280, 314.650 or 314.667, whichever is applicable. The resulting product shall be Oregon apportioned income or loss.

(c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this subsection, add [*nonbusiness*] **nonapportionable** income allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645, or subtract [*nonbusiness*] **nonapportionable** loss allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable transactions or activities both within and without Oregon.

(11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its attorney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange. However, "insurer" does not include title insurers or health care service contractors operating pursuant to ORS 750.005 to 750.095.

SECTION 10. ORS 317.090 is amended to read: 317.090. (1) As used in this section:

(a) "Oregon sales" means:

(A) If the corporation apportions [*business*] income under ORS 314.650 to 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes of ORS 314.665;

(B) If the corporation does not apportion [*business*] income for Oregon tax purposes, the total sales

in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the taxpayer were required to apportion [*business*] income for Oregon tax purposes; or

(C) If the corporation apportions [*business*] income using a method different from the method prescribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.

(b) If the corporation is an agricultural cooperative that is a cooperative organization described in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing business done with or for members of the agricultural cooperative.

(2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

(a) If Oregon sales properly reported on a return are:

(A) Less than \$500,000, the minimum tax is \$150.

(B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

(E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

(F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

(G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

(H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

(I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

(J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

(K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

(L) \$100 million or more, the minimum tax is \$100,000.

(b) If a corporation is an S corporation, the minimum tax is \$150.

(3) The minimum tax is not apportionable (except in the case of a change of accounting periods), is payable in full for any part of the year during which a corporation is subject to tax, and may not be reduced, paid or otherwise satisfied through the use of any tax credit.

SECTION 11. ORS 317.090, as amended by section 44, chapter 701, Oregon Laws 2015, is amended to read:

317.090. (1) As used in this section:

(a) "Oregon sales" means:

(A) If the corporation apportions [*business*] income under ORS 314.650 to 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes of ORS 314.665;

(B) If the corporation does not apportion [*business*] income for Oregon tax purposes, the total sales in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the taxpayer were required to apportion [*business*] income for Oregon tax purposes; or

(C) If the corporation apportions [*business*] income using a method different from the method prescribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.

(b) If the corporation is an agricultural cooperative that is a cooperative organization described in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing business done with or for members of the agricultural cooperative.

(2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

(a) If Oregon sales properly reported on a return are:

(A) Less than \$500,000, the minimum tax is \$150.

(B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

(E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

(F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

(G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

(H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

(I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

(J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

(K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

(L) \$100 million or more, the minimum tax is \$100,000.

(b) If a corporation is an S corporation, the minimum tax is \$150.

(3) The minimum tax is not apportionable (except in the case of a change of accounting periods), and is payable in full for any part of the year during which a corporation is subject to tax.

SECTION 12. The amendments to ORS 314.610, 314.625, 314.647, 314.650, 314.665, 314.668, 314.669, 314.671, 317.010 and 317.090 by sections 1 to 11 of this 2017 Act apply to tax years beginning on or after January 1, 2018.

SECTION 13. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor May 15, 2017

Filed in the office of Secretary of State May 15, 2017

Effective date October 6, 2017