

Chapter 314

Income Taxation Generally

314.021

LAW REVIEW CITATIONS: 4 WLJ 476.

314.075

ATTY. GEN. OPINIONS: Authority of commission to divulge taxpayers paying penalty under ORS 314.405, 1964-66, p 182.

314.080

LAW REVIEW CITATIONS: 4 WLJ 476.

314.115

CASE CITATIONS: *Gender v. State Tax Comm.*, (1968) 3 OTR 260.

314.125

NOTES OF DECISIONS

A determination which passes upon the propriety of a deduction does not determine basis. *Gender v. State Tax Comm.*, (1968) 3 OTR 260.

314.275

NOTES OF DECISIONS

Although this section is modeled after the federal law, the commission is not bound to follow the federal interpretation. *Lottis v. State Tax Comm.*, (1966) 2 OTR 434.

This section requires adjustments to be made regardless of who initiates the change and does not restrict adjustments with respect to years which precede enactment of this section. *Krauss v. Dept. of Rev.*, (1970) 4 OTR 43, modified, 257 Or 637, 480 P2d 703.

Change in the accounting method did not justify elimination of an opening inventory in the year of the change. *Krauss v. Dept. of Rev.* (1971) 257 Or 637, 480 P2d 703, modifying 4 OTR 43.

314.280

NOTES OF DECISIONS

1. Constitutionality
2. In general
3. Apportionment
4. Doing business

1. Constitutionality

The burden is on the taxpayer to prove the formula of apportionment produced an unfair, inequitable or unconstitutional result. *A.C. Dutton Lbr. Corp. v. State Tax Comm.*, (1961) 228 Or 525, 365 P2d 621, 369 P2d 129; *Utah Constr. and Min. Co. v. State Tax Comm.*, (1970) 255 Or 228, 465 P2d 712; *Humble Oil & Refining Co. v. Dept. of Rev.*, (1971) 4 OTR 284.

The commerce clause does not prevent the application

of the corporation excise tax to taxpayer's net income from Oregon calculated by the apportionment method. *John I. Haas, Inc. v. State Tax Comm.*, (1961) 227 Or 170, 361 P2d 820.

Only if the tax creates an unfair burden on interstate commerce with the incidents of double taxation is the legislation unconstitutional. *A.C. Dutton Lbr. Corp. v. State Tax Comm.*, (1961) 228 Or 525, 365 P2d 621, 369 P2d 129.

2. In general

One who attacks a formula of apportionment carries the burden of showing by clear and cogent evidence that it results in extra-territorial values being taxed. *John I. Haas, Inc. v. State Tax Comm.*, (1961) 227 Or 170, 361 P2d 820; *Consolidated Freightways, Inc. v. State Tax Comm.*, (1962) 230 Or 522, 370 P2d 224; *Zale-Salem, Inc. v. State Tax Comm.*, (1964) 237 Or 261, 391 P2d 601; *Pacific Tel. & Tel. v. State Tax Comm.*, (1967) 2 OTR 469, aff'd, 249 Or 113, 437 P2d 477.

If Oregon is the corporation's headquarters state, it is obviously entitled to tax a higher proportion of the transportation company's income than a so-called "bridge" state. *Consolidated Freightways, Inc. v. State Tax Comm.*, (1962) 230 Or 522, 370 P2d 224.

The Oregon personal property tax is a proper deduction along with other expenses in arriving at net income subject to allocation. *Edward Hines Lbr. Co. v. State Tax Comm.*, (1964) 238 Or 274, 393 P2d 187, aff'g 1 OTR 442.

The gross income of the business was derived from doing business both within and without the state. *Cal-Roof Wholesale, Inc. v. State Tax Comm.*, (1964) 2 OTR 91, aff'd, 242 Or 435, 410 P2d 233; *Oregon Mut. Sav. Bank v. State Tax Comm.*, (1965) 2 OTR 124; *Chamberlin v. State Tax Comm.*, (1965) 2 OTR 151; *Klamath Prod. Credit Assn. v. State Tax Comm.*, (1967) 3 OTR 16, aff'd, 251 Or 84, 444 P2d 923; *Equitable Sav. & Loan Assn. v. State Tax Comm.*, (1968) 251 Or 70, 444 P2d 916.

Use of a purchase factor to fairly and accurately reflect the net income of the business done within the state was reasonable. *A.C. Dutton Lbr. Corp. v. State Tax Comm.*, (1961) 228 Or 525, 365 P2d 621, 369 P2d 129.

3. Apportionment

A business is unitary if its parts are too closely connected and necessary to each other to justify division or separate consideration as independent units. *John I. Haas, Inc. v. State Tax Comm.*, (1961) 227 Or 170, 361 P2d 820; *United States Tobacco Co. v. State Tax Comm.*, (1962) 229 Or 627, 368 P2d 337.

A unitary business is an enterprise that manufactures, distributes and sells its products, the profits accruing only with the sales. *Id.*

Unitary income of a corporation is apportioned even if it is from intangibles. *Equitable Sav. & Loan Assn. v. State Tax Comm.*, (1968) 251 Or 70, 444 P2d 916; *Klamath Prod. Credit Assn. v. State Tax Comm.*, (1968) 251 Or 84, 444 P2d 923, aff'g 3 OTR 16.

Where a corporation derives its gross income both within and without the state, whether the segregated or appor-

tionment method of accounting shall be used depends upon which method will most fairly and accurately reflect the net income of the taxpayer within the state. *Utah Constr. and Min. Co. v. State Tax Comm.* (1970) 3 OTR 385, aff'd, 255 Or 228, 465 P2d 712; *Humble Oil & Refining Co. v. Dept. of Rev.* (1971) 4 OTR 284.

Under the Massachusetts three-factor formula of income apportionment it is not inequitable to exclude any part of the payments to independent contractors from the wage and property factors. *White Stag Mfg. Co. v. State Tax Comm.*, (1962) 232 Or 94, 373 P2d 999, cert. denied, 372 US 251, 83 S Ct 872, 9 L Ed 2d 732.

If the operation of the business within the state is dependent upon or contributes to the business without the state, the operations are unitary. *Zale-Salem, Inc. v. State Tax Comm.*, (1964) 237 Or 261, 391 P2d 601.

Regardless of whether the taxpayer was unitary, use of the apportionment method to allocate income was not mandatory. *Utah Constr. and Min. Co. v. State Tax Comm.* (1970) 3 OTR 385, aff'd, 255 Or 228, 465 P2d 712.

Circumstances which usually call for the application of the apportionment method are unity of ownership, unity of management and unity of operation and when business in-state depends upon or contributes to business out of state. *Humble Oil & Refining Co. v. Dept. of Rev.* (1971) 4 OTR 284.

The segregated method of reporting should have been applied. *Wah Chang Corp. v. State Tax Comm.*, (1964) 2 OTR 31.

Plaintiff is entitled to apportion its income under this section. *Equitable Sav. & Loan Assn. v. State Tax Comm.*, (1967) 3 OTR 1, aff'd, 251 Or 70, 444 P2d 916.

Principal and interest of out-of-state loans should have been allocated to the out-of-state portion of the formula. *Id.*

Taxpayer's activities in Washington amounted to more than solicitation of orders within the meaning of P.L. 86-272 and taxpayer was entitled to apportion its income. *Iron Fireman Mfg. Co. v. State Tax Comm.*, (1967) 3 OTR 33, aff'd 251 Or 227, 445 P2d 126.

Segregated reporting was proper as taxpayer had only the one separate construction project in Oregon, which project was not related to its other activities, expenses incurred outside the state were not charged against the project, and taxpayer was taxed by states on 100% of its income. *Utah Constr. and Min. Co. v. State Tax Comm.* (1970) 3 OTR 385, aff'd, 255 Or 228, 465 P2d 712.

4. Doing business

"Doing business" is defined by ORS 317.010(8). *Cal-Roof Wholesale, Inc. v. State Tax Comm.*, (1964) 2 OTR 91, aff'd, 242 Or 435, 410 P2d 233; *Chamberlin v. State Tax Comm.*, (1965) 2 OTR 151.

"Doing business" is not coterminous with "nexus," though "doing business" is sufficient to establish "nexus." *Cal-Roof Wholesale, Inc. v. State Tax Comm.*, (1965) 2 OTR 91.

Under former statute, the situs of intangible income arising out of plaintiff's discount purchase of its obligations was Oregon. *Castle Sawmills, Inc. v. State Tax Comm.*, (1964) 1 OTR 571.

FURTHER CITATIONS: *Weyerhaeuser Tbr. Co. v. Galloway*, (1942) 168 Or 85, 121 P2d 469; *Edward Hines Lbr. Co. v. State Tax Comm.*, (1959) 215 Or 453, 336 P2d 75; *Hamilton Management Corp. v. State Tax Comm.*, (1968) 3 OTR 154, aff'd, 253 Or 602, 457 P2d 486; *Utico Corp. v. State Tax Comm.*, (1969) 3 OTR 457.

LAW REVIEW CITATIONS: 44 OLR 144-148.

314.285

NOTES OF DECISIONS

When adjustment of prices or classes was necessary, the commission [now department] should have adjusted the opening inventory as well as the ending inventory. *Schumacher v. State Tax Comm.*, (1966) 2 OTR 268.

The hay was not properly included in taxpayers inventory. *Saunders v. State Tax Comm.*, (1966) 2 OTR 409.

314.290

CASE CITATIONS: *Johnson v. State Tax Comm.*, (1965) 2 OTR 250.

LAW REVIEW CITATIONS: 37 OLR 75.

314.295

NOTES OF DECISIONS

Taxpayers were not engaged in a trade or business within the meaning of this statute. *Moser v. Dept. of Rev.*, (1970) 4 OTR 256.

314.310

CASE CITATIONS: *Simpson Tbr. Co. v. State Tax Comm.*, (1967) 2 OTR 509.

LAW REVIEW CITATIONS: 1 WLJ 167.

314.365

CASE CITATIONS: *City of Woodburn v. Domogalla*, (1963) 1 OTR 292, rev'd, 238 Or 401, 395 P2d 150.

LAW REVIEW CITATIONS: 1 WLJ 166.

314.380

NOTES OF DECISIONS

The one-year limitation period commences to run from the time the assessment is issued, which is when the correction becomes final. *Gender v. State Tax Comm.*, (1968) 3 OTR 260.

FURTHER CITATIONS: *Industrial Air Prods. Co. v. Dept. of Rev.*, (1970) 4 OTR 103, aff'd, 259 Or 38, 485 P2d 24.

314.385

CASE CITATIONS: *Pacific Power & Light v. State Tax Comm.*, (1966) 2 OTR 420; *Crawford v. State Tax Comm.*, (1968) 3 OTR 185.

ATTY. GEN. OPINIONS: State tax forms as public works, 1966-68, p 436.

314.400

CASE CITATIONS: *Beneficial Loan Socy. v. State Tax Comm.*, (1939) 163 Or 211, 95 P2d 429.

ATTY. GEN. OPINIONS: Authority of commission to divulge taxpayers paying penalty under ORS 314.405, 1964-66, p 182.

314.405 to 314.465

LAW REVIEW CITATIONS: 1 WLJ 164-171.

314.405

NOTES OF DECISIONS

The courts under declaratory procedure may not interfere with power vested in the commission [now department]. *Weyerhaeuser Tbr Co. v. Galloway*, (1942) 168 Or 85, 121 P2d 469.

Time limit for assessment was inapplicable to attempted collections of offsets against prior assessments incorrectly allowed. *Warm Springs Lbr. Co. v. State Tax Comm.*, (1959) 217 Or 219, 342 P2d 143.

An honest difference of legal opinion existed and taxpayer was not negligent in reporting certain income. *McCollum v. State Tax Comm.*, (1967) 2 OTR 486.

Omitting reference to the statute, regulation or ruling was not fatal. *Equitable Sav. & Loan Assn. v. State Tax Comm.*, (1967) 3 OTR 1, aff'd, 251 Or 70, 444 P2d 916.

Notice of deficiency sent to taxpayer's accountant was not proper notice. *Furtick v. State Tax Comm.*, (1968) 3 OTR 242.

FURTHER CITATIONS: *Title & Trust Co. v. Wharton*, (1941) 166 Or 612, 144 P2d 140; *Johnston v. State Tax Comm.*, (1959) 218 Or 110, 342 P2d 799; *Reynolds Metals Co. v. State Tax Comm.*, (1966) 2 OTR 340; *Simpson Tbr. Co. v. State Tax Comm.*, (1967) 2 OTR 509, rev'd, 250 Or 434, 443 P2d 162; *Industrial Air Prod. Co. v. Dept. of Rev.*, (1970) 4 OTR 103, aff'd, 259 Or 38, 485 P2d 24.

ATTY. GEN. OPINIONS: Authority to divulge persons paying penalty, 1964-66, p 182; confidentiality of returns as to assistant attorneys general, (1970) Vol 35, p 102.

314.410

NOTES OF DECISIONS

The limitation clearly applies to personal property tax offsets. *Simpson Tbr. Co. v. State Tax Comm.*, (1967) 2 OTR 509, rev'd on other grounds, 250 Or 434, 443 P2d 162.

After the 1959 amendments, the limitation applied specifically to a deficiency arising for any reason. *Simpson Tbr. Co. v. State Tax Comm.*, (1968) 250 Or 434, 443 P2d 162, rev'g (1967) 2 OTR 509.

The one-year limitation period commences to run from the time the assessment is issued, which is when the correction becomes final. *Gender v. State Tax Comm.*, (1968) 3 OTR 260.

An item is not omitted from gross income if information sufficient to apprise the department of the nature and amount of the item is disclosed in the return. *Lloyd v. Dept. of Rev.*, (1970) 4 OTR 195.

Under subsection (3), the notice of deficiency filed within the period limited may include items adjusted on the return that are in addition to items corrected by the federal government. *Industrial Air Prod. Co. v. Dept. of Rev.*, (1971) 259 Or 38, 485 P2d 24, aff'g 4 OTR 103.

Time limit for assessment was inapplicable to attempted collections of offsets against prior assessments incorrectly allowed. *Warm Springs Lbr. Co. v. State Tax Comm.*, (1959) 217 Or 219, 342 P2d 143.

It was reasonable that the legislature intended the 1959 amendment to operate prospectively to apply to notices of proposed assessments dated after June 30, 1957. *Reynolds Metals Co. v. State Tax Comm.*, (1966) 2 OTR 340, aff'd, 245 Or 156, 421 P2d 379.

Gross income omitted by the erroneous reporting of a sale on the instalment rather than the cash basis was not omitted gross income. *Lloyd v. Dept. of Rev.*, (1970) 4 OTR 195.

FURTHER CITATIONS: *Industrial Refrigeration and*

Equip. Co. v. State Tax Comm., (1965) 242 Or 217, 408 P2d 937.

ATTY. GEN. OPINIONS: Authority of commission to divulge taxpayers paying penalty under ORS 314.405, 1964-66, p 182.

LAW REVIEW CITATIONS: 2 WLJ 100.

314.415

CASE CITATIONS: *Utgard v. State Tax Comm.*, (1963) 1 OTR 274, aff'd, (1964) 236 Or 596, 390 P2d 182.

ATTY. GEN. OPINIONS: Right of setoff applied to claims against the state, (1970) Vol 35, p 65.

314.430

CASE CITATIONS: *State v. Slusher*, (1926) 117 Or 498, 244 P 540, 58 ALR 114; *Sproul v. State Tax Comm.*, (1962) 1 OTR 31, rev'd, 234 Or 567, 382 P2d 99.

ATTY. GEN. OPINIONS: Requiring indemnity bond to execute distraint warrant, 1960-62, p 210.

LAW REVIEW CITATIONS: 3 WLJ 91.

314.435

ATTY. GEN. OPINIONS: Use of standard deduction on state and federal returns, (1970) Vol 34, p 1092.

314.440

CASE CITATIONS: *Pacific Power & Light Co. v. State Tax Comm.*, (1966) 2 OTR 420.

314.445

CASE CITATIONS: *Title and Trust Co. v. Wharton*, (1941) 166 Or 612, 114 P2d 140.

314.455

NOTES OF DECISIONS

Presumption of assessment validity in an income tax case is evidentiary. *Sproul v. State Tax Comm.*, (1962) 1 OTR 31, rev'd on other grounds, 234 Or 567, 382 P2d 99.

Presumption of assessment validity in income taxation attaches to the finding of the commission after review on appeal. Id.

If the tax liability questioned arises by assessment of an additional tax, the taxpayer must contest the assessment within the time provided in this section rather than pay and seek a refund. *Utgard v. State Tax Comm.*, (1963) 1 OTR 274, aff'd, 236 Or 596, 390 P2d 182.

FURTHER CITATIONS: *Johnston v. State Tax Comm.*, (1959) 218 Or 110, 342 P2d 799; *Simpson Tbr. Co. v. State Tax Comm.*, (1966) 2 OTR 509; *Straumfjord v. Commission*, (1967) 3 OTR 69.

ATTY. GEN. OPINIONS: Confidentiality of returns as to assistant attorneys general, (1970) Vol 35, p 102.

314.460

NOTES OF DECISIONS

The review goes beyond a determination of whether errors of law were committed by the commission [now department], and includes a determination as to whether its

findings of fact are supported by substantial evidence. *Hines Lbr. Co. v. Galloway*, (1944) 175 Or 524, 154 P2d 539.

This section authorizes a special statutory proceeding, which is exclusive and must be strictly pursued. *McCain v. State Tax Comm.*, (1961) 227 Or 486, 360 P2d 778.

The clerk is entitled to reject a proffered filing if not accompanied by the correct fee. *Estate of Lackey v. State Tax Comm.*, (1965) 2 OTR 83, aff'd, 242 Or 509, 411 P2d 78.

Service is complete when the complaint is deposited in the mail. *Lovness v. State Tax Comm.*, (1967) 3 OTR 25.

A declaratory judgment was not warranted by the corporation's fear that the tax commission would determine its net income from Oregon business by the segregation method instead of the apportionment method. *Weyerhaeuser Tbr. Co. v. Galloway*, (1942) 168 Or 85, 121 P2d 469.

FURTHER CITATIONS: *Title & Trust Co. v. Wharton*, (1941) 166 Or 612, 114 P2d 140; *Johnston v. State Tax Comm.*, (1959) 218 Or 110, 342 P2d 799; *A. C. Dutton Lbr. v. State Tax Comm.*, (1961) 228 Or 525, 365 P2d 867; *Sproul v. State Tax Comm.*, (1962) 1 OTR 31, rev'd 234 Or 567, 382 P2d 99; *Straumfjord v. Commission*, (1967) 3 OTR 69; *Lewis & Clark College v. State Tax Comm.*, (1968) 3 OTR 169; *Bach v. Dept. of Rev.*, (1970) 4 OTR 1.

314.465

CASE CITATIONS: *Sproul v. State Tax Comm.*, (1962) 1 OTR 31, rev'd, 234 Or 567, 382 P2d 99.

314.605 to 314.695

NOTES OF DECISIONS

1. In general

Under these provisions, distinction is made between capital gains that constitute business income and capital gains that constitute nonbusiness income. *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

2. Under former similar statute

Regardless of whether the taxpayer was unitary, use of the apportionment method to allocate income was not mandatory. *Utah Constr. and Min. Co. v. State Tax Comm.*, (1970) 3 OTR 385, aff'd, 255 Or 228, 465 P2d 712.

Where a corporation derived its gross income both from within and without the state, whether the segregated or apportionment method of accounting should be used depended upon which method most fairly and accurately reflected the net income of the taxpayer within the state. *Id.*

Circumstances which usually called for the application of the apportionment method were unity of ownership, unity of management and unity of operation and whether business in-state depended upon or contributed to business out of state. *Humble Oil & Refining Co., v. Dept. of Rev.* (1971) 4 OTR 284.

Taxpayer's activities in Washington amounted to more than solicitation of orders within the meaning of P.L. 86-272 and taxpayer was entitled to apportion its income. *Iron Fireman Mfg. Co. v. State Tax Comm.*, (1967) 3 OTR 33, aff'd, 251 Or 227, 445 P2d 126.

Segregated reporting was proper as taxpayer had only the one separate construction project in Oregon, which project was not related to its other activities, expenses incurred outside the state were not charged against the project, and taxpayer was taxed by states on 100% of its income. *Utah Constr. and Min. Co. v. State Tax Comm.*, (1970) 3 OTR 385, aff'd, 255 Or 228, 465 P2d 712.

314.610

NOTES OF DECISIONS

Income from the sale of property is income of a particular business if the property was acquired for that business, used in that business and disposed of by that business. *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.615

CASE CITATIONS: *Utico Corp. v. State Tax Comm.*, (1969) 3 OTR 457; *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.625

CASE CITATIONS: *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.635

CASE CITATIONS: *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.650

CASE CITATIONS: *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.670

CASE CITATIONS: *Tucker-Ottmar Farms v. Dept. of Rev.*, (1970) 4 OTR 179.

314.805

NOTES OF DECISIONS

The rules of the commission [now department] are highly persuasive in technical, involved matters. *Broadway-Madison Corp. v. Fisher*, (1940) 164 Or 401, 102 P2d 194.

LAW REVIEW CITATIONS: 4 WLJ 476.

314.815

NOTES OF DECISIONS

A regulation which denied a deduction for interest paid under certain conditions was inconsistent with the statutes. *Oregon-Wash. Plywood Co. v. State Tax Comm.*, (1965) 2 OTR 108.

The rule was within the commission's power. *Rieke v. State Tax Comm.*, (1967) 2 OTR 452.

FURTHER CITATIONS: *United States Nat. Bank v. State Tax Comm.*, (1963) 233 Or 478, 378 P2d 989; *Bailey v. State Tax Comm.*, (1966) 2 OTR 399.

314.820

NOTES OF DECISIONS

Notice of deficiency sent to taxpayer's accountant was not proper notice under ORS 314.405. *Furtick v. State Tax Comm.*, (1968) 3 OTR 242.

FURTHER CITATIONS: *Straumfjord v. Commission*, (1967) 3 OTR 69.

314.835

ATTY. GEN. OPINIONS: Authority to permit inspection of joint return by either spouse or by legal representative, 1924-26, p 106; microfilming of income tax returns by a

foreign firm, 1948-50, p 261; right of Public Utility Commissioner to examine returns, 1956-58, p 91; authority of Secretary of State to examine income tax returns during audit of State Tax Commission accounts, 1964-66, p 118; authority of commission to divulge taxpayers paying penalty under ORS 314.405, 1964-66, p 182; supplying other information to the State Public Welfare Commission, (1969) Vol 34, p 669; confidentiality of returns as to assistant attorneys general, (1970) Vol 35, p 102.

LAW REVIEW CITATIONS: 37 OLR 68, 41 OLR 335; 1 WLJ 164.

314.840

ATTY. GEN. OPINIONS: Right of Public Utility Commis-

sioner to examine returns, 1956-58, p 91; exceptions to confidentiality of tax records, 1964-66, p 67; authority of Secretary of State to examine income tax returns during audit of State Tax Commission accounts, 1964-66, p 118.

314.991

ATTY. GEN. OPINIONS: Authority of commission to divulge taxpayers paying penalty under ORS 314.405, 1964-66, p 182; supplying other information to the State Public Welfare Commission, (1969) Vol 34, p 669; confidentiality of returns as to assistant attorneys general, (1970) Vol 35, p 102.