Chapter 317

Corporation Excise Tax

NOTES OF DECISIONS

Income derived from a contract with the Federal Government by an independent contractor is subject to this tax; the statute does not impair the obligation of contract nor impose an unwarranted tax upon the functions of the Federal Government. General Constr. Co. v. Fisher, (1934) 149 Or 84, 39 P2d 358, 97 ALR 1252; Winston Bros. Co. v. Galloway, (1942) 168 Or 109, 121 P2d 457.

An excise tax may be imposed on a corporation as a substitute for personal property tax payable by individuals without violating constitutional provisions, but the tax imposed by this chapter was not intended as a substitute for a tax on gross income from intangibles received by individuals; the tax was intended as a charge for the benefits conferred by the corporate franchise. Redfield v. Fisher, (1931) 135 Or 180, 292 P 813, 295 P 461, 73 ALR 721.

Whether a corporation is classified as a "financial corporation" under ORS 317.060, or as a "business corporation" under ORS 317.070, the test of taxability is the same, namely, whether the corporation was "doing business" within the meaning of the statute. Welch Holding Co. v. Galloway, (1939) 161 Or 515, 89 P2d 559.

The taxing system inaugurated in 1929 differed greatly from that theretofore in effect; its purpose was to obtain additional revenue from new sources and to relieve real property from some of the burden of taxation. Title & Trust Co. v. Wharton, (1941) 166 Or 612, 114 P2d 140.

The corporation excise tax is exacted for the privilege of earning a net income in this state. Hines Lbr. Co. v. Galloway, (1944) 175 Or 524, 154 P2d 539.


ATTY. GEN. OPINIONS: Authority of mass transit district to tax, (1968) Vol 34, p 1066; taxability of interest on bonds to be issued by Port of Morrow for irrigation system connected with proposed private nuclear power plant, (1971) Vol 35, p 635.

317.010

NOTES OF DECISIONS

1. Subsection (8)

2. Subsection (9)

3. Subsection (10)

4. Subsection (12)

5. Subsection (17)

I. Subsection (5)

This definition includes all corporations, municipal, quasi-municipal and private, thereby including people's utility district. Central Lincoln P.U.D. v. State Tax Comm., (1960) 221 Or 398, 351 P2d 694.

2. Subsection (8)


The term "doing business" is used in its ordinary sense, and means the engaging in activities in the pursuit of gain. Welch Holding Co. v. Galloway, (1939) 161 Or 515, 89 P2d 559.

"Doing business" as defined relates to the question of what parts of a business are within and without the state by providing that this question shall be determined by the situs of the transaction of the corporation. Id.

An incidental or casual transaction not in the course of business of a corporation is not the "doing of business". Id.

Liquidation of a capital asset cannot be held to be "doing business" in the absence of a course of purchases and sales. Id.

The holding of securities of other corporations and the distribution of dividends paid thereon do not constitute "doing business". Id.

Where the sole purpose of formation of a corporation was to make and preserve a record of the beneficial ownership of stock in operating companies in order to avoid the assertion of federal income taxes because of the receipt of dividends from stock held as trustee, the corporation was not "doing business". Id.

A sale by a holding company of the stock of an operating company and a so-called loan of the money to another operating company without interest did not constitute the "doing of business". Id.

The fact that title to a parcel of land was held and conveyed in the name of the corporation and taxes thereon were paid from corporate funds did not constitute "doing business" where the transaction was for the individual benefit of the president of the corporation. Id.

The situs of a foreign corporation's work was within the state where it was performed under a federal contract on a jetty at the mouth of a navigable river beyond low-water mark but within two nautical miles from the coast line. Winston Bros. Co. v. Galloway, (1942) 168 Or 109, 121 P2d 457.

3. Subsection (9)

The excise tax is not an income tax but a privilege tax on the privilege of doing business resting on determination of the income which the taxpayer earned solely in this state. John I. Haas, Inc. v. State Tax Comm., (1961) 227 Or 170, 361 P2d 820.

4. Subsection (10)

Prior to the 1963 amendment, the definition of a financial institution did not include a corporation that bought installment contracts. General Elec. Cred. Corp. v. State Tax Comm., (1962) 231 Or 570, 373 P2d 974.

5. Subsection (13)
The definition of "paid" in this section applies only to deductions. Northwestern Ice & Cold Storage Co. v. Gallo-

6. Subsection (17)
This subsection recognizes a return for a fractional part of a year. Pacific Power & Light Co. v. State Tax Comm.,
(1966) 2 OTR 420, aff'd, 249 Or 103, 457 P2d 473.

FURTHER CITATIONS: Broadway-Madison Corp. v. Fisher, (1940) 164 Or 401, 102 P2d 194; A. C. Dutton Lbr. Corp.
2 OTR 124.

317.055
NOTES OF DECISIONS
The imposition of a license tax by a city upon national banks for the privilege of operating safe deposit vaults is
prohibited by ORS 317.056. Bank of California v. Portland,
(1937) 157 Or 203, 69 P2d 273, 115 ALR 676.

FURTHER CITATIONS: City of Beaverton v. Harris, (1970)
3 Or App 541, 474 P2d 771.

317.060
NOTES OF DECISIONS
See also cases under ORS 317.070.

Prior to the 1963 amendment, a credit corporation, whose
principal business was buying instalment contracts, was not
a financial institution as defined by ORS 317.010 (10). Gen-
570, 373 P2d 974.

A corporation organized to hold, manage and liquidate assets of a state savings and loan association, including
real estate and business assets, was "doing business" as
a financial institution within the meaning of this section. Alpha Corp. v. Multnomah County, (1948) 182 Or 671, 189
P2d 988.

FURTHER CITATIONS: Northwestern Acceptance Corp.
v. State Tax Comm., (1968) 3 OTR 354; Equitable Sav. &
Loan Assn. v. State Tax Comm., (1968) 251 Or 70, 444 P2d
916; City of Beaverton v. Harris, (1970) 3 Or App 541, 474
P2d 771.

ATTY. GEN. OPINIONS: Credit unions and savings and
loan associations as not subject to excise taxes, 1934-36,
p 63; annual fees and taxes for credit unions, 1958-60, p 193; personal property tax on federal credit unions, 1962-64, p 453.

317.065
NOTES OF DECISIONS
The imposition of a license tax by a city upon national banks for the privilege of operating safe deposit vaults is
prohibited by this section. Bank of California v. Portland,
(1937) 157 Or 203, 69 P2d 273, 115 ALR 676.

FURTHER CITATIONS: Alpha Corp. v. Multnomah County,
288, 467 P2d 671, Sup Ct review denied (with opinion), 256
Or 124, 471 P2d 798; City of Beaverton v. Harris, (1970)
3 Or App 541, 474 P2d 771.

ATTY. GEN. OPINIONS: Personal property tax on federal
credit unions, 1962-64, p 453.

317.070
NOTES OF DECISIONS
Income derived from a contract with the Federal Govern-
ment by an independent contractor is subject to tax; this
status does not impair the obligations of contract nor does
it impose an unwarranted tax upon the functions of the
149 Or 84, 39 P2d 358, 97 ALR 1252; Winston Bros. Co. v.
Galloway, (1942) 168 Or 109, 121 P2d 457.

The essential elements which must be found in order to
subject a corporation to taxation for certain years are, first,
that the corporation was "doing business" in those years,
and second, that it had income during those years. Welch
Holding Co. v. Galloway, (1939) 161 Or 515, 89 P2d 599.

A corporation which is a mere conduit or trustee through
which income passes has no "taxable income." Id.

A foreign corporation's net profits under a federal con-
tact to construct a jetty in aid of commerce and navigation
may be taxed by the state. Winston Bros. Co. v. Galloway,
(1942) 168 Or 109, 121 P2d 457.

Every corporation which earns a net income in Oregon
is subject to the assessment of the corporation excise tax,
even though the business which it did elsewhere caused it
to sustain an over-all net loss. Hines Lbr. Co. v. Galloway,
(1944) 175 Or 524, 154 P2d 539.

The corporation excise tax is exacted for the privilege of
earning a net income in this state. Id.

Under a former similar statute (ORS 317.085), what was
"tangible personal property" was controlled by the statu-
tory definitions, rather than agreement between the parties.
Warm Springs Lbr. Co. v. State Tax Comm., (1959) 217 Or
219, 342 P2d 143.

A unitary business operation supplies a sufficient nexus
between the taxpayer and the taxing state to prevent the
invalidity of this tax on due process grounds. John I. Haas,

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, 383 P2d 187, aff'd 1 OTR 442.

Prior to 1965 amendment, eligibility to the offset allowed
by subsection (2) was determined by the corporation’s ac-
Tivity in Oregon and not elsewhere. Guy F. Atkinson Co. v.
State Tax Comm., (1965) 239 Or 588, 399 P2d 166, aff'd 1
OTR 558.

"Principally engaged" can properly be construed to mean
"substantially engaged." Industrial Refrigeration and Equip.
Or 217, 408 P2d 937.

"Primarily" means "chiefly" or "principally" but not nec-
essarily over 50 percent. Industrial Refrigeration and Equip.
Co. v. State Tax Comm., (1965) 242 Or 217, 408 P2d 937,
modifying 2 OTR 122.

Earnings of plaintiff cooperative created by its work-
er members are earnings of its worker-members and not
of the corporation. Linton Plywood Assn. v. State Tax

Taxpayer is not entitled to offset a tax assessed against
its predecessor and paid by taxpayer. Bumble Bee Seafoods,
Inc. v. State Tax Comm., (1966) 2 OTR 347, aff'd, 245 Or
442, 421 P2d 974; American Portable Irr. Co. v. State Tax

Prior to the 1965 amendment, if the taxpayer was a uni-
tary business operation, the offset was based on the corpo-
ration's activity in and out of Oregon. Kaiser Cement &
Gypsum Corp. v. State Tax Comm., (1967) 2 OTR 480, aff'd,
230 Or 374, 443 P2d 233.
The offset provision does not require the corporation that pays the tax to be the same legal entity against whom the tax was assessed. American Portable Irr. Co. v. State Tax Comm., (1969) 3 OTR 360; aff'd, 255 Or 114, 464 P2d 687.


LAW REVIEW CITATIONS: 39 OLR 292.

317.072

NOTES OF DECISIONS

Until taxpayer has a certificate from the department, he is not entitled to any tax relief under this section. Hayden Island, Inc. v. Dept. of Environmental Quality, (1970) 4 OTR 69, aff'd, 258 Or 597, 484 P2d 1106.

317.080

NOTES OF DECISIONS


If the dominant and controlling motive of the taxpayer is primarily to benefit the taxpayers' membership economically and it has no services or means of furthering works of charity, it is not entitled to the exemption in this section. Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293; Santiam Fish & Game Assn. v. State Tax Comm., (1962) 229 Or 506, 368 P2d 401.

The term "gross receipts" does not include proceeds of capital conversions made without gain. Corbett Inv. Co. v. State Tax Comm., (1947) 181 Or 244, 181 P2d 130.

The modifying language of subsection (6) which follows the phrase "local associations of employees" refers only to such associations and has no bearing on civic leagues or organizations. Oregon Physicians' Service v. State Tax Comm., (1960) 220 Or 487, 349 P2d 831.


To qualify for exemption under subsection (6) the organization must be (1) organized as a civic league or organization, (2) not for profit, and (3) operated exclusively for promotion of social welfare. Id.

Tax exemptions applicable to religions and charities are to be strictly construed. Board of Publications of Methodist Church v. State Tax Comm., (1964) 239 Or 65, 396 P2d 212, rev'd 1 OTR 413.

The destination-of-income doctrine is not applied in Oregon to determine the exempt status of an organization. Id.

The motive of Oregon Physicians' Service was the self-regarding purpose of insuring its members against expense of illness and it was, therefore, not exempt. Oregon Physicians' Service v. State Tax Comm., (1960) 220 Or 487, 349 P2d 831.

The competitive, commercial nature of its business precludes exemption to plaintiff. Board of Publications of Methodist Church v. State Tax Comm., (1964) 239 Or 65, 396 P2d 212, rev'd 1 OTR 413.


LAW REVIEW CITATIONS: 39 OLR 128, 42 OLR 319.

317.090


ATTY. GEN. OPINIONS: Validity of minimum tax, 1930-32, p 291.

317.096

NOTES OF DECISIONS


317.105


ATTY. GEN. OPINIONS: Interest on obligations of special districts, 1962-64, p 77.

317.110


317.155

NOTES OF DECISIONS


NOTES OF DECISIONS

Where foreign corporation's subsidiaries paid a great percentage of their net income at 12 percent annual interest on sums advanced by the foreign corporation, the mere statement that the organization was advancing large sums of money to itself for purposes and under circumstances which would prevent any other concern from making such advances, failed to show that the charge was bona fide, reasonable, or that it was interest. Beneficial Loan Society of Ore. v. State Tax Comm., (1939) 163 Or 211, 95 P2d 429.


Earnings of prior years credited during the tax year, to the guaranty fund required by statute were not taxable, regardless of losses, in the year credited. Oregon Mut. Sav. Bank v. State Tax Comm., (1965) 2 OTR 124.

NOTES OF DECISIONS

The deduction for taxes paid or accrued within the taxable year is limited to the taxpayer's own taxes. Broadway-Madison Corp. v. Fisher, (1940) 102 Or 401, 102 P2d 194.

The word "paid" means "accrued or paid" as defined in ORS 317.010. Id.

Real estate taxes on property which a corporation acquired after tax day are not deductible. Id.

Tax payment after "tax day" constitutes part of the purchase price of the property deductible by the transferor. Id.

This section applies to the taxes for personal property tax year, not the taxpayers tax year. Oregon-Wash. Plywood Co. v. State Tax Comm., (1965) 2 OTR 108.


NOTES OF DECISIONS

The base of the tax assessed against corporations which do business both within and without this state is not their over-all net income, but their net income earned in Oregon, therefore, losses or profits resulting from operations in other states are immaterial. Hines Lbr. Co. v. Galloway, (1953) 175 Or 524, 154 P2d 539.

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317.290

Plaintiff, although a lessee, was entitled to a percentage depletion allowance. Hanna Mining Co. v. State Tax Comm., (1966) 2 OTR 389, aff'd, 247 Or 389, 430 P2d 563.

317.295

ATTY. GEN. OPINIONS: Gifts to Centennial Commission, 1958-60, p 76; deduction for contributions to Oregon Technical Institute, 1958-60, p 245.

317.297

A pre-merger net loss may be offset by the continuing enterprise post-merger only against the profits, if any, of the unit which sustained the loss. Tiffany-Davis Drug Co. v. State Tax Comm., (1966) 3 OTR 343; aff'd, 255 Or 279, 463 P2d 878.

317.300


317.305

LAW REVIEW CITATIONS: 37 OLR 78.

NOTES OF DECISIONS

317.360


317.590


317.990

NOTES OF DECISIONS

This statute only applies to organizations otherwise exempt. Board of Publications of Methodist Church v. State Tax Comm., (1964) 239 Or 65, 396 P2d 212, rev'g 1 OTR 413.