December 2023

Legislative Revenue Office

160 State Capitol Building, Salem, Oregon 97301 | 503.986.1266

Oregon Corporate Excise and Income Tax: 2023 Update

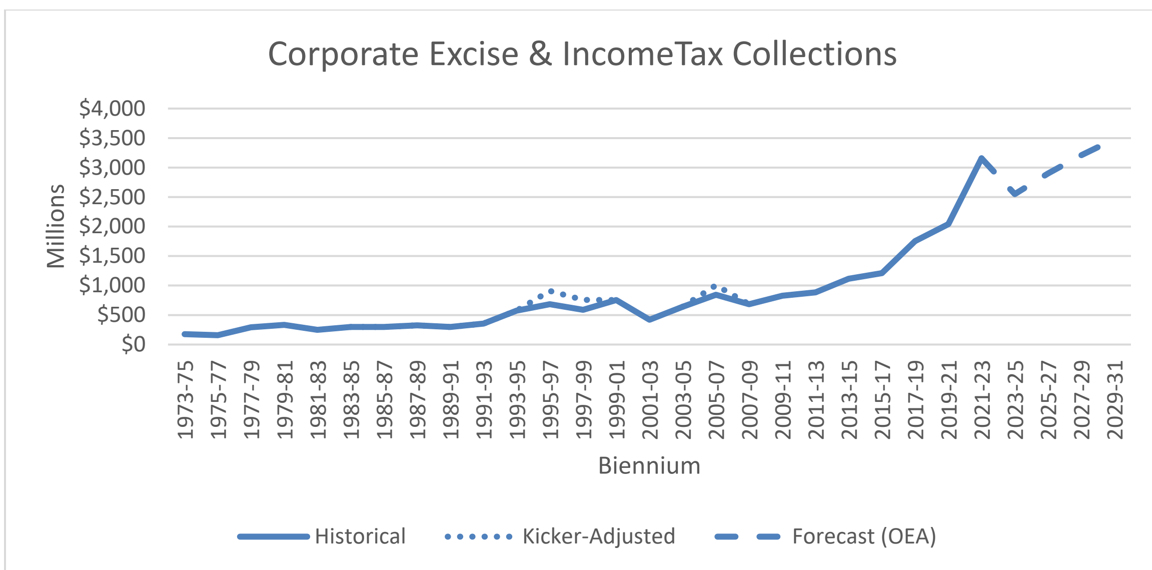
Contents

Introduction 2
S-Corporations and C-Corporations 3
One System with Two Names: Excise Tax and Income Tax 5
Corporate Taxable Income, Tax Rates, and Credits 6
  Federal Taxable Income 6
  Oregon Taxable Income 7
  Tax Rates and Minimum Tax 7
  Tax Credits 8
Timing of Tax Returns and Tax Payments/Collections 10
Characteristics of C-Corporation Tax Filers 12
Key Concepts 13
  Water's Edge Reporting 13
  Combined Reporting and Unitary Groups 14
  Nexus 14
  Apportioned and Allocated Income 15
  Interest Charge Domestic International Sales Corporations (IC-DISCs) 17
Other State Corporate Income Tax Rates 18
Summary of Major Historical Changes and Tax Parameters 19

Introduction

Businesses may be structured and operate as sole proprietors, partnerships, limited liability companies, S-corporations, or C-corporations. This report describes how corporations earning income in Oregon pay state tax on their net income through the Corporate Excise Tax and Income Tax. It explains key concepts, provides some basic statistics, and briefly reviews the history of corporate income taxation in Oregon.

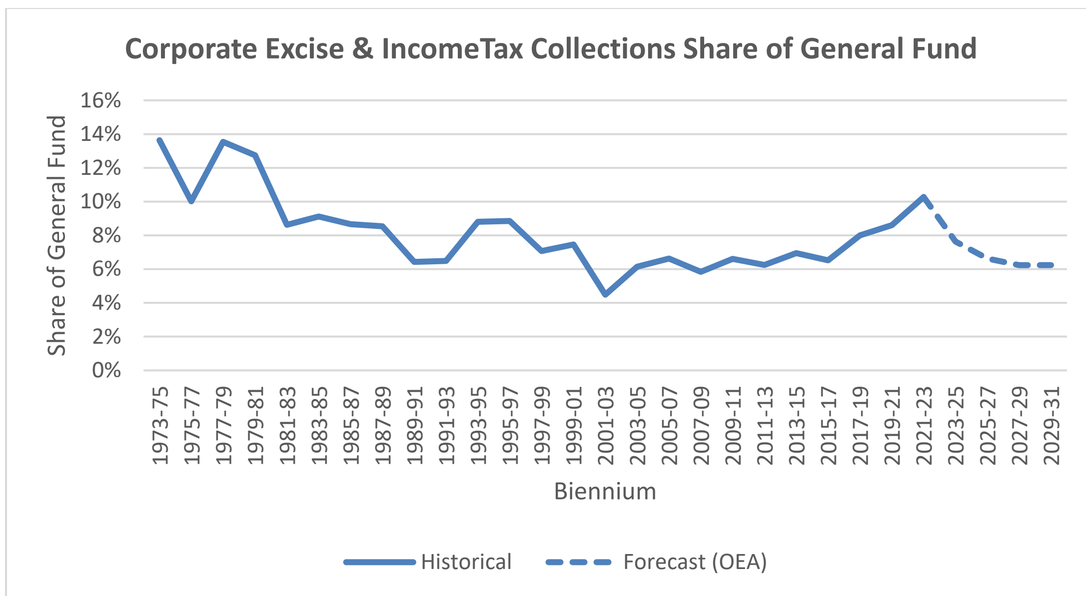
For Oregon's 2021-23 biennial budget period, collections from Oregon's tax on corporate income were $3.16 billion, which was the first biennium in which collections exceeded $3 billion ($2 billion was exceeded for the first time in the 2019-21 biennium). The following graph shows the total collections since the 1973-75 biennium, and a forecast of upcoming biennia from the Office of Economic Analysis (OEA).[1] In addition, because of Oregon's unique "kicker" law — which provided a corporate tax credit when actual collections exceeded forecast by two percent or more — several biennia had reduced collections, so an adjustment is also shown to display what collections would have been without the kicker.[2]



The Corporate Excise and Income Tax is the second largest revenue source in Oregon's General Fund (after the personal income tax) making up 10.3% of the General Fund in Oregon's 2021-23 biennial budget period. The next graph shows the percent of General Fund since the 1973-75 biennium with forecasts from OEA. The drivers behind this percentage over time are varied and related to both changes in the corporate income tax as well as changes in other general fund sources. Some broad factors are changes in both the federal and state taxation landscapes for businesses and individuals, policy choices affecting business taxation, and market forces. While deserving of analysis, a full examination of the relative general fund revenue sources is beyond the scope of this paper.

[1] Oregon Office of Economic Analysis, September 2023 forecast.

[2] The corporate tax surplus refund (commonly known as the "kicker") provided tax credits to corporations if corporate tax receipts were two percent or more over the forecast. The kicker was placed in statute in 1979 and added to the constitution in 2000. Measure 85 (2012) redirected the kicker to K-12 education. The most recent refunded kicker was $101 million for the 2003-05 biennium. Since 2012, corporate receipts have exceeded forecast each biennium. For 2019-21 the amount over forecast was $847 million, and for 2021-23 that amount was $1.8 billion.



The goal of this paper is to provide a broad understanding of Oregon's tax on corporate income by explaining concepts and providing some detail about characteristics of the tax. The report relies on data compiled by other state offices. Data from tax returns and for tax year 2020 tax collections comes from the Oregon Department of Revenue, Research Section. Data on overall collections history and forecast comes from the Oregon Office of Economic Analysis.

S-Corporations and C-Corporations

Oregon's taxation of corporate income begins with definitions in Federal law, which specifies two methods of taxing corporations in separate subchapters of Chapter 1 of the Internal Revenue Code (IRC). The two types of corporations subject to Oregon tax are C-Corporations (often called "regular corporations") and S-Corporations. S-Corporations are named for the subchapter of the IRC that describes their tax treatment and must elect the special status with the Internal Revenue Service by meeting specific requirements and filing form 2553.

C-corporation status is the default for tax purposes. C-corporation shareholders may be individuals, partnerships, LLCs, and other corporations. There is no limit on the number of shareholders, and they can issue multiple classes of stock. Perhaps most importantly, only C-corporations can publicly trade shares. If such corporations have all their taxable activities in Oregon, they are often referred to as "Oregon only" corporations. If they have activities that are taxable in at least one other state or country, they are known as a multistate corporation.

An S-corporation, on the other hand, must be a U.S. corporation, have at most 100 shareholders, and only one class of stock. Each shareholder must be a U.S. resident individual or family, and certain trusts or estates. An S-corporation cannot be a financial institution, an insurance company, or a domestic international sales corporation.

An S-corporation does not generally pay corporate tax on its income. Instead, the income (or loss) is divided among the shareholders and reported on their personal income tax returns. Since the income is passed through to the shareholders who owe the tax, S-Corporations are among the business types known as "pass-through entities." Although they generally pay no corporate tax on their income, S-corporations

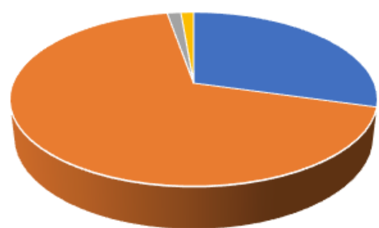
must file a corporate tax return and if subject to the Oregon Corporate Excise Tax pay a minimum tax of $150.

There are limited exceptions to the pass-through status that may require S-Corporations to pay tax based on income at the corporate level. Two exceptions may apply if the S-Corporation had converted from a C-corporation. The first is a tax on capital gains from assets acquired while in C-corporate status — these are known as "built-in gains". Second is an adjustment if the Corporation used the LIFO accounting method in the year before it converted to an S-corporation.[3] A third exception is that S-Corporations with more than 25% of gross receipts from passive sources (e.g., rent, royalties, or interest) pay tax on the "excess" net passive income.

The table and chart below contain information for tax year 2020. Despite the unusual nature of the year, these statistics are representative of a typical corporation tax year. For tax year 2020, 69.2 percent of Oregon corporate tax returns were filed by S-Corporations, while C-corporations subject to the excise tax owed 98.9 percent of the total net tax. Broadly speaking, corporate tax policy discussions tend to focus on the C-corporation Excise tax because it represents, by far, the largest portion of tax collections.

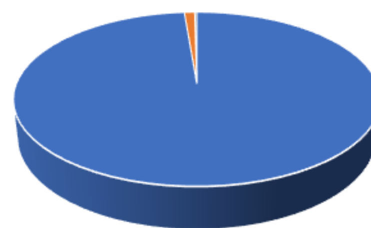
Corporation Tax Returns, Tax Year 2020		
	Number of Returns	Net Tax ($ millions)
C-Corporations Total	33,141	$1,031.5
C-Corp Excise Tax	31,595	$0.0
C-Corp Income Tax	1,546	$0.0
S-Corporations Total	74,444	$11.4
S-Corp Excise Tax	73,003	$0.0
S-Corp Income Tax	1,441	$11.4
Total	107,585	$1,042.9

2020 Corporate Tax Returns



C-Corp Excise, S-Corp Excise, C-Corp Income, S-Corp Income

2020 Corporate Tax Liability



C-Corp Excise, S-Corp Excise, C-Corp Income, S-Corp Income

[3] LIFO is an acronym for "last in, first out." Valuing inventory using the LIFO method generally means the inventory is valued at a lower cost decreasing the calculated profit and corresponding taxes in the current year, but potentially increasing calculated profit in future years.

One System with Two Names: Excise Tax and Income Tax

Oregon law has two chapters describing tax on corporate income. A corporation pays either the "Corporation Excise Tax" (ORS Chapter 317) or the "Corporation Income Tax" (ORS Chapter 318). The Excise Tax is a privilege tax measured by net income and imposed on companies "doing business" in Oregon. The Income Tax is also imposed on net income, and it applies to companies that have income earned from an Oregon source. In essence, all corporations with Oregon-source income are subject to tax, with the Excise Tax applying to most corporations and the Income Tax applying in cases where a corporation is not "doing business" in Oregon. The result is the two chapters of law work together to tax all corporations with Oregon-source income to the extent allowed by federal law.

While there is a nominal distinction between the income and excise tax, Oregon law explicitly notes the legislative intent is to administer them together as uniformly as possible (ORS 318.031). In addition, the Oregon Tax Court noted:

> ORS 317.018 indicates that the legislature intends both that Oregon taxable income is to be based upon federal taxable income (with certain additions and subtractions) and that Oregon will tax all such income over which it has jurisdiction. There being no limitation in the Oregon constitution limiting the reach of the tax statutes at issue here, the phrase "subject to Oregon's jurisdiction to tax" indicates that the legislature intended to extend the reach of the corporate excise tax to the limits of federal law.[4]

In the early 1900's, there were many attempts to pass a comprehensive income tax in Oregon. After Oregon's Share Tax, which taxed the value of securities held by national banks, was found to be invalid in 1928, those efforts included the intent to add a broad tax on corporate income to include banks.[5] The Corporate Excise Tax was enacted in 1929.

The new Corporate Excise Tax relied on a 1926 change in federal law that did not allow a direct corporate tax on income from government securities (a significant source of national banks' income) but rather allowed an indirect tax "according to or measured by net income" to include income from otherwise exempt government securities. This is why the tax was implemented as an excise tax for the privilege of "doing business" in Oregon rather than an income tax. For purposes of the tax, a taxpayer is doing business in Oregon if it engages in any profit-seeking activity in the state.[6]

In 1955 Oregon's tax on corporations was augmented with the addition of the Corporate Income Tax provisions. The new provisions were added in response to a U.S. Supreme Court decision that had broad implications but specifically determined a tax on the privilege of doing business in a state could not be applied to a shipping company that was transporting goods through the state and solely engaged in interstate commerce.[7] The Corporation Income Tax Act of 1955 was intended to ensure Oregon's corporate tax on income (under either the Excise Tax or Income Tax provisions) applies to all corporations with taxable income from an Oregon source.

In a typical year, the provisions of the Oregon Excise Tax account for more than 99 percent of the total Oregon tax on corporate income, and the Income tax provisions account for less than one percent. For

---

[4] In footnote 12 *of Capital One Auto Finance, Inc. v. Dept. of Revenue* in the Regular Division of the Oregon Tax Court, December 23, 2016. (22 OTR 326 (2016))

[5] The 1928 case was Brotherhood Co-op. National Bank v. Hurlburt, 26 F.2d 957 (D. Or. 1928). A more complete history of the genesis of Oregon's income tax can be found in the article: Willis C. Warren, A Brief History of Oregon's Income Tax, Oregon Historical Quarterly, Vol. 38, No. 2 (June 1937) pp. 193-205

[6] Oregon Administrative Rules (OAR 150-317-0030)

[7] Spector Motor Service v. O'Connor, 340 US 602 (1951)

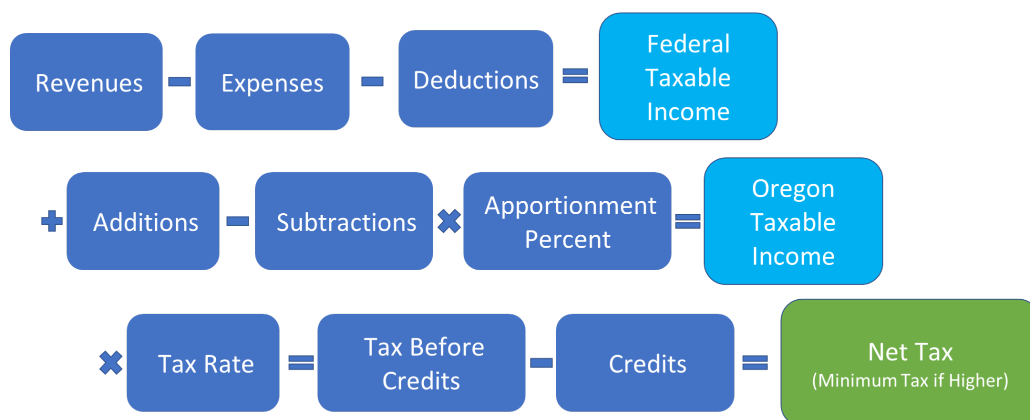
2020, the Income tax was about 0.22 percent of the total tax liability for Oregon corporate income (as shown on the table on page 2).

Corporate Taxable Income, Tax Rates, and Credits

Oregon's tax is intended to tax the profits of a corporation by using specific calculations to arrive at "net taxable income."

The calculation begins with total revenues from all sources and generally allows deductions for expenses incurred in the pursuit of income to calculate taxable (or net) income. Both the federal corporate income tax and Oregon's corporation income and excise tax also allow other deductions and exclusions.

At a very high level the calculation is carried out as follows:



Federal Taxable Income

Oregon's definition of taxable income begins with the definition of federal taxable income. As such, the Oregon tax return uses the federal tax return as a base document for determining Oregon taxable income. Federal taxable income is determined by adding together all income items and then subtracting certain allowable expenses. The following provides a summary view of the components of taxable income on a federal tax return.

Income	
	Gross Receipts or Sales
	Dividends
	Interest on U.S. Obligations
	Other Interest
	Gross Rents
	Gross Royalties
	Net Capital Gain
	Other Income

Expenses	
	Cost of Goods Sold
	Cost of Repairs
	Bad Debts
	Rents
	Taxes (State and Local)
	Interest
	Contributions
	Depreciation/Amortization
	Advertising
	Salaries and Wages
	Pension, Profit Sharing, etc.
	Employee Benefit Programs
	Other Deductions
	Net Operating Loss

Oregon Taxable Income

As mentioned above the calculation of Oregon Taxable Income starts with the corporation's federal taxable income.[8] The primary advantage of Oregon's connection to the federal definition of taxable income is that administration of, and compliance with, the tax is easier. In some cases, to reflect Oregon policy, specific adjustments are made to federal taxable income including additions and subtractions to arrive at Oregon taxable income.

Additions are provisions adding to federal taxable income to derive Oregon taxable income, and usually reflect the state denial of certain federal exclusions (e.g., interest on state and local bonds) or the disallowance of deductions for some expenses such as losses included in the federal return that are attributable to an affiliate company that is not in the Oregon filing group.

Subtractions allow Oregon-specific tax incentives such as land donations to educational institutions, and the different treatment of expenses such as allowing business expenses of Marijuana related activities authorized by Oregon law but prohibited under federal law.

For corporations that have income only from Oregon, the income attributed to Oregon is equal to federal income adjusted by additions and subtractions. For corporations that have income from multiple states, the share of income attributed to Oregon is determined through an apportionment formula. The formula is based on the proportion of the corporation's sales in Oregon versus everywhere (more detail is provided in the Key Concepts section of this report).

In calculating Oregon taxable income, net operating loss carryforwards are treated different from how they are treated at the federal level.[9] For example, at the federal level, losses in one year can be carried forward to future years and deducted from net income in those years. The federal loss carryforward deduction is limited to 80 percent of taxable income and losses can be carried forward indefinitely.[10] Generally, Oregon only allows losses to be carried forward, up to 15 years. SB 1524 (2022) provides an exception for some farm operation losses in tax years 2023 through 2028 allowing them to be carried back (subtracted from prior years' income) up to three years.

Tax Rates and Minimum Tax

Oregon tax is calculated by multiplying Oregon Taxable Income by the applicable tax rates. Oregon's Corporate Income and Excise taxes have a two-tiered structure, applying a 6.6% rate to taxable income up to $1 million, and a 7.6% rate to taxable income above $1 million; the threshold is not indexed for inflation. A history of the tax brackets and rates is provided in the final section of this report.

[8] Specifically, the Oregon tax return begins with Federal Taxable Income before net operating loss deduction and special deductions (i.e., Line 28 on the Federal Form 1120), these items are accounted for separately in calculating Oregon taxable income.

[9] Capital losses are treated the same for Oregon and federal tax. The losses are deducted against capital gains only and can be carried back up to three years, or carried forward up to five years to offset against capital gains but not if it increases or creates a net loss for the year. See Oregon Administrative Rule 150-317-0060.

[10] The Tax Cuts and Jobs Act of 2017 and CARES Act made significant changes, some of which were temporary. The description here applies to tax years 2021 and forward.

Corporate Excise/Income Tax Rates	
Taxable Income	Tax Rate
<= $1 Million	6.6%
Over $1 Million	7.6%

C-Corporations that pay under the Excise Tax provisions have a tiered minimum tax based on their sales in Oregon, the minimum under the Income Tax provisions is zero. Tax liability is the tax calculated from tax rates (minus credits) or the minimum tax if it is higher. The table below shows the minimum tax that has been in place since 2009.[11]

C-Corporate Minimum Tax	
Minimum Excise Tax based on Sales	
Oregon Sales ($)	MGT
< $500,000	$150
$500,000 to $1 Million	$500
$1 Million to $2 Million	$1,000
$2 Million to $3 Million	$1,500
$3 Million to $5 Million	$2,000
$5 Million to $7 Million	$4,000
$7 Million to $10 Million	$7,500
$10 Million to $25 Million	$15,000
$25 Million to $50 Million	$30,000
$50 Million to $75 Million	$50,000
$75 Million to $100 Million	$75,000
$100 Million or more	$100,000
Mininum Income Tax	
All Corporate Income Tax Filers	$0

Tax Credits

Tax credits reduce a taxpayer's liability directly, on a dollar-for-dollar basis to the minimum tax applicable to the taxpayer. For example, assuming a corporation has a pre-credit tax liability of more than $250, and a minimum tax of $150, then a $100 tax credit can reduce tax liability by the full $100 of the credit. In many cases, any 'excess' tax credit may be carried forward to subsequent tax years, potentially reducing future tax liability. In other cases, 'excess' tax credit is refunded to the taxpayer. These credits are known as refundable credits. Currently, the only refundable tax credits available to corporations are for agricultural worker overtime pay and for "claim of right" income repayments.

The following are tax credits available to corporations as newly claimed in tax year 2023. Of the fourteen tax credits, nine have a carryforward, two are refundable, and three are not refundable and do not have a carryforward.

- Affordable Housing Lenders are eligible if they make qualified loans at below market interest rates for low-income housing projects. The Housing and Community Services department may certify credits of up to $35 million each year. The credit amount is the difference between

[11] Oregon's Corporate Income Tax has a minimum tax of zero for both C-Corporations and S-Corporations. The zero minimum is usually referred to as having "no minimum tax." There is also no minimum tax for IC-DISCs, which are very briefly described in the Key Concepts section of this report.

finance charges on the loan and the market rate for the same charges. The credit is taken over the life of the loan and each year can be carried forward up to 5 years.

- Agricultural Worker Overtime allows a credit to employers paying overtime to agricultural workers as required by HB 4002 (2022). The credit is a percent of incremental overtime compensation varying by size of employer and whether the taxpayer's agricultural activity is dairying. This credit is refundable.
- Agriculture Workforce Housing allows a transferrable credit up to 50 percent of eligible costs to complete an agriculture workforce housing project to be taken over five years and can be carried forward up to 9 years. This credit may also be transferred to a taxpayer that contributed to the project if the initial recipient of the credit is unable to use it.
- Claim of Right allows a refundable credit for taxpayers to adjust tax for prior inclusion of income that was correctly included on a prior year's tax return (i.e., it appeared the taxpayer had an unrestricted right to the income) but was later determined to have been paid to the taxpayer in error and had to be repaid.
- Crop Donation allows a credit for 15 percent of the wholesale value of edible crops donated to a food bank or other nonprofit by a grower, can be carried forward up to 3 years.
- Employer Scholarship allows a credit for 50 percent of scholarships (up to $50,000 per year) paid by an employer for their employees or employees' dependents. The employer must have at least four full-time employees and program certification from the Director of the Office of Student Access and Completion. The credit can be carried forward up to five years.
- Film Production Development Contributions awards credits by auction administered by the Department of Revenue. Proceeds from the auction are used to reimburse filmmakers for a portion of expenses incurred in Oregon. Taxpayers can purchase credits through the auction, with bids beginning at a limit set by the Department of Revenue (with a lower limit of 90% of the value of the credit). The credit can be carried forward up to three years.
- Fish Screening Devices is a credit for 50 percent of costs (up to $50,000) of installing fish screening devices, bypass devices, or fish ways certified by the Oregon Department of Fish and Wildlife. The credit can be carried forward up to five years.
- Individual Development Account (IDA Initiative Fund) Donations can be eligible for a credit if made to state-selected fiduciary organizations. Donations are applied to match participant contributions to Individual Development Accounts (IDAs), and to administration of the IDA program. The credit amount is determined by the fiduciary organizations but can't exceed 90 percent of the contribution. The credit can be carried forward up to three years.
- Oregon Life and Health Insurance Guaranty Association (OLHIGA) offset credits are available to life and health insurance corporations that pay certain assessments to the Oregon Life and Health Insurance Guarantee Association. The credit is 20 percent of the assessment each of the five years following payment. No carryforward is available for this credit.
- Oregon Cultural Trust Contributions provides a credit equal to a taxpayer's contribution to the Oregon Cultural Trust (up to $2,500) after the taxpayer makes contribution of at least as much to another Oregon cultural organization. No carryforward is available for this credit.
- Reservation Enterprise Zone allows a credit for tribal property taxes or other tribal taxes paid or incurred by a new business facility in a reservation enterprise zone. No carryforward is available for this credit.
- Short Line Railroad Rehabilitation allows a credit equal to 50% of the rehabilitation project costs for a taxpayer, limited to $3,500 per mile of a short line railroad owned by the taxpayer. There is an annual cap of $4 million on total certified credits, and costs that could be used to claim a federal credit are not allowed a state credit. A carryforward of 5 years is available.
- University Venture Development Fund Contributions can be eligible for a credit of up to 60% of the amount donated (not to exceed $600,000). Oregon's public universities and Oregon Health and Science University can establish development funds and certify donations eligible for the credit. The credit can be carried forward up to three years.

Use of tax credits by corporations has been declining as several credits have been allowed to sunset and are not available for new use. For tax year 2020, $6.9 million of newly claimed credits were used, with most of the value being used by a few corporations. Carryforward of credits that were previously claimed was larger with $36 million used, with the largest carryforward use being $9.7 million used by 67 corporations for the research and development tax credit that sunset in 2017 and allowed a 5-year carryforward. A new tax credit for research and development targeted to companies working in a semiconductor-related field was created by the 2023 Legislature (HB 2009) to apply to tax years 2024 through 2029.

The 2009 Legislature established a formal review process for all tax credits. Tax credits are generally enacted for a six-year period and then scheduled to sunset. Each long session the legislature reviews roughly one-third of active tax credits such that a review of all tax credits occurs over the span of six years, or three long legislative sessions. Since 2015 the Legislative Revenue Office has published a report on expiring tax credits, which is the basis for the legislative review. These reports can be found on the Legislative Revenue Office webpage in the Publications section.

Timing of Tax Returns and Tax Payments/Collections

Because corporations don't all use a calendar year as their annual accounting period, they may file a tax return based on their fiscal year. Tax law generally refers to a "tax year" as the year in which a corporation's fiscal year begins. For example, a tax return that covers the period December 1, 2021, to November 30, 2022, would be for the 2021 tax year. There are corporations with a fiscal year starting in each of the twelve calendar months, though for 2020 more than 60 percent of C-Corporation tax returns and tax liability was from calendar-year filers.

The tax year concept is important because for a given tax year, the tax policies are generally the same for each corporation. There can be some exceptions, for example federal law may change treatment of depreciation for property placed in service at a specific date in the middle of a year. The reference point of tax year is useful in groupings of tax returns with similar policy but does complicate the understanding of which policies are responsible for tax revenue received in a given calendar year or fiscal year.

Corporations are generally required to file their federal tax return (or request for extension) on the 15th of the fourth month following the end of their fiscal year, and their state return one month later. For example, if their fiscal year corresponds to the calendar year, their federal tax return is due April 15th and their Oregon tax return is due May 15th. Many corporations file for an extension allowing both federal and state tax returns to be filed 6-months after the original due date.

Corporations are required to make quarterly estimated payments throughout the year if they expect to have $500 or more of tax liability. Estimated payments are due on the 15th day of the 4th, 6th, 9th, and 12th months of a taxpayer's fiscal year (April, June, September, and December for calendar year filers). Required estimated payments are generally 25% of the total tax liability on the tax return or based on an annualized calculation (there are exceptions, for example a small corporation can make estimates based on the prior tax year). If quarterly payments are below the required amount, interest is owed on the difference from the payment due date. Interest is set annually by the Department of Revenue based on rates set by the Internal Revenue Service. For calendar year 2023, the rate was set at six percent per year.

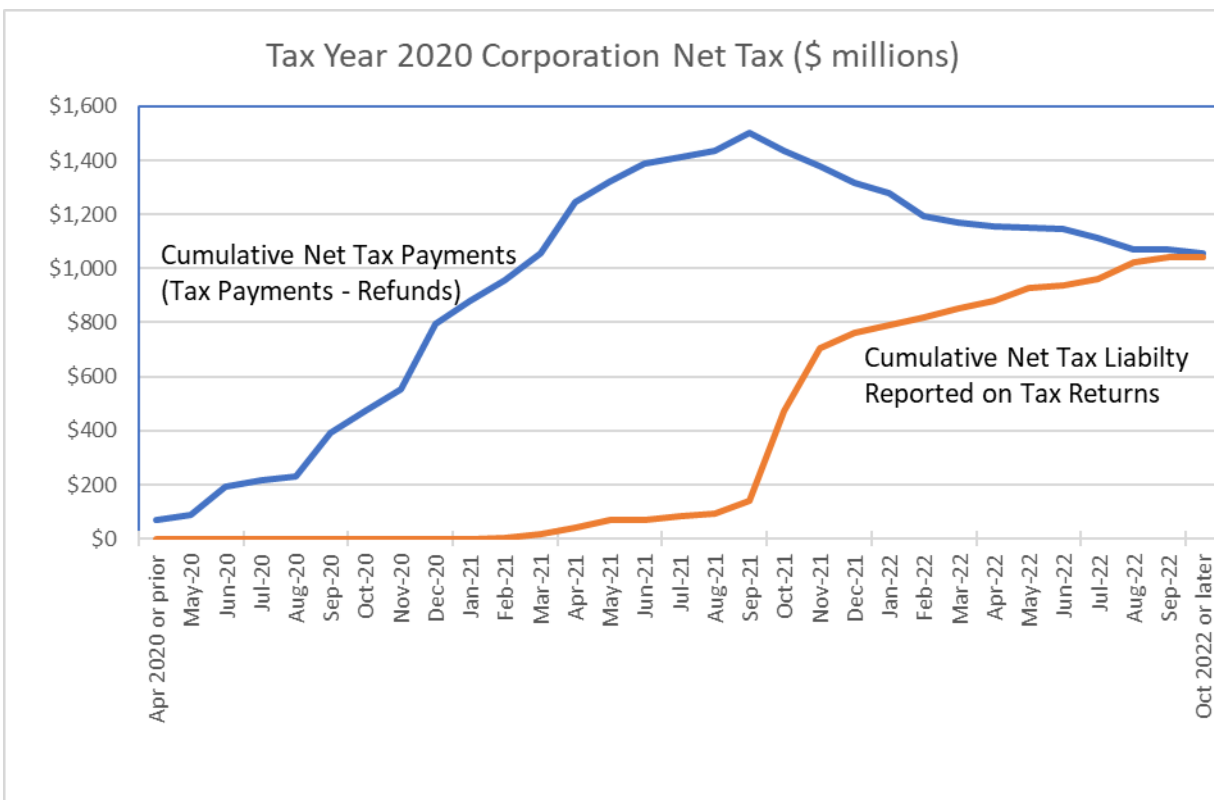
When taxpayers file their tax returns, their total payments for the tax year are compared to the liability calculated on the tax return. If the liability is higher, the corporation is required to make a final payment

to reconcile the payments to the liability. If a corporation has tax due that is not paid by the due date for the tax return, the amount owed may be subject to a 5 percent failure-to-pay penalty in addition to any interest owed.

If the payments exceed the liability at the time of filing the tax return, the balance is refunded. Any refund can be used to pay tax for the following tax year. Corporations generally overpay taxes (they are likely motivated to avoid penalties), so the dollar amount of corporation refunds is significant each year, with those refunds generally applied as estimated payments for the next tax year.

For state budgeting purposes, the state economist forecasts the net tax collections to be received within each biennium. As noted, the tax collections in a year are different from annual tax liabilities attributed to the year. Tax collections are the actual payments made by taxpayers counted at the time the payments are made. Because the General Fund budgeting and spending are on a cash basis, tax collections usually get more attention than annual tax liability.

As an example, the following graph shows the cumulative payments (net of refunds) for the 2020 tax year compared to the cumulative liability shown on tax returns filed for the 2020 tax year.



The graph illustrates the lag in timing between when Oregon receives tax payments and when the returns are filed (which explain why the revenue was received). It is intended to be broadly illustrative of the timing of payments and tax returns, so it does simplify the presentation somewhat. In particular, amended or late returns as well as audits will change the values for several years into the futures.

From the graph, note that as of September of 2021, total estimated and other payments for the tax year exceeded the eventual total by about 40%. Starting in October of 2021, refunds began to reduce the net collections as payments were reconciled to liability with the filing of tax returns. Refunds leveled off and cumulative payments converged with known tax liability about a year later when the last tax returns for Tax Year 2020 were due. This pattern reflects the challenge of explaining or predicting trends in taxes on

corporate income. Forecasters try to understand what is driving the tax receipts given that taxpayers tend to be conservative overall (probably due to potential penalties) and as a group make estimated payments that exceed their final tax liability. While the graph shows the activity for just tax year 2020, tax payments received in every month can be traced to a variety of tax years.

Characteristics of C-Corporation Tax Filers

To describe the number of taxpayers that pay under the Corporate Excise or Income Tax in Oregon, this section will focus on C-Corporations. While C-Corporations made up about 31% of all tax filers for tax year 20, they paid 98.9% of the tax. The following tables show C-corporation tax filers by Oregon taxable income category, minimum tax payment (sales) category, and by the largest industry sectors.

Taxable Income Category	Number of Returns	Net Tax ($millions)
Zero Income (or Loss)	20,890	$42.9
$1 to $50,000	6,513	$7.8
$50,000 to $100,000	1,268	$6.7
$100,000 to $250,000	1,482	$16.6
$250,000 to $500,000	921	$21.6
$500,000 to $1 million	661	$30.4
$1 million to $5 million	939	$143.2
More than $5 million	467	$762.2
Total	**33,141**	**$1,031.5**

C-Corporation Tax Returns for Tax Year 2020							
		Returns Paying Minimum Tax		Returns paying Rate-Based Tax		TOTAL for all Returns	
Oregon Sales Category for Minimum Tax	Minimum Tax	Number of Returns	Net Tax ($millions)	Number of Returns	Net Tax ($millions)	Number of Returns	Net Tax ($millions)
No Minimum Tax (Form 20-I or IC-DISC)*	N/A	N/A	N/A	1,729	$4.3	1,729	$4.3
Less than $500,000	$150	14,722	$2.2	3,488	$9.5	18,210	$11.8
$500,000 to $1 million	$500	2,043	$1.0	1,091	$6.9	3,134	$7.9
$1 million to $2 million	$1,000	1,684	$1.7	1,054	$11.6	2,738	$13.3
$2 million to $3 million	$1,500	894	$1.3	578	$9.8	1,472	$11.1
$3 million to $5 million	$2,000	848	$1.7	667	$18.3	1,515	$20.0
$5 million to $7 million	$4,000	465	$1.9	388	$16.0	853	$17.9
$7 million to $10 million	$7,500	462	$3.5	314	$20.6	776	$24.1
$10 million to $25 million	$15,000	723	$10.8	654	$77.5	1,377	$88.4
$25 million to $50 million	$30,000	298	$8.9	307	$92.1	605	$101.0
$50 million to $75 million	$50,000	110	$5.5	127	$72.6	237	$78.1
$75 million to $100 million	$75,000	46	$3.5	89	$63.4	135	$66.8
More than $100 million	$100,000	121	$12.1	239	$574.7	360	$586.8
Total		**22,416**	**$54.1**	**10,725**	**$977.4**	**33,141**	**$1,031.5**

*The minimum tax applies to the Excise Tax only. The two categories of taxpayers not subject to the income tax are those that file form 20-I and pay under the Income Tax provisions because they are not "doing business" in Oregon and those that file Form IC-DISC (See the description fo IC-DISC in the Key Concepts Section of this report).

C-Corporation Tax Returns for Tax Year 2020		
Industry Sector	**Number of Returns**	**Net Tax ($millions)**
Agriculture, Forestry, Fishing, and Hunting	1,380	$8.2
Mining	76	$1.1
Utilities	88	$10.0
Construction	2,009	$38.8
Manufacturing	2,276	$84.0
Wholesale Trade	3,508	$167.1
Retail Trade	1,817	$130.7
Transportation and Warehousing	707	$31.8
Information	2,061	$50.7
Finance and Insurance	4,342	$186.6
Real Estate, Rental, and Leasing	1,813	$18.2
Professional, Scientific, and Technical Services	4,728	$61.1
Management of Companies and Enterprises	2,180	$177.3
Administrative, Support, and Waste Management	1,144	$19.5
Education Services	312	$2.0
Health Care and Social Assistance	1,032	$12.0
Arts, Entertainment, and Recreation	352	$1.0
Accommodation and Food Services	686	$7.7
Other Services (except Public Administration)	1,113	$21.9
Unknown	1,517	$1.5
Total	**33,141**	**$1,031.5**

For a full review of the characteristics of tax returns for tax year 2020 and others, please refer to the Department of Revenue statistical publications. Specifically, the Oregon Corporate Excise & Income Tax Statistics.

Key Concepts

The determination of Oregon corporation income tax liability relies on the intersection of several concepts. As previously stated, the starting point is federal taxable income. The Oregon process can be described as consisting of the following three steps: First, which corporation included in the federal return should be included on the Oregon tax return; Second, which streams of income should be included; and third, what percentage of each income stream is taxable by Oregon. The concepts included in this section are briefly described to help provide more context for the structure and impact of the tax.

Water's Edge Reporting

A combined group of corporations may include both international and U.S. members, but the international members may not be required to be included for tax reporting. Specifically, a combined group may include only United States companies, or it can include all members worldwide. Oregon has adopted water's edge reporting, requiring inclusion of unitary members in the United States, but not foreign members "beyond the water's edge." Oregon, and many other states, moved away from worldwide combined reporting and adopted Water's Edge reporting in 1984.

Combined Reporting and Unitary Groups

Complex business structures often involve several businesses working together with some form of common ownership, some centralization of management functions or other shared functions. When a group of businesses has these types of shared value it has a unitary relationship and the income from all the businesses is interrelated and can be subject to apportionment among states for tax purposes. That is, the group of businesses can be taxed as a single — unitary — business by a state.

States that impose a corporate income tax require groups of related corporations to file using either the combined or separate filing method.[12] The separate method treats each business in isolation and considers only the income attributed to the individual corporation. The combined approach taxes a "unitary group" by including the taxable income of all companies with sufficient business connections to a given state. Currently, 28 states and the District of Columbia require combined reporting, while 16 states allow each individual corporation to file its own, separate tax return.

Oregon follows the unitary method. In most cases if a group of related businesses is subject to Oregon income or excise tax and they file a consolidated tax return with the Internal Revenue Service (IRS), they must also file a consolidated return for Oregon. The tax return represents the parent company and all the affiliated companies. Apportioning income from all related businesses in a unitary group treats them as a single economic enterprise.

When filing in Oregon, corporations start their state calculation with federal taxable income. Individual companies are added to or removed from the return depending on whether they operate as a unitary group within Oregon. The intent of requiring combined reporting is to include the income of related corporations that share economic value and may reasonably have income attributable to Oregon.

Nexus

The U.S. Constitution limits the reach of state income taxes in the Commerce Clause and the Due Process Clause. Together, these provisions require that a corporation has substantial connections to a state before a state can tax its income, that income subject to tax by a state must be related to values connected with the state imposing the tax, and that states may not impose taxes in ways that are discriminatory and place an undue burden on interstate commerce. [13]

In 1959 Congress enacted an additional limit on taxing income derived from sale of tangible goods with Public Law 86-272. This law prohibits states from taxing income derived from businesses if their only activity in a state is "solicitation of orders" for tangible personal property. This prohibition does not apply if the business has a more substantial presence in the state (e.g., performing warranty service).

A business with substantial ties to a state which allow the state to tax its income is said to have nexus with that state. A state can show that a corporation has nexus either through the presence of physical factors that support the corporation's business (e.g., a retail store, warehouse, or office) or through ties to the state's economy. Oregon administrative rules (OAR 150-317-0020) state that for Oregon, "Substantial nexus exists where a taxpayer regularly takes advantage of Oregon's economy to produce income for the taxpayer and may be established through the significant economic presence of a taxpayer in the state."

[12] "Corporate income tax" as used here refers to a tax on or measured by income. States call them by various names. For Oregon, this includes the Corporation Excise Tax and Corporation Income tax.

[13] The term "undue burden" comes from what is known as the Dormant Commerce Clause of the U.S. Constitution. Courts have interpreted the Commerce Clause as reserving to Congress the right to regulate interstate and international trade and prohibiting states from discriminating against, or unduly burdening, interstate or international trade.

While not a complete list, some of the factors considered by the Department of Revenue to determine if nexus exists are listed in OAR 150-317-0020(3).

OAR 150-31-0020 (3) In determining whether a taxpayer has a substantial nexus with Oregon the department may consider whether the taxpayer:

> *(a)Maintains continuous and systematic contacts with Oregon's economy or market;*
> *(b)Conducts deliberate marketing to or solicitation of Oregon customers;*
> *(c)Files or is required to file reports or returns with Oregon regulatory bodies;*
> *(d)Receives significant gross receipts attributable to customers in Oregon;*
> *(e)Receives significant gross receipts attributable to the use of taxpayer's intangible property in Oregon; or*
> *(f)Receives benefits provided by the state, such as:*
>> *(A)Laws providing protection of business interests or regulating consumer credit;*
>> *(B)Access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights;*
>> *(C)Highway or transportation system access for transport of taxpayer's goods or services;*
>> *(D)Access to educated workforce in Oregon; or*
>> *(E)Police and fire protection for property in Oregon that displays taxpayer's intellectual or intangible property.*

Apportioned and Allocated Income

Most income earned by a corporation within the U.S. will be taxable by the state in which it was earned. For corporations operating solely within Oregon's borders finding the income attributable to Oregon is straightforward and all their income will be taxed by Oregon. Many corporations, however, operate in multiple states and identifying the amount of income taxable by Oregon is not straightforward. As mentioned above, the starting point for calculating Oregon tax liability is federal taxable income. The main question is then, how much of that income is taxable by Oregon? While there are several steps involved, apportionment or allocation of that income among states is fundamental to taxing multistate businesses.

The methods of apportionment used by most states started with model legislation that originated with the creation of a model act for states known as the Uniform Distribution of Income for Tax Purposes Act (UDITPA) in 1957 by the National Conference of Commissioners on Uniform State Laws. States found an impetus to enact most or all of UDITPA when Congress began considering legislation that would limit states' ability to tax multistate business income. In 1967, the Multistate Tax Compact was formed and created the Multistate Tax Commission (MTC). The MTC continues to study issues of taxing multistate businesses and recommend changes in laws and rules to promote consistent tax policy among the states. Oregon adopted UDITPA in 1965 and the Multistate Tax Compact in 1967.

While Oregon's apportionment method did start with UDITPA, it has been modified since 1967. In 2013, Oregon Senate Bill 307 formally disconnected from Articles III and IV of the Multistate Tax Compact which prescribe a method of apportionment. Oregon had moved to using a single sales factor (described in more detail in the Apportionment Formulas section below), and the 2013 change clarified that corporations could not choose their method of apportionment from state law, or the Multistate Tax Compact.[14]

[14] The disconnect was a defensive step in response to a 2012 California Court of Appeal decision allowing taxpayers to elect between the apportionment method prescribed by state law, or the three equally weighted factors contained in the Multistate Tax Compact if the state was a member of the Compact (Gillette Co. Et. Al. V. California Franchise Tax Board). The California Supreme Court reversed that ruling in 2015 holding that the taxpayers could not elect between the statutory apportionment formula and the formula contained in the Multistate Compact.

Apportionment versus Allocation

Apportionment divides the income that is earned in the taxpayer's business among the states in which the corporation operates. Only income from a corporation's transactions in its regular trade and business activities is apportionable. Examples of apportionable income include sales of products and services if those sales and services are the taxpayer's business. If a taxpayer's business is renting property, then rental income is apportionable.

Allocation, in contrast, assigns income from activities that are incidental to the corporation's business to a particular state, usually based on the location of property that produced the income, or the location of the corporation's domicile. Only non-apportionable income is assigned to states using allocation. Examples of income that is allocated rather than apportioned include investments not related to a corporation's regular business (e.g., capital gains or interest from owning stocks and bonds may be unrelated to regular business).

Apportionment Formulas

The Uniform Division of Income for Tax Purposes Act suggests a three-factor apportionment formula — property, payroll, and sales — giving each factor equal weight. Many states use a version of the formula that gives more weight to sales. As originally enacted in Oregon, the equal-weighted formula required multistate corporations to calculate their proportion of U.S. property in Oregon, their proportion of U.S. payroll in Oregon, and their proportion of U.S. sales in Oregon. These three percentages were then averaged. The result was applied to the apportionable federal taxable income to arrive at Oregon taxable income. Oregon adopted a version of the formula that gave twice as much weight to sales in 1991 (known as "double-weighted sales" and transitioned to using only sales in 2005 ("single-sales factor").

Since 2005 the method Oregon has used to divide apportionable income among states is known as "single sales factor" apportionment. The income apportioned to Oregon is in proportion to the corporation's sales in Oregon versus that corporation's total sales in the United States. The ratio used is Oregon sales divided by sales everywhere. For instance, a corporation with $20 million in Oregon Sales and $100 million in sales within the United States would apportion 20% (20/100) of its apportionable income to Oregon.

As an example of the effect of apportionment formulas, the table to the right shows three of the historical methods used by Oregon. Originally, C-corporations were required to calculate their Oregon shares of property, payroll, and sales within the U.S. using an equal-weighted formula. The example in the table has shares of 33%, 50%, and 20%, for property, payroll, and sales factors, respectively. The simple average of the factors is 34%. Consequently, an equal-weighted apportionment formula would apportion 34% of taxable income to Oregon. Under the double-weighted sales approach, the sales factor is counted twice when calculating the average. In this example, because the sales factor of 20% is less than the equal-weighted approach, the double-weighted approach results in a lower apportionment factor of 31%. Lastly, the single-sales factor approach means simply using the 20% sales factor. For this example, the apportionment percent is reduced by increasing the weight on the sales factor.

Apportionment Methods

	$ Millions		
	Property	Payroll	Sales
Oregon	$10.0	$30.0	$20.0
Washington	$15.0	$20.0	$50.0
California	$5.0	$10.0	$30.0
Total	$30.0	$60.0	$100.0
Federal Taxable Income:			$10.0
Oregon Shares	33%	50%	20%
Even-weighted factor:			34%
Double-weighted sales factor:			31%
Single-Sales Factor:			20%

Because of the variety of taxpayer circumstances, and significant differences between business types, there are some industries required to use modified apportionment factors or sourcing rules. For instance, transportation companies (airlines, railroads, and trucking companies) and utility companies have specific rules for apportionment. While industries with modified apportionment factors generally still use a single-

sales-factor for Oregon, utility and telecommunications companies can choose to use the double-weighted formula.[15]

Market-Based Sourcing

There are policy options for specifying which of a corporation's sales are assigned to a state. The options can be relatively straightforward for the sale of tangible products where sales are usually sourced to the state where the property is delivered. However, intangible products and services sold as part of a corporation's business can be assigned either to the state of the recipient, or to the state where the income-producing activities occurred. SB 28 (2017) moved Oregon to market-based sourcing for both tangible and intangible sales (e.g., goods, and services, respectively) starting in 2018. Under this method, sales made to a recipient within a given state are assigned to that state and included in the numerator when calculating the apportionment percentage.

Prior to 2018, services were generally assigned according to what is known as the Cost-of-Performance method. Basically, the sale of a service was assigned to the state in which the plurality of costs was incurred. For instance, using a Cost-of-Performance rule when assigning a location for software sales would generally assign those sales to the state where the software was developed, where a market-based rule would generally assign the sales to the state where the software is installed and used.

Throwback Sales

One goal of apportionment under UDITPA is to distribute 100% of federal income to the states in which each corporation does business so that all income is taxable by states. There are limits based on federal law that ensure income can only be taxed by a state if a taxpayer has substantial ties to the state (i.e., "nexus" which is discussed earlier). There are cases where a corporation has sales into a state in which it does not have nexus. To apportion 100% of income to states where a corporation is taxable, sales made from Oregon into states where the taxpayer does not have such nexus are "thrown back" to Oregon and treated as Oregon sales. Not all states require sales "throw-back" in those cases, but the rule is intended to reduce the value of sales not included in apportioned income in any state (these sales are known as "nowhere sales") which would result in some income not being taxable by any state.

Interest Charge Domestic International Sales Corporations (IC-DISCs)

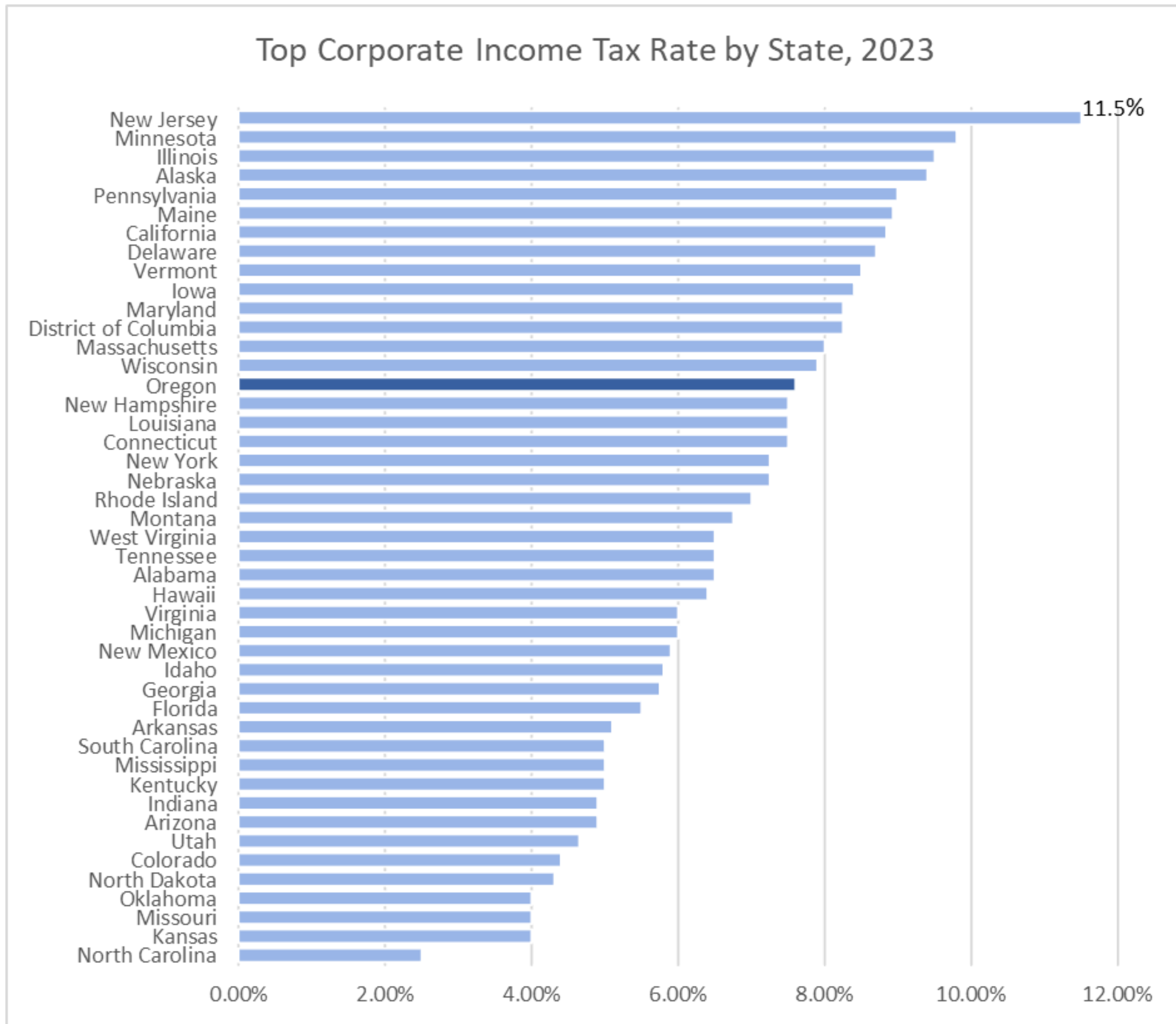
IC-DISCs are distinct business entities that receive a commission on a corporation's export sales. While generally beyond the scope of this paper, IC-DISCs formed on or before January 1, 2014 are noted here because they have unique treatment under Oregon law. They are not subject to the minimum Excise Tax (as noted in the table showing minimum tax categories), and they are taxed at a reduced 2.5% rate on commissions received.

---

[15] ORS 314.280(3)(b) allows utilities and telecommunication corporations to choose double-weighted sales but note that there is more broad authority (e.g., ORS 314.280(1), and ORS 314.295) for the Department of Revenue to impose or allow a different apportionment method.

Other State Corporate Income Tax Rates

Each state has its own complexity within its corporate income tax structure, but one way to compare states is to look at the top tax rate. The next graph shows the states ranked by top tax rate.



Source: Federation of Tax Administrators, Tax Foundation, and Individual State Websites

Note that the graph does not include the detail necessary for a thorough comparison, and several of the top rates apply to specific industries only or include a surtax of some kind.

There are six states that do not have a corporate income tax (Nevada, Ohio, South Dakota, Texas, Washington, and Wyoming). Of the states that do not impose a corporate tax on income, four impose a gross receipts tax (Nevada, Ohio, Texas, and Washington). Oregon, Delaware, and Tennessee impose both a corporate income tax and a gross receipts tax (the Corporate Activity Tax is Oregon's modified gross receipts tax).

Summary of Major Historical Changes and Tax Parameters

The Corporate Excise Tax was enacted in 1929 with the Personal Income Tax. Below are the major tax changes in Oregon.

Major Historical Changes to Corporate Income Taxation in Oregon	
1929	Corporate excise tax enacted with a tax rate set at 5%, a minimum tax of $25, and an equally weighted three factor apportionment factor.
1931	Excise tax rate increased to 8% and minimum tax reduced to $10.
1939	Segregated accounting methods allowed.
1951	Revenues directed specifically to the General Fund.
1955	Corporate *income* tax was enacted at a rate of 8% to tax corporations benefitting from Oregon's economy but not subject to the excise tax.
1957	Corporate excise tax rate decreased to 6%.
1959	Federal Public Law 86-272 enacted.
1965	Uniform Division of Income for Tax Purposes Act was adopted.
1967	Multistate Tax Compact was adopted to ensure consistent tax policy among states.
1973	Semi-annual estimated tax payments required for corporations beginning Jan. 1, 1974.
1975	In *Coca-Cola*, Oregon's Supreme Court ruled that the tax commission had authority to permit or require corporations to use segregated accounting or apportionment. Legislature adopted combined reporting statues to codify current practices by Dept. of Revenue.
1976	Tax rate changed to 6.5% and applied to corporations in all industries.
1977	All corporations taxed at the same rate, 7% for 1977 and 7.5% for subsequent years.
1982	Quarterly estimated tax payments required beginning Jan. 1, 1982.
1984	"Water's Edge" unitary reporting requirement adopted, requiring only businesses in the U.S. be reported on a consolidated return.
1987	Reduced the tax rate from 7.5% to 6.6% beginning Jan. 1, 1987.
1989	S Corporations required to pay minimum tax. Double weighted sales apportionment formula beginning tax years on or after Jan.1,1991.
1997	Oregon establishes "rolling reconnect" for federal changes made after April 15, 1997.
2001	Adopted apportionment formula heavily weighted towards sales for tax years on or after May 1, 2003.
2005	Adopted corporate single-sales apportionment formula.
2009	Second tax bracket for taxable income above $250,000 added at an initial rate of 7.9%, declining slightly through 2012. As of tax year 2013, the top rate of 7.6% applies to income exceeding $10 million. C corporation min. tax changed from $10 to an amount ranging between $150 and $100,000, depending on the level of Oregon sales.
2013	Oregon's listed jurisdiction law took effect. Modified tax brackets by applying the top tax rate of 7.6% to taxable income above $1 million.
2017	Cost-of-Performance apportionment method replaced with a Market-Based approach.
2018	Required addback of federal dividends related to repatriation. Repeal of Oregon's listed jurisdiction law.
2019	Required addback of amounts deducted on federal return for Global Intangible Low-Taxed Income (GILTI).

This table gives provides a summary of changes in tax rates, minimum taxes, and the apportionment formula.

Historical Summary of Major Parameter Changes				
Tax Year	**Tax Rate**	**Minimum Tax**		**Apportionment**
		C-Corps	**S-Corps**	
1929	5.0%	$25		3 equal factors
1931	8.0%	$10		
1955	8.0%, 4% Utilities			
1957	6.0%, 9% Financial Corporations 7% Utilities			
1958			$0 (Subchapter S created)	
1976	6.5% (all corporations)			
1977	7.0%			
1978	7.5%			
1980				
1987	6.6%			
1989			$10	
1991				50% Sales
2003				80% Sales (5/1/03)
2005				100% Sales (7/1/05)
2009	6.6% up to $250,000 income, then 7.9%	Graduated Minimum	$150	
2011	6.6% up to $250,000 income, then 7.6%			
2013	6.6% up to $1,000,000 income, then 7.6%			