

House Bill 2479

Sponsored by COMMITTEE ON REVENUE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits Public Utility Commission from including tax savings realized by public utility affiliates that result from tax credits associated with investment in or operation of facilities by affiliate, if affiliate is regulated as public utility in other state and tax savings have been included in regulated operations of affiliate in other state. Modifies definition of taxes authorized to be collected in public utility rates for purposes of application of automatic adjustment clause to rates, in order to base calculation of taxes authorized to be collected in rates on actual audited results of utility regulated operations.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to operation of an automatic adjustment clause for taxes in public utility rates; amending
3 ORS 757.268; and declaring an emergency.

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

5 **SECTION 1.** ORS 757.268 is amended to read:

6 757.268. (1) Every public utility shall file a tax report with the Public Utility Commission an-
7 nually, on or before October 15 following the year for which the report is being made. The tax re-
8 port shall contain the information required by the commission, including:

9 (a) The amount of taxes that was paid by the utility in the three preceding years, or that was
10 paid by the affiliated group and that is properly attributed to the regulated operations of the utility,
11 determined without regard to the tax year for which the taxes were paid; and

12 (b) The amount of taxes authorized to be collected in rates for the three preceding years.

13 (2) Every public utility shall be required to obtain and provide to the commission any other in-
14 formation that the commission requires to review the tax report and to implement and administer
15 this section and ORS 757.210.

16 (3) The commission may disclose, or any intervenor may obtain and disclose, the amount by
17 which the amount of taxes that units of government received from the public utility or from the af-
18 filiated group differs from the amount of costs for taxes collected, directly or indirectly, as part of
19 rates paid by customers, including whether the difference is positive or negative.

20 (4) The commission shall review the tax report and any other information the commission has
21 obtained and make the determinations described in this section within 90 days following the filing
22 of the report, or within a further period of time that the commission may by rule establish for
23 making determinations under this section that does not exceed 180 days following the filing of the
24 report. If the commission determines that the amount of taxes assumed in rates or otherwise col-
25 lected from ratepayers for any of the three preceding years differed by \$100,000 or more from the
26 amount of taxes paid to units of government by the public utility, or by the affiliated group and
27 properly attributed to the regulated operations of the utility, the commission shall require the utility
28 to establish an automatic adjustment clause, as defined in ORS 757.210, within 30 days following the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 date of the commission's determinations under this section, or by a later date that the commission
2 may by rule prescribe for establishing an automatic adjustment clause that does not exceed 60 days
3 following the date of the commission's determinations under this section.

4 (5) If an adjustment to rates is made under an automatic adjustment clause established under
5 this section, the automatic adjustment clause shall remain in effect for each successive year after
6 an adjustment is made and until an order terminating the automatic adjustment clause is made un-
7 der subsection (9) of this section.

8 (6) The automatic adjustment clause shall account for all taxes paid to units of government by
9 the public utility that are properly attributed to the regulated operations of the utility, or by the
10 affiliated group that are properly attributed to the regulated operations of the utility, and all taxes
11 that are authorized to be collected through rates, so that ratepayers are not charged for more tax
12 than:

13 (a) The utility pays to units of government and that is properly attributed to the regulated op-
14 erations of the utility; or

15 (b) In the case of an affiliated group, the affiliated group pays to units of government and that
16 is properly attributed to the regulated operations of the utility.

17 (7) An automatic adjustment clause established under this section may not be used to make ad-
18 justments to rates for taxes paid that are properly attributed to any unregulated affiliate of the
19 public utility or to the parent of the utility.

20 (8) Notwithstanding subsections (1) to (7) of this section[, *the commission may authorize a public*
21 *utility to include in rates*]:

22 (a) **The commission may authorize a public utility to include in rates** deferred taxes re-
23 sulting from accelerated depreciation or other tax treatment of utility investment; [*and*]

24 (b) **The commission may authorize a public utility to include in rates** tax requirements and
25 benefits that are required to be included in order to ensure compliance with the normalization re-
26 quirements of federal tax law[.]; **and**

27 (c) **The commission may not adjust the calculation of taxes paid to include any tax**
28 **savings realized by an affiliate of the utility as a result of tax credits associated with in-**
29 **vestment in or operation of a facility by the affiliate if the affiliate is regulated in another**
30 **state and the savings from those tax credits have been included in the regulated operations**
31 **of that affiliate in the other state.**

32 (9) If the commission determines that establishing an automatic adjustment clause under this
33 section would have a material adverse effect on customers of the public utility, the commission shall
34 issue an order terminating the automatic adjustment clause. The order shall set forth the reasons
35 for the commission's determination under this subsection.

36 (10) The commission shall conduct a hearing under ORS 757.210 prior to making a determination
37 under subsection (9) of this section that an automatic adjustment clause would have a material ad-
38 verse effect on customers of the public utility.

39 (11) The commission may not use the tax information obtained by the commission under this
40 section for any purpose other than those described in subsections (1) to (10) of this section. An
41 intervenor in a commission proceeding to review the tax report or make rate adjustments described
42 in this section may, upon signing a protective order prepared by the commission, obtain and use the
43 information obtained by the commission that is not otherwise required to be made publicly available
44 under this section, according to the terms of the protective order.

45 (12) For purposes of this section, taxes paid that are properly attributed to the regulated oper-

1 ations of the public utility may not exceed the lesser of:

2 (a) That portion of the total taxes paid that is incurred as a result of income generated by the
3 regulated operations of the utility; or

4 (b) The total amount of taxes paid to units of government by the utility or by the affiliated
5 group, whichever applies.

6 (13) As used in this section:

7 (a) "Affiliated group" means an affiliated group of corporations of which the public utility is a
8 member and that files a consolidated federal income tax return.

9 (b) "Public utility" or "utility" means:

10 (A) A regulated investor-owned utility that provided electric or natural gas service to an aver-
11 age of 50,000 or more customers in Oregon in 2003; or

12 (B) A successor in interest to an entity described in subparagraph (A) of this paragraph that
13 continues to be a regulated investor-owned utility.

14 (c) "Regulated operations of the utility" means those activities of a public utility that are sub-
15 ject to rate regulation by the commission.

16 (d) "Tax":

17 (A) Means a federal, state or local tax or fee that is imposed on or measured by income and that
18 is paid to units of government.

19 (B) Does not include any amount that is refunded by a unit of government as a tax refund.

20 (C) Does not include franchise fees or privilege taxes.

21 (e) "Taxes authorized to be collected in rates" means the [*product determined by multiplying the*
22 *following three values:*]

23 [(A) *The revenues the utility collects from ratepayers in Oregon, adjusted for any rate adjustment*
24 *imposed under this section;*]

25 [(B) *The ratio of the net revenues from regulated operations of the utility to gross revenues from*
26 *regulated operations of the utility, as determined by the commission in establishing rates; and]*

27 [(C) *The effective tax rate used by the commission in establishing rates.*] **amount of taxes actu-**
28 **ally collected through the regulated operations of the utility:**

29 (A) **Calculated for the same 12-month period as the calculation of the amount of taxes**
30 **paid; and**

31 (B) **Determined by the commission based upon the actual taxable income as shown in the**
32 **audit results of the regulated operations of the utility, as audited by the commission or by**
33 **an independent auditor.**

34 (f) "Taxes paid" means amounts received by units of government from the utility or from the
35 affiliated group of which the utility is a member, whichever is applicable, adjusted as follows:

36 (A) Increased by the amount of tax savings realized as a result of charitable contribution de-
37 ductions allowed because of charitable contributions made by the utility;

38 (B) Increased by the amount of tax savings realized as a result of tax credits associated with
39 investment by the utility in the regulated operations of the utility, to the extent the expenditures
40 giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into
41 account by the commission in the utility's last general ratemaking proceeding; and

42 (C) Adjusted by deferred taxes related to the regulated operations of the utility.

43 (g) "Three preceding years" means the three most recent consecutive fiscal years preceding the
44 date the tax report is required to be filed.

45 **SECTION 2. This 2007 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
2 **on its passage.**

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