

Senate Bill 177

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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**.

Provides that person has substantial nexus with State of Oregon if specified levels of property, payroll or sales in state are exceeded. Provides special rules for commonly owned enterprises and other entities engaged in certain activities.

Applies to tax years beginning on or after January 1, 2008.

A BILL FOR AN ACT

1
2 Relating to substantial nexus for tax purposes.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 314.**

5 **SECTION 2. (1) As used in this section:**

6 (a) **"Commonly owned enterprise" means two or more entities that are under common**
7 **control:**

8 (A) **Through a common parent that owns or constructively owns more than 50 percent**
9 **of the voting power of the outstanding stock or other ownership interests of the entities; or**

10 (B) **Through five or fewer individuals, trusts or estates that own or constructively own**
11 **more than 50 percent of the voting power of the outstanding stock or other ownership in-**
12 **terests of the entities, taking into account the entity ownership interests of each individual,**
13 **trust or estate that are identical with respect to each entity.**

14 (b) **"Compensation" means wages, salaries or other remuneration paid to employees that**
15 **constitutes gross income under section 61 of the Internal Revenue Code.**

16 (c) **"Compensation in this state" means compensation that is paid to an individual for**
17 **service:**

18 (A) **Performed entirely within this state;**

19 (B) **Performed both within and without this state, but the service performed without this**
20 **state is incidental to the service performed within this state; or**

21 (C) **Performed both within and without this state and:**

22 (i) **The service is directed or controlled within this state; or**

23 (ii) **The place from which the service is directed or controlled is not in any state in which**
24 **some part of the service is performed, and the individual who performs the service is a res-**
25 **ident of this state.**

26 (d) **"Net annual rental rate" means the annual rental rate paid by the taxpayer less any**
27 **annual rental rate received by the taxpayer from subrentals.**

28 (e) **"Payroll" means the total amount paid by the taxpayer for compensation in this state**
29 **during the tax period.**

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 (f) "Property" means the average value during the tax period of real and tangible per-
2 sonal property owned or rented and used in this state by the taxpayer during the tax period,
3 determined as follows:

4 (A) The value of the property owned by the taxpayer shall be the original cost basis of
5 the property;

6 (B) The value of the property rented by the taxpayer shall be eight times the net annual
7 rental rate; and

8 (C) The average value of the values described in subparagraphs (A) and (B) of this para-
9 graph shall be calculated by averaging the values at the beginning of the tax period and at
10 the end of the tax period, or the Department of Revenue may require the averaging of
11 monthly values during the tax period if the averaging of monthly values is reasonably re-
12 quired by the department to properly reflect the average value of the property of the tax-
13 payer.

14 (g) "Sales" means the total amount of the taxpayer's gross receipts for the tax period,
15 including gross receipts from other entities that constitute a commonly owned enterprise,
16 from all of the following:

17 (A) The sale, lease or license of real property located in this state.

18 (B) The lease or license of tangible personal property located in this state.

19 (C) The sale of tangible personal property that:

20 (i) Is received at a business location of the seller that is located in this state; or

21 (ii) Is delivered to a purchaser in this state or another person in this state at the direc-
22 tion of the purchaser, pursuant to instructions that are known to the seller.

23 (D) The sale of tangible personal property, if the seller does not know where the tangible
24 personal property will be received and if:

25 (i) Business records maintained by the seller in the ordinary course of business indicate
26 an address for the purchaser in this state and use of the address does not constitute bad
27 faith; or

28 (ii) An address of the purchaser that is obtained during the consummation of the sale
29 between the seller and the purchaser, including an address on the payment instrument of the
30 purchaser, is in this state, and:

31 (I) No other address of the purchaser is available; and

32 (II) Use of the address does not constitute bad faith.

33 (E) The sale, lease or license of services, intangibles or digital products for primary use
34 by a purchaser that is known to the seller to be located in this state, except that the gross
35 receipts from the sale, lease or license of services, intangibles or digital products are to be
36 apportioned among states according to usage, if the seller knows that the services, intangi-
37 bles or digital products are to be used in two or more states because there are separate
38 charges for, or measured by, usage at locations in different states.

39 (F) The sale, lease or license of services, intangibles or digital products if the seller does
40 not know where the services, intangibles or digital products will be used, if:

41 (i) Business records maintained by the seller in the ordinary course of business indicate
42 an address for the purchaser in this state and use of the address does not constitute bad
43 faith; or

44 (ii) An address of the purchaser that is obtained during the consummation of the sale
45 between the seller and the purchaser, including an address on the payment instrument of the

1 purchaser, is in this state, and:

2 (I) No other address of the purchaser is available; and

3 (II) Use of the address does not constitute bad faith.

4 (2) For purposes of ORS chapters 314 to 318:

5 (a) Individuals who are residents under ORS 316.027 or who are domiciled in this state
6 have substantial nexus with this state.

7 (b) Business entities that are organized under the laws of this state or that are com-
8 mercially domiciled in this state have substantial nexus with this state.

9 (c) Nonresident individuals and business entities that are organized under laws outside
10 of this state have substantial nexus with this state if, for a tax period or portion of a tax
11 period:

12 (A) The property of the taxpayer in this state exceeds \$50,000;

13 (B) The payroll of the taxpayer in this state exceeds \$50,000; or

14 (C) The sales of the taxpayer in this state exceeds \$500,000.

15 (d) Notwithstanding paragraph (c) of this subsection or the location requirements of the
16 definitions of "property," "payroll" and "sales" in subsection (1) of this section, a business
17 entity organized outside of this state has substantial nexus with this state if at least 25
18 percent of property, 25 percent of payroll or 25 percent of sales of the business entity is in
19 this state.

20 (e)(A) The Department of Revenue shall make a cost of living adjustment to the thresh-
21 old amounts set forth in paragraph (c) of this subsection for tax years that begin in a cal-
22 endar year in which the consumer price index has changed by five percent or more from the
23 later of the consumer price index:

24 (i) On January 1, 2003; or

25 (ii) For the last date on which the amounts were adjusted under this paragraph.

26 (B) The adjusted threshold amounts shall be rounded to the nearest \$1,000.

27 (C) As used in this paragraph, "consumer price index" means the U.S. City Average
28 Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of
29 Labor Statistics of the United States Department of Labor.

30 (3)(a) Notwithstanding subsection (2) of this section, a commonly owned enterprise has
31 substantial nexus with this state if the enterprise meets or exceeds any threshold in sub-
32 section (2)(c) or (d) of this section after both of the following adjustments are made:

33 (A) The enterprise shall aggregate the property, payroll and sales of each entity of the
34 enterprise that has combined property, payroll and sales of at least \$5,000 in this state, in-
35 cluding those entities that, if treated as independent entities, would satisfy the substantial
36 nexus thresholds in subsection (2)(c) or (d) of this section.

37 (B) The aggregate amount determined under subparagraph (A) of this paragraph shall
38 be reduced by any disclosed interentity transactions that, if included, would constitute a
39 double counting of assets or receipts.

40 (b) If the commonly owned enterprise has substantial nexus under paragraph (a) of this
41 subsection, the Department of Revenue may by rule require the enterprise to file a joint in-
42 formation return containing the information required by the department.

43 (c) If the aggregate property, payroll or sales of the entities that comprise a unitary
44 business of the commonly owned enterprise have substantial nexus under subsection (2) of
45 this section, each entity that is part of the unitary business shall be deemed to have sub-

1 **stantial nexus with this state and shall be subject to tax under ORS chapters 314 to 318.**

2 **(4) Notwithstanding subsections (1) to (3) of this section, if the individual, business entity**
3 **or other person is:**

4 **(a) Subject to rules for allocation and apportionment of income adopted by the Depart-**
5 **ment of Revenue under ORS 314.280 or 314.670, the person shall determine property, payroll**
6 **and sales for purposes of determining substantial nexus under this section the same way the**
7 **person determines apportionment under the applicable rules;**

8 **(b) A financial organization that is subject to allocation and apportionment under ORS**
9 **314.280 and 314.675, the organization shall determine property, payroll and sales for purposes**
10 **of determining substantial nexus using the same methods used to determine property, pay-**
11 **roll and sales for apportionment purposes; or**

12 **(c) A pass-through entity, including but not limited to a partnership, S corporation, lim-**
13 **ited liability company or trust, and that is not otherwise described in paragraphs (a) or (b)**
14 **of this subsection, the entity shall determine substantial nexus with this state as otherwise**
15 **provided in subsections (1) to (3) of this section, except determined at the entity level.**

16 **(5) Notwithstanding subsections (1) to (4) of this section, a person may not be considered**
17 **to have substantial nexus with this state if Public Law 86-272, 15 U.S.C. 381, prohibits this**
18 **state from imposing a tax on, or measured by, the net income of that person.**

19 **(6) The Department of Revenue may adopt rules to implement and administer this sec-**
20 **tion, including but not limited to rules defining terms and prescribing standards that are**
21 **consistent with the provisions of this section.**

22 **SECTION 3. Section 2 of this 2007 Act applies to tax years beginning on or after January**
23 **1, 2008.**