

A-Engrossed
Senate Bill 178

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of 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.

Changes definition of "single trade or business" to "unitary business" for corporate income and excise tax purposes.

Applies to tax years beginning on or after January 1, 2007[, and to tax years for which returns are subject to audit or adjustment by Department of Revenue].

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to unitary business definitions for tax purposes; creating new provisions; amending ORS
3 317.479 and 317.705; and prescribing an effective date.

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

5 **SECTION 1.** ORS 317.705 is amended to read:

6 317.705. As used in [*this section and ORS 317.710 and*] **ORS 317.705 to 317.715:**

7 (1) "Affiliated group" means an affiliated group of corporations as defined in section 1504 of the
8 Internal Revenue Code.

9 (2) "Unitary group" means a corporation or group of corporations engaged in business activities
10 that constitute a [*single trade or*] **unitary** business.

11 (3)(a) [*"Single trade or business"*] "**Unitary business**" means a business enterprise in which
12 there exists directly or indirectly between the members or parts of the enterprise a sharing or ex-
13 change of value as demonstrated by:

14 (A) Centralized management or a common executive force;

15 (B) Centralized administrative services or functions resulting in economies of scale; [*and*] **or**

16 (C) Flow of goods, capital resources or services demonstrating functional integration.

17 (b) [*"Single trade or business"*] "**Unitary business**" may include, but is not limited to, a business
18 enterprise the activities of which:

19 (A) Are in the same general line of business (such as manufacturing, wholesaling or retailing);

20 or

21 (B) Constitute steps in a vertically integrated process (such as the steps involved in the pro-
22 duction of natural resources, which might include exploration, mining, refining and marketing).

23 (c) Whether two or more corporations that are included in the same consolidated federal return
24 are engaged in a [*single trade or*] **unitary** business may be determined by making reference to cor-
25 porations that are doing business in the United States and are subject to federal income taxation,

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 whether or not those corporations are includable in the consolidated return. No other corporations
2 may be taken into consideration in making such a determination, except in a case in which the
3 transactions or relationships between such corporations are made in an attempt to evade or avoid
4 taxation.

5 **SECTION 2.** ORS 317.479 is amended to read:

6 317.479. (1) Preacquisition losses, as described under section 384 of the Internal Revenue Code,
7 to the extent allocated or apportioned to Oregon, with the additions, subtractions, modifications and
8 other adjustments required for purposes of this chapter, shall not be considered in determining the
9 taxable income or loss under ORS 317.010.

10 (2) If any preacquisition loss, as described in subsection (1) of this section, may not offset a re-
11 cognized built-in gain by reason of section 384 of the Internal Revenue Code, such gain shall not
12 be taken into account in determining under ORS 317.476 the amount of such loss which may be
13 carried to other taxable years.

14 (3) In any case in which a preacquisition loss, as described in subsection (1) of this section, for
15 any taxable year is subject to limitation under subsection (1) of this section and a taxable loss from
16 such taxable year is not subject to such limitation, taxable income shall be treated as having been
17 offset first by the loss subject to such limitation.

18 (4) The definitions contained in section 384(c) of the Internal Revenue Code shall apply for
19 purposes of this section, except that where appropriate, gain, loss and items of income shall be de-
20 termined as allocated or apportioned to Oregon and with the additions, subtractions, modifications
21 and other adjustments contained in this chapter.

22 (5) Section 384(b) and (c)(5) and (6) of the Internal Revenue Code shall be applied for purposes
23 of this section in a manner consistent with ORS 317.705 to [317.725] **317.715, 317.720 and 317.725.**

24 **SECTION 3. The amendments to ORS 317.705 and 317.479 by sections 1 and 2 of this 2007**
25 **Act apply to tax years beginning on or after January 1, 2007.**

26 **SECTION 4. This 2007 Act takes effect on the 91st day after the date on which the reg-**
27 **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

28