

Senate Bill 180

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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**.

Modifies definition of "financial organization" for corporate excise and income tax purposes.

Applies to tax years beginning on or after January 1, 2007, and to earlier tax years for which taxpayer may file claim for refund, for which Department of Revenue may audit or make adjustment to return or for which return is subject of appeal.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to treatment of financial organizations in tax law; creating new provisions; amending ORS
3 311.473, 314.610, 317.010, 317.056, 317.310 and 317.660; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.610 is amended to read:

6 314.610. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

7 (1) "Business income" means income arising from transactions and activity in the regular course
8 of the taxpayer's trade or business and includes income from tangible and intangible property if the
9 acquisition, the management, use or rental, and the disposition of the property constitute integral
10 parts of the taxpayer's regular trade or business operations.

11 (2) "Commercial domicile" means the principal place from which the trade or business of the
12 taxpayer is directed or managed.

13 (3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid
14 to employees for personal services.

15 (4) "Financial organization" means [*any financial institution or trust company, as those terms are*
16 *defined in ORS 706.008, any industrial bank, land bank, safe deposit company, private banker, coop-*
17 *erative bank, investment company, or any type of insurance company.*] **a person, corporation or**
18 **other business entity that is any of the following:**

19 **(a) A bank holding company under the laws of this state or under the Bank Holding**
20 **Company Act of 1956, 12 U.S.C. 1841 et seq., as amended.**

21 **(b) A savings and loan holding company under the National Housing Act, 12 U.S.C. 1701**
22 **et seq., as amended.**

23 **(c) A national bank organized and existing as a national bank association under the Na-**
24 **tional Bank Act, 12 U.S.C. 21 et seq., as amended.**

25 **(d) A savings association, as defined in 12 U.S.C. 1813(b)(1), as amended.**

26 **(e) A bank or thrift institution incorporated or organized under the laws of any state.**

27 **(f) An entity organized under the provisions of 12 U.S.C. 611 to 631, as amended.**

28 **(g) An agency or branch of a foreign bank, as defined in 12 U.S.C. 3101, as amended.**

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 **(h) A state credit union the loan assets of which exceed \$50,000,000 as of the first day of**
 2 **the taxable year of the state credit union.**

3 **(i) A production credit association subject to 12 U.S.C. 2071 et seq., as amended.**

4 **(j) A corporation, more than 50 percent of the voting stock of which is owned, directly**
 5 **or indirectly, by a person or other business entity described in paragraphs (a) to (i) of this**
 6 **subsection, provided that the entity is not an insurer taxable under ORS 317.655.**

7 **(k) A person that is not described in paragraphs (a) to (j) or (L) of this subsection, that**
 8 **is not an insurer taxable under ORS 317.655 and that derives more than 50 percent of its**
 9 **gross income from activities that a person described in paragraphs (c) to (i) or (L) of this**
 10 **subsection is authorized to conduct, not taking into account any income derived from non-**
 11 **recurring extraordinary sources.**

12 **(L) A person that derives at least 50 percent of the person’s annual average gross in-**
 13 **come, for financial accounting purposes for the current tax year and the two preceding tax**
 14 **years, from finance leases, excluding any gross income from incidental or occasional trans-**
 15 **actions. For purposes of this paragraph, “finance lease” means:**

16 **(A) A lease transaction that is the functional equivalent of an extension of credit and**
 17 **that transfers substantially all of the benefits and risks of the ownership of the leased**
 18 **property;**

19 **(B) A direct financing lease or a leverage lease that meets the criteria of Financial Ac-**
 20 **counting Standards Board Statement No. 13; or**

21 **(C) Any other lease that is accounted for as a financing by a lessor under generally ac-**
 22 **cepted accounting principles.**

23 (5) “Nonbusiness income” means all income other than business income.

24 (6) “Public utility” means any business entity whose principal business is ownership and opera-
 25 tion for public use of any plant, equipment, property, franchise, or license for the transmission of
 26 communications, transportation of goods or persons, or the production, storage, transmission, sale,
 27 delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

28 (7) “Sales” means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

29 (8) “State” means any state of the United States, the District of Columbia, the Commonwealth
 30 of Puerto Rico, any territory or possession of the United States, and any foreign country or political
 31 subdivision thereof.

32 **SECTION 2.** ORS 317.010 is amended to read:

33 317.010. As used in this chapter, unless the context requires otherwise:

34 (1) “Centrally assessed corporation” means every corporation the property of which is assessed
 35 by the Department of Revenue under ORS 308.505 to 308.665.

36 (2) “Department” means the Department of Revenue.

37 (3)(a) “Consolidated federal return” means the return permitted or required to be filed by a
 38 group of affiliated corporations under section 1501 of the Internal Revenue Code.

39 (b) “Consolidated state return” means the return required to be filed under ORS 317.710 (5).

40 (4) “Doing business” means any transaction or transactions in the course of its activities con-
 41 ducted within the state by a national banking association, or any other corporation; provided, how-
 42 ever, that a foreign corporation whose activities in this state are confined to purchases of personal
 43 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
 44 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
 45 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-

1 terminated as provided in section 1504 of the Internal Revenue Code.

2 (5) "Excise tax" means a tax measured by or according to net income imposed upon national
3 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing
4 and business corporations for the privilege of carrying on or doing business in this state.

5 [(6) "*Financial institution*" or "*financial corporation*" means a bank or trust company organized
6 under ORS chapter 707, national banking association or production credit association organized under
7 federal statute, building and loan association, savings and loan association, mutual savings bank, and
8 any other corporation whose principal business is in direct competition with national and state
9 banks.]

10 **(6) "Financial organization" has the meaning given that term in ORS 314.610.**

11 (7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise,
12 refers to the laws of the United States or to the Internal Revenue Code as they are amended and
13 in effect:

14 (a) On December 31, 2004; or

15 (b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

16 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS
17 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
18 ORS 317.650 to 317.665.

19 (9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers
20 in subsection (11) of this section and ORS 317.650 to 317.665.

21 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a
22 corporation for which no federal taxable income or loss is determined, as would be determined, un-
23 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States
24 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,
25 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-
26 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or
27 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a
28 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of
29 income from transactions or activities carried on both within and without the state) applies, to
30 derive taxable income or loss, the following shall occur:

31 (a) From the amount otherwise determined under this subsection, subtract nonbusiness income,
32 or add nonbusiness loss, whichever is applicable.

33 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-
34 portionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The
35 resulting product shall be Oregon apportioned income or loss.

36 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this
37 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to
38 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to
39 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable
40 transactions or activities both within and without Oregon.

41 (11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or
42 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-
43 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting
44 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or
45 interinsurance exchange. However, "insurer" does not include title insurers or health care service

1 contractors operating pursuant to ORS 750.005 to 750.095.

2 **SECTION 3.** ORS 317.056 is amended to read:

3 317.056. Except as otherwise required by federal law, every financial [*corporation*] **organization**
4 located within this state shall be subject to county, city, district, political subdivision and all other
5 local taxes imposed generally on a nondiscriminatory basis throughout the jurisdiction of the taxing
6 authority, at the same rates and in all respects in the same manner and to the same extent as are
7 mercantile, manufacturing and business corporations, and shall pay annually to the state an excise
8 tax according to or measured by its Oregon taxable income, to be computed in the manner provided
9 by this chapter at the rate provided in ORS 317.061.

10 **SECTION 4.** ORS 317.310 is amended to read:

11 317.310. (1) To derive Oregon taxable income of a financial [*institution which*] **organization that**
12 has changed from the reserve method of accounting to the specific charge-off method of accounting
13 for federal tax purposes, there shall be subtracted from federal taxable income amounts [*which*] **that**
14 the financial [*institution*] **organization** recognized pursuant to section 585(c)(3) of the Internal Re-
15 venue Code.

16 (2) To derive Oregon taxable income, after the modification prescribed in subsection (1) of this
17 section, the balance in the reserve for bad debts, as determined under ORS 317.333 (2) (1985 Re-
18 placement Part), shall be taken into income using the same method as the financial [*institution*] **or-**
19 **ganization** used for federal tax purposes pursuant to section 585(c)(3) of the Internal Revenue Code.

20 (3) Subsections (1) and (2) of this section [*shall*] **do** not apply to bad debt reserves for which an
21 election under section 585(c)(4) of the Internal Revenue Code has been made. A financial [*institution*
22 *which*] **organization that** uses the method described in section 585(c)(4) of the Internal Revenue
23 Code shall apply that same method to the balance in the reserve for bad debts, as determined under
24 ORS 317.333 (2) (1985 Replacement Part), and adjust its Oregon taxable income accordingly.

25 **SECTION 5.** ORS 317.660 is amended to read:

26 317.660. [*In lieu of the provisions of ORS 314.280,*] If the income of an insurer is derived from
27 business done both within and without this state, the determination of Oregon taxable income shall
28 be arrived at by apportionment based upon an averaging of the following three factors:

29 (1) Insurance sales factor: The percentage obtained by dividing (a) the direct premiums (exclud-
30 ing reinsurance accepted and without deduction of reinsurance ceded) received by the insurer during
31 the taxable year on policies and contracts which are allocated to this state and to other jurisdic-
32 tions in which the insurer is not authorized to do business by (b) the total of such premiums received
33 by the insurer during the taxable year on policies and contracts that had been sold within and
34 without this state. For purposes of this subsection, "premiums" means sums properly included in
35 appropriate schedules of the annual statement filed by the insurer with the Director of the Depart-
36 ment of Consumer and Business Services, which allocate premiums by jurisdiction. If the exclusion
37 of reinsurance premiums results in an apportionment formula that does not fairly represent the ex-
38 tent of the taxpayer's activity in this state, the taxpayer may petition for and the Department of
39 Revenue may permit, or the Department of Revenue may require, the inclusion of reinsurance pre-
40 miums in the insurance sales factor.

41 (2) Wage and commission factor: The percentage obtained by dividing (a) the total of wages,
42 salaries, commissions and other compensation for personal services paid in this state during the tax
43 period to employees and insurance salesmen in connection with the business of the insurer, by (b)
44 the total wages, salaries, commissions and other compensation for personal services paid everywhere
45 during the tax period to employees and insurance salesmen in connection with the business of the

1 insurer. For determining the place of payment, the procedure set forth in ORS 314.660 (2) shall ap-
2 ply.

3 (3) Real estate income and interest factor: The percentage obtained by dividing (a) the total net
4 income (after deducting from gross rental income real estate expenses, property taxes and depreci-
5 ation attributable thereto, which are included in appropriate schedules of the annual statement filed
6 by the insurer with the Department of Consumer and Business Services) received from real property
7 within this state plus gross interest received on loans secured by real property within this state
8 during the taxable year, by (b) the total net income received from real property within and without
9 this state plus gross interest received on loans secured by real property within and without this
10 state during the taxable year.

11 **SECTION 6. The amendments to ORS 314.610, 317.010, 317.056, 317.310 and 317.660 by**
12 **sections 1 to 5 of this 2007 Act apply to:**

13 (1) Tax years beginning on or after January 1, 2007; and

14 (2) Any tax year for which a return is subject to audit or adjustment by the Department
15 of Revenue on or after the effective date of this 2007 Act, any tax year for which a return
16 is the subject of an appeal on or after the effective date of this 2007 Act and any tax year
17 for which a claim for refund may be made on or after the effective date of this 2007 Act.

18 **SECTION 7.** ORS 311.473 is amended to read:

19 311.473. (1) Any financial institution, [*as defined in ORS 317.010,*] or agent or representative of
20 a financial institution, that, in the process of foreclosing any security interest or other lien on tax-
21 able personal property, including property classified as real property machinery and equipment, or
22 after the lien is foreclosed, causes the property to be removed, or is knowledgeable that the property
23 will be removed by another after the foreclosure sale, from the county in which the property is as-
24 sessed or seized, shall notify the tax collector of that county prior to the removal. The notice shall
25 be mailed to the tax collector, return receipt requested, and shall contain a description of the
26 property that is the subject of the foreclosure, together with the name and address of the owner or
27 owners of the property.

28 (2) Failure to give the notice required under subsection (1) of this section shall not affect the
29 foreclosure, but the tax collector shall have recourse against the financial institution on behalf of
30 the taxing units for any damages sustained on account of failure to mail the notice.

31 **SECTION 8. This 2007 Act takes effect on the 91st day after the date on which the reg-**
32 **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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