

Enrolled
House Bill 2065

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CHAPTER

AN ACT

Relating to correction of erroneous material in Oregon tax law; amending ORS 63.810, 118.290, 118.830, 118.870, 285C.250, 305.288, 305.620, 305.720, 309.100, 312.122, 312.125, 314.015, 314.041, 314.752, 314.775, 315.208, 316.168, 316.287, 316.699, 316.871, 317.097, 318.031, 318.106, 318.130, 323.005, 323.110, 323.385 and 344.755 and section 15, chapter 625, Oregon Laws 2007, and section 10, chapter 883, Oregon Laws 2007; and repealing ORS 315.254, 316.834 and 317.383.

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

SECTION 1. ORS 63.810 is amended to read:

63.810. For purposes of ORS [chapters 305 to 324] **320.005 to 320.150 and ORS chapters 305, 306, 307, 308, 308A, 309, 310, 311, 312, 314, 315, 316, 317, 318, 319, 321, 323 and 324**, a limited liability company formed under this chapter or qualified to do business in this state as a foreign limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of ORS [chapters 305 to 324] **320.005 to 320.150 and ORS chapters 305, 306, 307, 308, 308A, 309, 310, 311, 312, 314, 315, 316, 317, 318, 319, 321, 323 and 324**, a member or an assignee of a member of a limited liability company formed under this chapter or qualified to do business in this state as a foreign limited liability company shall have the same status as the member or assignee of a member has for federal income tax purposes.

NOTE: Eliminates misleading super-series reference.

SECTION 2. ORS 118.290 is amended to read:

118.290. (1) If any bequest or legacy is charged upon or payable out of any property, the heir or devisee shall deduct [such tax therefrom and pay such] **from the property the tax imposed by ORS 118.005 to 118.840 and pay the** tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on [such] **the** property until paid. The payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy is enforced, or by the Department of Revenue in the same manner as income taxes are collected under ORS chapter 314.

(2) If any bequest or legacy is given in money for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount[; but, if it is not]. **If any bequest or legacy is not given** in money, the administrator, executor or trustee shall make application to the court having jurisdiction of an accounting by the administrator, executor or trustee to make an apportionment, if the case requires, of the sum to be paid by such legatee or beneficiary, and for such further order relative thereto as the case may require.

NOTE: Conforms grammar and punctuation to legislative style; clarifies reference in (1).

SECTION 3. ORS 118.830 is amended to read:

118.830. (1) The proof required by ORS 118.820 may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state *[but if such proof]*.

(2) **If the proof** is not filed within the time limit set out in ORS 118.820, the clerk of the court *[forthwith]* shall notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws *[thereof]* with respect to *[such]* **the** estate[,] and shall state in *[such]* **the** notice, as far as is known to the clerk[,]:

(a) The name, date of death and last domicile of *[such]* **the** decedent;

(b) The name and address of each executor or administrator;

(c) A summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to *[such]* **the** decedent at the time of death; and

(d) The fact that *[such]* **the** executor or administrator has not filed *[theretofore]* the proof required in ORS 118.820.

(3) The clerk shall attach to *[such]* **the** notice:

(a) A plain copy of the will and codicils of *[such]* **the** decedent, if the decedent died testate[,];
or

(b) If the decedent died intestate, a list of heirs and next of kin of the decedent, so far as is known to *[such]* **the** clerk.

(4) Within 60 days after the mailing of *[such]* **the** notice, the official or body charged with the administration of the death tax laws of the domiciliary state may file with the court in this state a petition for an accounting in *[such]* **the** estate. *[Such]* **The** official or body of the domiciliary state shall be deemed a party interested for the purpose of petitioning the court for *[such]* **the** accounting.

(5) If *[such]* **the** petition is filed within the period of 60 days, the court shall order the accounting[, *and upon the accounting being filed and approved*] **and, upon the filing and approval of the accounting**, shall enter a judgment requiring the remission to the fiduciary appointed by the domiciliary probate court of the balance of the intangible personalty after the payment of creditors and expenses of administration in this state.

NOTE: Conforms structure to legislative style and updates word choice.

SECTION 4. ORS 118.870 is amended to read:

118.870. (1) When it appears by the written admission of the executor and the tax official of each state involved in the dispute that an agreement contemplated in ORS 118.865 (1) cannot be reached or, in all events, if one year has elapsed from the date of the election without such an agreement having been reached, the domicile of the decedent at the time of death shall be determined solely for death tax purposes as *[follows:]* **provided in this section.**

[(1)] (2) When this state and one other state only are involved in the dispute, the Director of the Department of Revenue and the taxing official of the other state shall each appoint a member of a board of arbitration and those members shall appoint the third member of the board. If this state and more than one other state are involved, the taxing officials *[thereof]* **of the involved states** shall agree upon the authorities charged with the duty of administering death tax laws in three states not involved in the dispute and each of these authorities shall appoint one member of the board of arbitration. The board shall select one of its members as chairperson.

[(2)] *The board shall hold hearings at such places as it deems necessary, upon reasonable notice to the executor, ancillary administrators, all interested persons and the taxing officials of the states involved, all of whom are entitled to be heard.]*

(3) The board may administer oaths, take testimony, subpoena witnesses and require their attendance[;], require the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena of the board may be punished by any court of record in the same manner as if the subpoena had been issued by *[such]* **the** court.

(4) Whenever practicable the board shall apply the rules of evidence then prevailing in the federal courts under the federal rules of civil procedure.

(5) The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among the members, the taxing officials involved and the executor. If such an agreement cannot be reached, the compensation and expenses shall be determined by the taxing officials and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile of the decedent. The amount so determined shall be borne by the decedent's estate and shall be deemed an administration expense of the estate.

(6) The board shall hold hearings at places the board deems necessary, upon reasonable notice to the executor, ancillary administrators, all interested persons and the taxing officials of the states involved, all of whom are entitled to be heard.

[5] (7) The board, by the decision of its majority, shall determine the domicile of the decedent at the time of death. The decision of the board is final and conclusive and binds this state and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purposes. If the board does not render a decision within one year from the time that it is fully constituted, all authority of the board shall cease and the bar to court proceedings set forth in ORS 118.860 shall no longer exist.

[6] (8) The decision of the board and the record of [its] **the board's** proceeding shall be filed with the authority [having] **that has** jurisdiction to assess death taxes in the state determined to be the domicile of the decedent and with the authorities [which] **that** would have had jurisdiction to assess death taxes in each of the other states involved if the decedent had been found to be domiciled [therein] **there**.

[7] *The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among such members, the taxing officials involved, and the executor. If such an agreement cannot be reached, the compensation and expenses shall be determined by such taxing officials and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile of the decedent. Such amount so determined shall be borne by the decedent's estate and shall be deemed an administration expense thereof.*

NOTE: Ameliorates lead-in read-in problems and updates punctuation and word choice.

SECTION 5. ORS 285C.250 is amended to read:

285C.250. (1) Within a reasonable period of time prior to the termination of enterprise zones under ORS 285C.245 (2), the Director of the Economic and Community Development Department shall competitively designate the same number of enterprise zones effective immediately after termination of the previous enterprise zones. The determination by the director as to the areas designated as enterprise zones shall be final.

(2) When an enterprise zone is terminated under ORS [285B.686 (4) to (6)] **285C.245 (4) to (6)**, the director may competitively designate a new enterprise zone. The sponsor of the enterprise zone terminated under ORS 285C.245 (4) or (5) is not eligible to apply for a new enterprise zone, except for a county government when the terminated zone was also jointly sponsored by one or more cities or ports.

(3) Sponsors of existing enterprise zones that are due to terminate may reapply for designation under subsection (1) of this section.

(4) Any city, county or port may apply to the director for designation of an enterprise zone in accordance with the criteria set forth in ORS 285C.065 and 285C.090. In addition, the Economic and Community Development Department by rule shall determine the minimum level of economic hardship in any area to be included within an enterprise zone, any other criteria necessary to evaluate the need for the enterprise zone and the potential for accomplishing the purposes of ORS 285C.050 to 285C.250.

(5) All enterprise zones designated under this section shall terminate in accordance with ORS 285C.245 (2).

(6) When the director designates enterprise zones under this section, there is no limit on the relative number of urban or rural enterprise zones designated.

(7) The director may determine when to accept applications for any enterprise zone that terminates under subsection (2) of this section or is not designated under subsection (1) of this section for lack of qualified applicants.

NOTE: Corrects faulty reference in (2).

SECTION 6. ORS 305.288 is amended to read:

305.288. (1) The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist:

(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling (or is vacant) and was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.

(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

(2) If the tax court finds that the conditions needed to order a change or correction under subsection (1) of this section exist, the court may order a change or correction in the maximum assessed value of the property in addition to the change or correction in the real market value of the property.

(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable, the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.

(4) Before ordering a change or correction to the assessment or tax roll under subsection (3) of this section, the tax court may determine whether any of the conditions exist in a particular case. If the tax court determines that one of the conditions specified does exist, the tax court shall hold a hearing to determine whether to order a change or correction to the roll.

(5) For purposes of this section:

(a) "Current tax year" has the meaning given the term under ORS 306.115.

(b) "Good and sufficient cause":

(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.

(6) The remedy provided under this section is in addition to all other remedies provided by law.

(7) As used in subsections (1) to (6) of this section, "manufactured structure" has the meaning given that term in ORS 446.561.

NOTE: Provides proper punctuation in (3).

SECTION 7. ORS 305.620 is amended to read:

305.620. (1) Any state agency or department may enter into agreements with any political subdivision of this state for the collection, enforcement, administration and distribution of local taxes of the political subdivision imposed upon or measured by gross or net income, wages or net earnings from self-employment or local general sales and use taxes.

(2) The department or agency shall prescribe the rules by which the agreements entered into under subsection (1) of this section are administered.

(3) The department or agency shall prescribe the rules by which the taxes described by subsection (1) of this section are administered, collected, enforced and distributed.

(4) A political subdivision may appear as an intervenor at any conference held by the Department of Revenue or conference, hearing or proceeding held by another department or agency in connection with a local tax administered by the department or agency. The political subdivision may be represented by its own counsel. The department or agency shall adopt rules governing the procedures to be followed by the political subdivision in making an appearance.

(5) Costs incurred by the department or agency in the administration, enforcement, collection and distribution of taxes under the agreements entered into under subsection (1) of this section shall be first deducted from the taxes collected before distribution is made to the political subdivision which is a party to the agreement.

(6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the Department of Revenue or orders of another department or agency relating to the collection, enforcement, administration and distribution of local taxes under agreements entered into under subsection (1) of this section.

(7) A proceeding for refund or to set aside additional taxes or taxes assessed when no return was filed may be initiated before the state agency or department.

(8) An appeal from a determination or an order may be taken by the taxpayer or by the political subdivision whose taxes are in issue, by filing a complaint with the clerk of the Oregon Tax Court at its principal office [*at the state capital,*] in Salem, Oregon, within 60 days after the notice of the determination of the Department of Revenue or the order of the department or agency is sent to the taxpayer or the political subdivision. The filing of the complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service of the taxpayer's complaint shall be accomplished by the clerk of the tax court by filing a copy of the complaint with the administrative head of the department or agency and a copy with the political subdivision. Service of the political subdivision's complaint shall be accomplished by the clerk of the tax court by filing a copy of the complaint with the administrative head of the department or agency and mailing a copy of the complaint to the taxpayer. The complaint of a taxpayer shall be entitled in the name of the person filing as plaintiff and the department or agency as defendant. The complaint of a political subdivision shall be entitled in the name of the political subdivision as plaintiff and the taxpayer and the department or agency as defendants. A copy of the order of the department or agency shall be attached to the complaint. All procedures shall be in accordance with ORS 305.405 to 305.494.

NOTE: Purges extra words in (8).

SECTION 8. ORS 305.720 is amended to read:

305.720. Subject to ORS 305.710, 305.723 and 305.745, an entity qualifies for listing on the eligibility roster for form listing to receive contributions by means of checkoff if:

(1) The entity supports private charitable causes or engages in public activities that are consistent with policies and programs of the state and:

(a) Checkoff resources are used to augment existing programs or provide new funding to related activities of proven value[.];

(b) Checkoff funds are not to be used to meet the administrative expenses of the entity;

[(b)] (c) Programs funded by checkoff resources [*must*] result in substantial and direct benefits to the human and natural resources of the state that the Oregon Charitable Checkoff Commission determines are unlikely to occur under existing public and private programs; and

[(c)] (d) After checkoff resources are received by the entity, the entity shows a pattern over several years of increasing its total revenues from other than checkoff sources or reaches the level where no more than 50 percent of its revenues are from checkoff sources.

(2) The entity is qualified to receive contributions that are tax deductible under the following:

(a) Section 170 of the Internal Revenue Code (relating to contributions and gifts to charitable and governmental entities).

(b) Section 501(k) of the Internal Revenue Code (relating to contributions to certain organizations providing child care).

(c) Section 7871 of the Internal Revenue Code (relating to contributions to Indian tribal governments).

(d) Any other federal law allowing a deduction from federal individual income tax for charitable contributions to an entity classified by rule of the Department of Revenue as being an entity belonging to the general class described in paragraphs (a) to (c) of this subsection.

(3) The entity makes application for listing within the time and in the manner prescribed by ORS 305.725.

(4) The entity files a financial report, and other information, with the commission as described under ORS 305.730.

(5) The entity received \$25,000 or more in checkoff contributions in at least one of the two tax years immediately preceding the tax year for which it is to be listed on the Oregon income tax return. This subsection does not apply if the entity has not been included on the Oregon personal income tax return for each of the two tax years immediately preceding the tax year for which determination for purposes of this subsection is being made.

NOTE: Abolishes abnormal punctuation in (1).

SECTION 9. ORS 309.100 is amended to read:

309.100. (1) The owner or an owner of any taxable property or any person who holds an interest in the property that obligates the person to pay taxes imposed on the property, may petition the board of property tax appeals for relief as authorized under ORS 309.026. As used in this subsection, an interest that obligates the person to pay taxes includes a contract, lease or other intervening instrumentality.

(2) Petitions filed under this section shall be filed with the clerk of the board during the period following the date the tax statements are mailed for the current tax year and ending December 31.

(3) Each petition shall:

(a) Be made in writing.

(b) State the facts and the grounds upon which the petition is made.

(c) Be signed and verified by the oath of a person described in subsection (1) or (4) of this section.

(d) State the address to which notice of the action of the board shall be sent. The notice may be sent to a person described in subsection (1) or (4) of this section.

(e) State if the petitioner or a representative desires to appear at a hearing before the board.

(4)(a) The following persons may sign a petition and appear before the board on behalf of a person described in subsection (1) of this section:

(A) A relative, as defined by rule adopted by the Department of Revenue, of an owner of the property.

(B) A person duly qualified to practice law or public accountancy in this state.

(C) A legal guardian or conservator who is acting on behalf of an owner of the property.

(D) A real estate broker or principal real estate broker licensed under ORS 696.022.

(E) A state certified appraiser or a state licensed appraiser under ORS 674.310 or a registered appraiser under ORS 308.010.

(F) The lessee of the property.

(G) An attorney-in-fact under a general power of attorney executed by a principal who is an owner of the property.

(b) A petition signed by a person described in this subsection, other than a legal guardian or conservator of a property owner, an attorney-in-fact described in paragraph (a)(G) of this subsection or a person duly qualified to practice law in this state, shall include written *[and signed]* authorization *[from]* **for the person to act on behalf of** the owner or other person described in subsection (1) of this section *[for the person to act on their behalf]*. **The authorization shall be signed by the owner or other person described in subsection (1) of this section.**

(c) In the case of a petition signed by a legal guardian or conservator, the board may request the guardian or conservator to authenticate the guardianship or conservatorship.

(d) In the case of a petition signed by an attorney-in-fact described in paragraph (a)(G) of this subsection, the petition shall be accompanied by a copy of the general power of attorney.

(5) If the petitioner has requested a hearing before the board, the board shall give such petitioner at least five days' written notice of the time and place to appear. If the board denies any petition upon the grounds that it does not meet the requirements of subsection (3) of this section, it shall issue a written order rejecting the petition and set forth in the order the reasons the board considered the petition to be defective.

(6) Notwithstanding ORS 9.160 or 9.320, the owner or other person described in subsection (1) of this section may appear and represent himself or herself at the hearing before the board, or may be represented at the hearing by any authorized person described in subsection (4) of this section.

NOTE: Reconciles pronoun with antecedent in (4)(b).

SECTION 10. ORS 312.122 is amended to read:

312.122. (1) A county may by ordinance provide the means to require the tax collector of the county to deed to the county pursuant to ORS 312.200 any real property sold to the county under ORS 312.100 after the expiration of the 30-day period provided in subsection (2) of this section if:

(a) The property is subjected to waste [*which*] **that** results in a forfeiture to the county of the right to possession of the property under ORS 312.180; or

(b) The property is not occupied by the owner or any person or entity that appears in the records of the county to have a lien or other interest in the property for a period of six consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.

(2)(a) Upon determining that real property sold to the county under ORS 312.100 may be subject to waste or abandonment as provided in subsection (1) of this section, the county shall set a date, time and place within the county for a hearing for the purpose of determining whether the property should be deeded to the county pursuant to subsection (1) of this section.

(b) The owner and any person or entity that appears in the records of the county to have a lien or other interest in the property shall be given an opportunity to be heard at the hearing provided in paragraph (a) of this subsection.

(c) If the county determines after the hearing provided in paragraph (a) of this subsection that the property is subject to waste or abandonment as provided in subsection (1) of this section, the county governing body shall provide that any rights of possession the owner may have in the property are forfeited and direct the property be deeded to the county by the tax collector of the county after expiration of a period of 30 days from the date of the action of the county governing body determining property subject to forfeiture unless it is sooner redeemed by the owner or any person or entity that then appears in the records of the county to have a lien or other interest in the property. All rights of redemption with respect to the real property described in that deed shall terminate on the execution of the deed to the county.

(d) The county shall, in its ordinance, provide for procedures for the hearing required under this subsection that are compatible with the requirements of due process of law.

(3) Not less than 30 days prior to the hearing provided in subsection (2) of this section, the county shall notify the owner and any person or entity that then appears in the records of the county to have a lien or other interest in the property of the hearing. The notice shall contain:

(a) The date, time and place of the hearing provided for in subsection (2) of this section;

(b) The date of the judgment;

(c) The normal date of expiration of the period of redemption under ORS 312.120;

(d) **A** warning to the effect that if the county determines that the property is subject to waste or abandonment as provided in subsection (1) of this section, the property will be deeded to the county immediately after the expiration of 30 days from the date of the county governing body action so determining and that every right or interest of any person in the property will be forfeited forever to the county unless the property is redeemed within that 30-day period;

(e) A legal description of the property and a tax account number; and

(f) The name of the owner as it appears on the latest tax roll.

(4) The notice required to be given under subsection (3) of this section shall be given by both certified mail and by regular first class mail.

(5)(a) If the notice required under subsection (3) of this section is to be given to an owner, the notice shall be addressed to the owner or owners, as reflected in the county records of deeds, at the true and correct address of the owner as appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collector of the county pursuant to ORS 311.560.

(b) If the person or entity to whom the notice is required under subsection (3) of this section to be given is a lienholder, or person or entity other than the owner, having or appearing to have a lien or other interest in the property, the notice shall be addressed to the lienholder, person or entity at the address [which] **that** the county knows or after reasonable inquiry[,] has reason to believe to be the address at which the lienholder, person or entity will most likely receive actual notice.

(6) For purposes of subsection (5)(b) of this section, if the lienholder is a corporation or a limited partnership, the county shall be considered to have made reasonable inquiry if the notice is mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Corporation Commissioner, or if the corporation or limited partnership is not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership.

(7) As used in this section, "records of the county" has that meaning given in ORS 312.125 (7).

NOTE: Repairs relative pronouns in (1)(a) and (5)(b); furnishes forgotten article in (3)(d); corrects comma usage in (5)(b).

SECTION 11. ORS 312.125 is amended to read:

312.125. (1) Not less than one year prior to the expiration of the period of redemption of any real property ordered sold to the county under a judgment under ORS 312.100, the tax collector shall provide notice of the expiration of the period of redemption to any person or entity entitled to redeem the property under ORS 312.120 (2) whose interest appears in the records of the county as of the date foreclosure proceedings were instituted. Any person or entity whose interest has terminated by any means other than a judgment of foreclosure under ORS 312.120 shall not be entitled to such notice.

(2) The notice shall contain:

(a) The date of the judgment;

(b) The date of expiration of the period of redemption;

(c) **A** warning to the effect that the property ordered sold under the judgment, unless sooner redeemed, will be deeded to the county immediately on expiration of the period of redemption and that every right or interest of any person in the property will be forfeited forever to the county;

(d) A legal description of the property and a tax account number; and

(e) The name of the owner as it appears on the latest tax roll.

(3) The notice required to be given under subsections (1) and (2) of this section shall be given by both certified mail and by regular first class mail and subsections (4) and (5) of this section shall apply to both mailings.

(4)(a) If the notice required under subsections (1) and (2) of this section is to be given to an owner, the notice shall be addressed to the owner or owners, as reflected in the county records of deeds, at the true and correct address of the owner as appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collector pursuant to ORS 311.560.

(b) If the person or entity to whom the notice is required under subsection (1) of this section to be given is a lienholder, or person or entity other than the owner, having or appearing to have a lien or other interest in the property, the notice shall be addressed to the lienholder, person or entity at the address [which] **that** the tax collector knows or after reasonable inquiry[,] has reason to believe to be the address at which the lienholder, person or entity will most likely receive actual notice. For the convenience of the county, any lien, instrument or other document, memorandum or writing, filed on or after September 27, 1987, that creates an interest with respect to which notice is required to be given under this paragraph, shall contain:

(A) The address of the person or entity holding lien or other interest created by the instrument or other document, memorandum or writing; and

(B) The tax account number, if any, and if known, of the property subject to the lien or in which the interest is created.

(5) Failure of a lien, instrument or other document, memorandum or other writing to contain the address and tax account number information required under subsection (4)(b) of this section does not invalidate the lien, instrument or other document, memorandum or writing, nor shall the failure of the writing to contain the information relieve the tax collector of the duty to obtain and mail the notice required under subsection (4)(b) of this section to the address that the tax collector believes to be the address at which the lienholder, person or entity is most likely to receive actual notice.

(6) For purposes of subsection (4)(b) of this section, if the lienholder is a corporation or a limited partnership, the tax collector shall be considered to have made reasonable inquiry if the notice is mailed to the registered agent or last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Corporation Commissioner, or if the corporation or limited partnership is not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership.

(7)(a) As used in this section, "records of the county" means the following:

(A) The grantor-grantee indexes.

(B) Other records of deeds, mortgages, powers of attorney, contracts and other instruments, documents or memorandum of conveyance or otherwise of real property that are described in ORS 205.130 (1) and (2).

(C) The County Clerk Lien Record described in ORS 205.130 (3).

(D) Records of federal tax liens and other liens, instruments or other documents or writings reflecting an interest in real property described in ORS 205.246, if those records are kept separately from the records described in paragraph (b) of this subsection.

(E) Records of statutory liens on real property described in ORS 87.372.

(F) Any other records of interests in real property required to be kept by the county clerk, if the records contain a legal description of the property and an address specifically designated as indicated on the instrument, document or other memorandum or writing for purposes of mailing the notice required by this section.

(b) For purposes of this section only, "records of the county" includes:

(A) The appropriate records of the courts described in ORS 7.010 in the custody of the clerk of the appropriate court or court administrator under ORS 7.110; and

(B) Probate records in the custody of the clerk of the appropriate court or court administrator under ORS 7.230 and 7.240. Notwithstanding any provision to the contrary in ORS chapter 7 or other law, the clerk of the appropriate court or the court administrator shall make available to and assist the tax collector in the examination of the records described in this paragraph for purposes of carrying out the obligations of the tax collector under this section without charge.

NOTE: Furnishes forgotten article in (2)(c); repairs relative pronoun and corrects comma usage in (4)(b).

SECTION 12. ORS 314.015 is amended to read:

314.015. Notwithstanding ORS [314.013] **670.600**, for purposes of ORS chapter 316, a person serving as a referee or assistant referee in a youth or adult recreational soccer match shall be considered to be an independent contractor.

NOTE: Replaces reference to repealed section.

SECTION 13. ORS 314.041 is amended to read:

314.041. (1) Except as provided in subsection (2) of this section, [ORS 314.304 and] sections 7, 7a, 28, 38 and 40, chapter 556, Oregon Laws 1995, **and** the new material enacted and amendments and repeals made by chapter 556, Oregon Laws 1995, apply to transactions or activities occurring on or after January 1, 1995, in tax years beginning on or after January 1, 1995.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Revenue Recon-

ciliation Act of 1993 (P.L. 103-66), the Uruguay Round Agreements Act (P.L. 103-465) or P.L. 104-7 shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(3)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1995, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under chapter 556, Oregon Laws 1995, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1995, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 556, Oregon Laws 1995, then notwithstanding ORS 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 556, Oregon Laws 1995, for a tax year beginning before January 1, 1995, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1995 return is filed, whichever period expires later.

NOTE: Removes reference to repealed section and provides missing conjunction in (1).

SECTION 14. ORS 314.752 is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), [ORS 315.254 (*youth apprenticeship sponsorship*),] ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel).

NOTE: Deletes reference to repealed section in (5); see section 19 (repealing 315.254).

SECTION 15. ORS 314.752, as amended by section 13, chapter 625, Oregon Laws 2007, is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), **ORS 315.138 (fish screening, by-pass devices, fishways)**, ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), [ORS 315.254 (*youth apprenticeship sponsorship*),] ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel).

NOTE: Deletes reference to repealed section in (5); see section 19 (repealing 315.254). Restores unnecessarily omitted language in (5).

SECTION 16. ORS 314.752, as amended by section 13, chapter 625, Oregon Laws 2007, and section 3, chapter 883, Oregon Laws 2007, is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, “business tax credit” means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), **ORS 315.104 (forestation and reforestation)**, ORS 315.134 (fish habitat improvement), **ORS 315.138 (fish screening, by-pass devices, fishways)**, ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), [ORS 315.254 (*youth apprenticeship sponsorship*),] ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel).

NOTE: Deletes reference to repealed section in (5); see section 19 (repealing 315.254). Restores unnecessarily omitted language in (5).

SECTION 17. ORS 314.775 is amended to read:

314.775. As used in ORS 314.775 to 314.784:

(1) “Distributive income” means the net amount of income, gain, deduction or loss of a pass-through entity for the tax year of the entity.

(2) “Lower-tier pass-through entity” means a pass-through entity, an ownership interest of which is held by another pass-through entity.

(3) “Nonresident” means:

(a) An individual who is not a resident of this state;

(b) A corporation, partnership or other business entity that has a commercial domicile, as defined in ORS 314.610, that is outside this state; or

(c) A trust that is not a resident trust or qualified funeral trust under ORS 316.282.

(4) “Owner” means a person that owns an interest in a pass-through entity.

(5) “Pass-through entity” means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. “Pass-through entity” does not include any trust[, *as defined in ORS 128.005,*] except a form of trust that the Department of Revenue has determined by rule to have been established or maintained primarily for tax avoidance purposes.

(6) “Upper-tier pass-through entity” means a pass-through entity that owns an interest in another pass-through entity.

NOTE: Eliminates citation to repealed section in (5).

SECTION 18. ORS 315.208 is amended to read:

315.208. (1) A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation that is an employer, under ORS chapter 317 or 318) is allowed to an employer, based upon costs actually paid or incurred by the employer, to acquire, construct, reconstruct, renovate or otherwise improve real property so that the property may be used primarily as a dependent care facility.

(2) The credit allowed under this section shall be the lesser of:

(a) \$2,500[,] multiplied by the number of full-time equivalent employees employed by the employer (on the property or within such proximity to the property that any dependents of the employees may be cared for in the facility) on any date within the two years immediately preceding the end of the first tax year for which credit is first claimed; [or]

(b) Fifty percent of the cost of the acquisition, construction, reconstruction, renovation or other improvement; or

(c) \$100,000.

(3) To qualify for the credit allowed under subsection (1) of this section:

(a) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation or other improvement to real property may be paid or incurred either:

(A) To another to be used to acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be used as a dependent care facility with which the employer contracts to make dependent care assistance payments which payments are wholly or partially entitled to exclusion from income of the employee for federal tax purposes under section 129 of the Internal Revenue Code; or

(B) To acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be operated by the employer, or a combination of employers, to provide dependent care assistance to the employees of the employer under a program or programs under which the assistance is, under section 129 of the Internal Revenue Code, wholly or partially excluded from the income of the employee.

(b) The property must be in actual use as a dependent care facility on the last day of the tax year for which credit is claimed and dependent care services assisted by the employer must take place on the acquired, constructed, reconstructed, renovated or improved property and must be entitled to an exclusion (whole or partial) from the income of the employee for federal tax purposes under section 129 of the Internal Revenue Code on the last day of the tax year for which credit is claimed.

(c) The person or persons operating the dependent care facility on the property acquired, constructed, reconstructed, renovated or improved must hold a certification (temporary or not) issued under ORS 657A.030 and 657A.250 to 657A.450 by the Child Care Division to operate the facility on the property on the last day of the tax year of any tax year in which credit under this section is claimed.

(d) The dependent care facility acquired, constructed, reconstructed, renovated or otherwise improved must be located in Oregon. No credit shall be allowed under this section if the dependent care facility is not acquired, constructed, reconstructed, renovated or improved to accommodate six or more children.

(e) The employer must meet any other requirements or furnish any information, including information furnished by the employees or person operating the dependent care facility, to the Department of Revenue that the department requires under its rules to carry out the purposes of this section.

(f) The dependent care facility, the costs of the acquisition, construction, reconstruction, renovation or improvement upon which the credit granted under this section is based, must be placed in operation before January 1, 2002.

(4) The total amount of the costs upon which the credit allowable under this section is based, and the total amount of the credit, shall be determined by the employer, subject to any rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated or otherwise improved is first placed in operation as a dependent care facility certified by the Child Care Division under ORS 657A.030 and 657A.250 to 657A.450. One-tenth of the total credit is allowable in that tax year and one-tenth of the total credit is allowable in each succeeding tax year, not to exceed nine tax years, thereafter. No credit shall be allowed under this section for any tax year at the end of which the dependent care facility is not in actual operation under a current certification (temporary or not) issued by the Child Care Division nor shall any credit be allowed for any tax year at the end of which the employer is not providing dependent care assistance entitled to exclusion (whole or partial) from employee income for federal tax purposes under section 129 of the Internal Revenue Code for dependent care on the property. Any tax credit allowable under this section in a tax year may be carried forward in the same manner and to the same tax years as if it were a tax credit described in ORS 315.204.

(5) Nothing in this section shall affect the computation of depreciation or basis of a dependent care facility. If a deduction is allowed for purposes of ORS chapter 316, 317 or 318 for the amounts paid or incurred upon which the credit under this section is based, the deduction shall be reduced by the dollar amount of the credit granted under this section.

(6) For purposes of the credit allowed under this section:

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code shall apply to the extent applicable.

(b) "Employer" means a resident, part-year resident or full-year nonresident employer carrying on a business, trade, occupation or profession in this state.

(7) The department shall require that evidence that the person operating the dependent care facility on the date that the taxpayer's tax year ends holds a current certification (temporary or otherwise) to operate the facility accompany the tax return on which any amount of tax credit granted under this section is claimed, or that such evidence be separately furnished. If the evidence is not so furnished, no credit shall be allowed for the tax year for which the evidence is not furnished. The Child Care Division shall cooperate by making such evidence, in an appropriate form, available to the person operating the facility, if the person is currently certified (temporary or not) so that, if necessary, it may be made available to the taxpayer.

NOTE: Corrects punctuation and conjunction in (2)(a).

SECTION 19. ORS 315.254 is repealed.

NOTE: Repeals obsolete statute.

SECTION 20. ORS 316.168 is amended to read:

316.168. (1) Except as otherwise provided by law, every employer subject to the provisions of ORS 316.162 to 316.221, 656.506 and ORS chapter 657, or a payroll-based tax imposed by a mass transit district and administered by the Department of Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report upon a form prescribed by the department.

(2) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing, as provided in ORS 305.820.

[(a)] (3) The report shall be accompanied by payment of any tax or assessment due and a combined tax and assessment payment coupon prescribed by the department. The employer shall indicate on the coupon the amount of the total payment and the portions of the payment to be paid to each of the tax or assessment programs.

[(b)] (4) The Department of Revenue shall credit the payment to the tax or assessment programs in the amounts indicated by the employer on the coupon and shall promptly remit the payments to the appropriate taxing or assessing body.

[(c)] (5) If the employer fails to allocate the payment on the coupon, the department shall allocate the payment to the proper tax or assessment programs on the basis of the percentage the payment bears to the total amount due.

[(d)] (6) The Department of Revenue shall distribute copies of the combined quarterly tax and assessment report and the necessary tax or assessment payment information to each of the agencies charged with the administration of a tax or assessment covered by the report.

[(e)] (7) The Department of Revenue, the Employment Department and the Department of Consumer and Business Services shall develop a system of account numbers and assign to each employer a single account number representing all of the tax and assessment programs included in the combined quarterly tax and assessment report.

NOTE: Mends misnumbering.

SECTION 21. ORS 316.287 is amended to read:

316.287. (1) The "fiduciary adjustment" is the net amount of the modifications to federal taxable income described in this chapter (ORS 316.697 being applicable if the estate or trust is a beneficiary of another estate or trust) that relates to its items of income or deduction of an estate or trust.

(2) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to the share of the estate or trust income of the beneficiary for such year, under state law or the terms of the instrument, that is required to be

distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

(3) The Department of Revenue may by [regulation] **rule** authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the department may require.

NOTE: Substitutes usual usage in (3).

SECTION 22. ORS 316.699 is amended to read:

316.699. (1) There shall be subtracted from federal taxable income the amount contributed to a college savings network account established under ORS 348.841 to 348.873.

(2) Notwithstanding subsection (1) of this section, a subtraction under this section may not exceed the lesser of:

(a) \$4,000 for the tax year if the taxpayer files a joint return, or \$2,000 for the tax year if the taxpayer files a return other than a joint return; and

(b) If an amount is carried forward to a succeeding tax year under subsection [(3)] (4) of this section, the balance in the college savings network account at the close of the tax year for which the subtraction is being made.

(3)(a) The Department of Revenue shall annually adjust the maximum subtraction allowable under this section according to the cost-of-living adjustment for the calendar year. The department shall make this adjustment by multiplying the amount in subsection (2) of this section by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2007.

(b) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) Any amounts contributed to a college savings network account that are not subtracted from federal taxable income because of the monetary limitations imposed by subsection (2) of this section may be carried forward for four succeeding tax years and subtracted from federal taxable income in any of those succeeding tax years in an amount that does not exceed the monetary limitations imposed by subsection (2) of this section.

(5) The amount contributed to a college savings network account may be subtracted from a preceding tax year if the contribution is made before the taxpayer files a return or before the 15th day of the fourth month following the closing of the taxpayer's tax year, whichever is earlier.

NOTE: Corrects faulty reference.

SECTION 23. ORS 316.834 is repealed.

NOTE: Repeals obsolete statute.

SECTION 24. ORS 316.871 is amended to read:

316.871. As used in ORS 316.871 and 316.872, unless the context requires otherwise:

(1) "Consideration" includes money, property or securities. If consideration is for other than money, consideration shall mean the amount equal to the adjusted basis to the corporation of the property received reduced by any liability to which the property was subject or [which] **that** was assumed by the corporation as of the time the property was received.

(2) "Security" means any security as defined in ORS 59.015.

(3) "Small business corporation" means a corporation that:

(a) Is organized in this state or authorized to transact business in this state under the Oregon Business Corporation Act and [which] **that** has its primary place of business or commercial domicile in Oregon as determined under the administrative rule of the Department of Revenue.

(b) Had total employment of no more than 200 employees, as measured by the number of employees covered by federal unemployment insurance on December 31 of the year preceding issuance of the small business stock, a majority of which employees were covered by Oregon unemployment insurance on December 31 of the year preceding acquisition of the small business stock. However, if more than 50 percent of the outstanding equity securities of all classes are held by another cor-

poration, the employment of the controlling corporation shall be counted as employment of the eligible corporation for purposes of this paragraph.

(c) Had gross receipts for its tax year ending in the calendar year previous to the calendar year in which the tax year of the taxpayer claiming the credit under ORS 316.872[,] begins, of which not more than 25 percent were obtained from royalties, rents, dividends, interest, annuities and sales and exchanges of property. However, this restriction does not apply to companies whose primary business is the sale or development of computer software.

(d) Is not engaged primarily in the business of managing, holding, buying or selling real property.

(e) Has not issued small business securities for consideration in excess of \$1 million. Any small business securities issued by affiliates of the corporation as defined in section 1504 of the Internal Revenue Code shall be aggregated with the small business securities issued by the corporation for purposes of the \$1 million limit.

(4) "Small business security" means a security issued by a small business corporation and purchased by a taxpayer directly from the same small business corporation, or purchased by a taxpayer from an underwriter [*which*] **that** is selling the securities as part of a plan to raise new debt or equity capital for the small business corporation. The Department of Revenue shall, upon request, designate those small business security issues [*which*] **that** fit the definition set forth in this [*paragraph*] **subsection**.

NOTE: Improves pronoun choice in (1), (3)(a) and (4); corrects punctuation in (3)(c); fixes internal reference in (4).

SECTION 25. ORS 317.097, as amended by section 6, chapter 29, Oregon Laws 2008, and section 15, chapter 45, Oregon Laws 2008, is amended to read:

317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, 2020, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development, acquisition or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development, acquisition or rehabilitation is made.

(2) The maximum amount of credit for the difference between the amounts described in subsection (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall be:

(a) Made to an individual or individuals who own the dwelling, participate in an owner-occupied community rehabilitation program and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income;

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition or rehabilitation of housing; and
(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project;

(c)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed; or

(d)(A) Made to a qualified borrower;

(B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing preserved by the loan:

(i) Is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Has a rent assistance contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture that will be maintained by the qualified borrower.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed \$17 million for any fiscal year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which may not exceed 20 years.

(8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not affect the credit allowed under this section.

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

[(10) As used in this section:]

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.]

(b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.]

[(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.]

[(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.]

[(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2007.]

[(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.]

[(g) "Qualified assignee" means any investor participating in the secondary market for real estate loans.]

[(h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.]

[(i) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.]

[(11)] (10) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

[(12)] (11) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

[(13)] (12) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

(13) As used in this section:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.

(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2007.

(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.

(g) "Qualified assignee" means any investor participating in the secondary market for real estate loans.

(h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection

(4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(i) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

NOTE: Makes section definitions easier to find.

SECTION 25a. If House Bill 2157 becomes law, section 25 of this 2009 Act (amending ORS 317.097) is repealed and ORS 317.097, as amended by section 6, chapter 29, Oregon Laws 2008, section 15, chapter 45, Oregon Laws 2008, and section 25, chapter 5, Oregon Laws 2009 (Enrolled House Bill 2157), is amended to read:

317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, 2020, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development, acquisition or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development, acquisition or rehabilitation is made.

(2) The maximum amount of credit for the difference between the amounts described in subsection (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall be:

(a) Made to an individual or individuals who own the dwelling, participate in an owner-occupied community rehabilitation program and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income;

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition or rehabilitation of housing; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project;

(c)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed; or

(d)(A) Made to a qualified borrower;

(B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing preserved by the loan:

(i) Is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Has a rent assistance contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture that will be maintained by the qualified borrower.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed \$17 million for any fiscal year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which may not exceed 20 years.

(8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not affect the credit allowed under this section.

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

[(10) As used in this section:]

[(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.]

[(b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.]

[(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.]

[(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.]

[(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2008.]

[(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.]

[(g) "Qualified assignee" means any investor participating in the secondary market for real estate loans.]

[(h) “Qualified borrower” means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.]

[(i) “Sponsoring entity” means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.]

[(11)] (10) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

[(12)] (11) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

[(13)] (12) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

(13) As used in this section:

(a) “Annual rate” means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) “Finance charge” means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.

(c) “Lending institution” means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) “Manufactured dwelling park” has the meaning given that term in ORS 446.003.

(e) “Nonprofit corporation” means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2008.

(f) “Preservation project” means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.

(g) “Qualified assignee” means any investor participating in the secondary market for real estate loans.

(h) “Qualified borrower” means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(i) “Sponsoring entity” means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

NOTE: Makes section definitions easier to find; resolves conflict with House Bill 2157.

SECTION 26. ORS 317.383 is repealed.

NOTE: Repeals obsolete statute.

SECTION 27. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156, 315.204, 315.208, 315.213, [315.254,] 315.304, 315.507, 315.511 and 315.604 (all only to the extent applicable to a corporation) and ORS chapter 317.

NOTE: Deletes reference to repealed section; see section 19 (repealing 315.254).

SECTION 28. ORS 318.031, as amended by section 4, chapter 883, Oregon Laws 2007, is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, **315.104**, 315.134, 315.141, 315.156, 315.204, 315.208, 315.213, [315.254,] 315.304, 315.507, 315.511 and 315.604 (all only to the extent applicable to a corporation) and ORS chapter 317.

NOTE: Deletes reference to repealed section; see section 19 (repealing 315.254). Restores unnecessarily omitted reference.

SECTION 29. ORS 318.106 is amended to read:

318.106. ORS 317.151[, *during its existence and as it may be amended,*] is incorporated into **and made a part of** this chapter [*and made a part hereof*].

NOTE: Conforms section to legislative style.

SECTION 30. ORS 318.130 is amended to read:

318.130. ORS 317.329[, *during its existence and as it may be amended,*] is incorporated into **and made a part of** this chapter by reference [*and made a part hereof*].

NOTE: Conforms section to legislative style.

SECTION 31. ORS 323.005 is amended to read:

323.005. [(1)] ORS 323.005 to 323.482 may be cited as the Cigarette Tax Act.

[(2) *Except where the context otherwise requires, the definitions given in ORS 323.005 to 323.482 govern its construction.*]

NOTE: Deletes redundant language.

SECTION 32. ORS 323.110 is amended to read:

323.110. The Department of Revenue, to [*insure*] **ensure** compliance with ORS 323.005 to 323.482, shall require a licensee or an applicant for a license as distributor to deposit with it such security as the department may determine. The amount of the security shall be fixed by the department but shall not be greater than two times the estimated average monthly liability shown in the monthly reports, determined in such manner as the department deems proper. The amount of the security may be increased or decreased by the department subject to the limitations herein provided. Except as provided in ORS 323.120, the security shall be in the form of a bond or bonds executed by the distributor as principal and by a corporation, authorized to engage in business as a surety company in Oregon under ORS 742.350 to 742.370, as surety, payable to the State of Oregon through its Department of Revenue, conditioned upon the payment of all taxes, penalties and other obligations of the distributor arising under ORS 323.005 to 323.482.

NOTE: Ensures adherence to legislative style.

SECTION 33. ORS 323.385 is amended to read:

323.385. (1) If the Department of Revenue believes that the collection of any amount of tax required to be paid by any person under ORS 323.005 to 323.482 will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable, with interest and penalty as provided in ORS 323.381.

(2) If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 20 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 20 days.

(3) The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to ORS 323.416. The person shall, however, file the petition for redetermination with the department within 20 days after the service upon the person of notice of the determination. The person shall at the time of filing the petition for redetermination deposit with the department such security as *[it]* **the department** may deem necessary to *[insure]* **ensure** compliance with ORS 323.005 to 323.482. The security may be sold by the department at public sale if it becomes necessary in order to recover any amount due. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed pursuant to ORS 323.403. Upon any such sale, the surplus, if any, above the amount due under ORS 323.005 to 323.482 shall be returned to the person who deposited the security.

NOTE: Clarifies antecedent and standardizes syntax in (3).

SECTION 34. ORS 344.755 is amended to read:

344.755. Training agents who terminate youth apprentices without cause as determined by the appropriate apprenticeship committee prior to completion of training or who violate ORS 344.745 or 344.750 or rules adopted pursuant thereto by the State Apprenticeship and Training Council or the Department of Education, upon notice to the Department of Revenue, may lose their eligibility for tax credits pursuant to ORS *[315.254 and]* 318.031 and their eligibility to train and employ youth apprentices under ORS *[315.254 and]* 344.745 to 344.757 for a period of one year.

NOTE: Deletes references to repealed section; see section 19 (repealing 315.254).

SECTION 35. Section 15, chapter 625, Oregon Laws 2007, is amended to read:

Sec. 15. The amendments to ORS *[314.752 and]* 496.303 by *[sections 13 and 14 of this 2007 Act]* **section 14, chapter 625, Oregon Laws 2007**, become operative on January 2, 2014.

NOTE: Corrects operative date.

SECTION 36. Section 10, chapter 883, Oregon Laws 2007, is amended to read:

Sec. 10. The amendments to ORS *[314.752, 318.031,]* 526.450, 526.455, 526.465 and 526.475 by sections *[3 to 8 of this 2007 Act]* **5 to 8, chapter 883, Oregon Laws 2007**, become operative on January 2, 2028.

NOTE: Corrects operative date.

Passed by House February 19, 2009

Received by Governor:

Repassed by House March 20, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

.....
Governor

Passed by Senate March 18, 2009

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2009

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Secretary of State