

House Bill 2070

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Revenue)

SUMMARY

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

Increases corporate minimum tax levied on C corporations with business activity in state.
Applies to tax years beginning on or after January 1, 2010.

A BILL FOR AN ACT

1
2 Relating to corporate minimum taxes; creating new provisions; amending ORS 317.090; and providing
3 for revenue raising that requires approval by a three-fifths majority.

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

5 **SECTION 1.** ORS 317.090 is amended to read:

6 317.090. (1) Each taxpayer named in ORS 317.056 or 317.070 shall pay annually to the state, for
7 the privilege of carrying on or doing business by it within this state, a minimum tax of **the greater**
8 **of \$10 or the amount required by sections 2 and 3 of this 2009 Act.**

9 (2) The minimum tax shall not be apportionable (except in the case of a change of accounting
10 periods), but shall be payable in full for any part of the year during which a corporation is subject
11 to tax.

12 **SECTION 2.** As used in this section and section 3 of this 2009 Act, unless the context
13 requires otherwise:

14 (1) **"Business activity"** means a transfer of legal or equitable title to or rental of prop-
15 erty, whether real, personal or mixed, tangible or intangible, or the performance of services,
16 or a combination thereof, made or engaged in, or caused to be made or engaged in, within
17 this state, whether in intrastate, interstate or foreign commerce, with the object of gain,
18 benefit or advantage, whether direct or indirect, to the taxpayer or to others. **"Business ac-**
19 **tivity"** does not include services rendered by an employee to the employee's employer, ser-
20 vices rendered as a director of a corporation, or a casual transaction. **"Business activity"**
21 includes activity of a taxpayer incidental to the taxpayer's other business activities.

22 (2) **"Casual transaction"** means a transaction made or engaged in other than in the or-
23 dinary course of repeated and successive transactions of a like character, except that a
24 transaction made or engaged in by a taxpayer that is incidental to that taxpayer's regular
25 business activity constitutes a business activity under sections 2 and 3 of this 2009 Act.

26 (3) **"Compensation"** means all wages, salaries, fees, bonuses, commissions or payments
27 made in the tax year on behalf of or for the benefit of employees, officers or directors of the
28 taxpayer. **"Compensation"** includes, but is not limited to, payments that are subject to or
29 specifically exempt or excepted from withholding under sections 3401 to 3406 of the Internal
30 Revenue Code. **"Compensation"** also includes, on a cash or accrual basis consistent with the
31 taxpayer's method of accounting for federal income tax purposes, payments to state and

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

1 federal unemployment compensation funds, payments under the Federal Insurance Contri-
 2 butions Act and similar social insurance programs, payments, including self-insurance, for
 3 worker’s compensation insurance, payments to individuals not currently working, payments
 4 to dependents and heirs of individuals because of current or former labor services rendered
 5 by those individuals, payments to a pension, retirement or profit sharing plan, and payments
 6 for insurance for which employees are the beneficiaries, including payments under health
 7 and welfare and noninsured benefit plans and payments of fees for the administration of
 8 health and welfare and noninsured benefit plans. “Compensation” does not include any of the
 9 following:

10 (a) Discounts on the price of the taxpayer’s merchandise or services sold to the taxpay-
 11 er’s employees, officers or directors that are not available to other customers.

12 (b) Payments to an independent contractor.

13 (c) Payments to state and federal unemployment compensation funds.

14 (4) “Dividends” means any distribution of money or property, other than the distribution
 15 of newly issued stock of the same enterprise, to the owners of a business enterprise with
 16 respect to their ownership interest in the enterprise from the accumulated revenues and
 17 profits of the enterprise. “Dividends” does not include any of the following:

18 (a) Distributions of money or property to beneficiaries of a trust qualified under section
 19 401 of the Internal Revenue Code.

20 (b) Cash or noncash payments of life, sickness, accident or other benefits to members
 21 or their dependents or designated beneficiaries from a voluntary employees’ beneficiary as-
 22 sociation qualified under section 501(c)(9) of the Internal Revenue Code.

23 (c) Distributions of money or property to participants from any common trust fund as
 24 defined under section 584 of the Internal Revenue Code.

25 (d) Policyholder dividends as defined under section 808 of the Internal Revenue Code, to
 26 the extent the dividends are not reduced pursuant to section 809 of the Internal Revenue
 27 Code.

28 (e) Payment of interest on deposits of depositors of a mutual bank or credit union.

29 (f) Distributions of money or property to or on behalf of beneficiaries of a trust that is
 30 either subject to taxation under section 641 of the Internal Revenue Code or described in
 31 section 664 of the Internal Revenue Code, if the trust limits its activities to personal in-
 32 vestment activities that do not constitute business activities and those incidental to or in
 33 support of such personal investment activities.

34 (5) “Employee” means an employee as defined in section 3401(c) of the Internal Revenue
 35 Code. An individual from whom an employer is required to withhold for federal income tax
 36 purposes shall prima facie be deemed an employee.

37 (6) “Employer” means an employer as defined in section 3401(d) of the Internal Revenue
 38 Code. A person required to withhold for federal income tax purposes shall prima facie be
 39 deemed an employer.

40 (7) “Enterprise value tax base” means the sum of all compensation paid or accrued, in-
 41 terest paid or accrued and dividends paid by the business enterprise, before apportionment
 42 or allocation.

43 (8) “Gross receipts” means the sum of sales and rent or lease receipts. “Gross receipts”
 44 does not include the amounts received in an agency or other representative capacity, solely
 45 on behalf of another or others, excluding amounts received by persons having the power or

1 authority to expend or otherwise appropriate such amounts in payment for or in consider-
2 ation of sales or services made or rendered by themselves or by others acting under their
3 direction and control or by such fiduciaries as guardians, executors, administrators, receiv-
4 ers, conservators or trustees other than trustees of taxes received or collected from others
5 under direction of the laws of the federal government or of any state or local government.

6 (9) "Interest" means all amounts paid or accrued for the use or forbearance of money
7 or property. "Interest" does not include amounts paid, credited or set aside in connection
8 with reserves by insurers to fulfill policy and contractual responsibilities to policy holders
9 or by voluntary employees' beneficiary associations qualified under section 501(c)(9) of the
10 Internal Revenue Code to fulfill obligations to members.

11 **SECTION 3.** (1) For each tax year, there is levied and imposed a tax at the rate of 0.2
12 percent of the enterprise value tax base, after allocation or apportionment, of every C cor-
13 poration with business activity in this state.

14 (2) Notwithstanding subsection (1) of this section, if the gross receipts of a taxpayer do
15 not exceed \$100,000 for the tax year, the taxpayer shall be exempt from the tax levied and
16 imposed under this section.

17 **SECTION 4.** Sections 2 and 3 of this 2009 Act and the amendments to ORS 317.090 by
18 section 1 of this 2009 Act apply to tax years beginning on or after January 1, 2010.
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