

House Bill 3506

Sponsored by Representative MAURER; Representatives BENTZ, BRUUN

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**.

Connects definition of taxable income for purposes of Oregon personal income and corporate tax laws to federal Internal Revenue Code as code is from time to time amended.

Applies to tax years beginning on or after January 1, 2009.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to connection to federal tax law; creating new provisions; amending ORS 314.011, 316.012,
3 316.013, 317.010 and 317.018; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.011, as amended by section 11, chapter 45, Oregon Laws 2008, and section
6 21, chapter 5, Oregon Laws 2009 (Enrolled House Bill 2157), is amended to read:

7 314.011. (1) As used in this chapter, unless the context requires otherwise, "department" means
8 the Department of Revenue.

9 (2) As used in this chapter:

10 (a) Any term has the same meaning as when used in a comparable context in the laws of the
11 United States relating to federal income taxes, unless a different meaning is clearly required or the
12 term is specifically defined in this chapter.

13 (b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of
14 the United States or to the Internal Revenue Code refers to the laws of the United States or to the
15 Internal Revenue Code as they are amended and in effect:

16 **(A)** On December 31, 2008[.]; **or**

17 **(B) If related to the definition of taxable income, as applicable to the tax year of the**
18 **taxpayer.**

19 (c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260
20 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412,
21 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, **except those de-**
22 **scribed in paragraph (b) of this subsection**, any reference to the laws of the United States or to
23 the Internal Revenue Code means the laws of the United States relating to income taxes or the
24 Internal Revenue Code as they are amended on or before December 31, 2008, even when the
25 amendments take effect or become operative after that date, except where the Legislative Assembly
26 has specifically provided otherwise.

27 (3) Insofar as is practicable in the administration of this chapter, the department shall apply and
28 follow the administrative and judicial interpretations of the federal income tax law. When a pro-
29 vision of the federal income tax law is the subject of conflicting opinions by two or more federal
30 courts, the department shall follow the rule observed by the United States Commissioner of Internal

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 Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of
2 the department to audit the return of any taxpayer or to determine any fact relating to the tax li-
3 ability of any taxpayer.

4 (4) When portions of the Internal Revenue Code incorporated by reference as provided in sub-
5 section (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury,
6 then such rules or regulations shall be regarded as rules adopted by the department under and in
7 accordance with the provisions of this chapter, whenever they are prescribed or amended.

8 (5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in
9 subsection (2) of this section are later corrected by an Act or a Title within an Act of the United
10 States Congress designated as an Act or Title making technical corrections, then notwithstanding
11 the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so
12 corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided
13 in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title
14 (in which case the provisions shall take effect as indicated in the Act or Title), as if originally in-
15 cluded in the provisions of the Act being technically corrected. If, on account of this subsection, any
16 adjustment is required to an Oregon return that would otherwise be prevented by operation of law
17 or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the
18 manner provided under ORS 314.135.

19 (b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an
20 Act or Title.

21 **SECTION 2.** ORS 316.012, as amended by section 13, chapter 45, Oregon Laws 2008, and section
22 23, chapter 5, Oregon Laws 2009 (Enrolled House Bill 2157), is amended to read:

23 316.012. Any term used in this chapter has the same meaning as when used in a comparable
24 context in the laws of the United States relating to federal income taxes, unless a different meaning
25 is clearly required or the term is specifically defined in this chapter. Except where the Legislative
26 Assembly has provided otherwise, any reference in this chapter to the laws of the United States or
27 to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue
28 Code as they are amended and in effect:

29 (1) On December 31, 2008[.]; **or**

30 (2) **If related to the definition of taxable income, as applicable to the tax year of the**
31 **taxpayer.**

32 **SECTION 3.** ORS 316.013, as amended by section 29, chapter 5, Oregon Laws 2009 (Enrolled
33 House Bill 2157), is amended to read:

34 316.013. Unless the context requires otherwise and notwithstanding ORS 316.012, whenever, in
35 the calculation of Oregon taxable income, reference to the taxpayer's federal adjusted gross income
36 is required to be made, the taxpayer's federal adjusted gross income shall be as determined under
37 the provisions of the Internal Revenue Code as they may be in effect [*on December 31, 2008,*] **for**
38 **the tax year of the taxpayer** without any of the additions, subtractions or other modifications or
39 adjustments required under this chapter and other laws of this state applicable to personal income
40 taxation.

41 **SECTION 4.** ORS 317.010, as amended by section 14, chapter 45, Oregon Laws 2008, and section
42 24, chapter 5, Oregon Laws 2009 (Enrolled House Bill 2157), is amended to read:

43 317.010. As used in this chapter, unless the context requires otherwise:

44 (1) "Centrally assessed corporation" means every corporation the property of which is assessed
45 by the Department of Revenue under ORS 308.505 to 308.665.

- 1 (2) "Department" means the Department of Revenue.
- 2 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a
3 group of affiliated corporations under section 1501 of the Internal Revenue Code.
- 4 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).
- 5 (4) "Doing business" means any transaction or transactions in the course of its activities con-
6 ducted within the state by a national banking association, or any other corporation; provided, how-
7 ever, that a foreign corporation whose activities in this state are confined to purchases of personal
8 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
9 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
10 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-
11 termined as provided in section 1504 of the Internal Revenue Code.
- 12 (5) "Excise tax" means a tax measured by or according to net income imposed upon national
13 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing
14 and business corporations for the privilege of carrying on or doing business in this state.
- 15 (6) "Financial institution" or "financial corporation" means a bank or trust company organized
16 under ORS chapter 707, national banking association or production credit association organized
17 under federal statute, building and loan association, savings and loan association, mutual savings
18 bank, and any other corporation whose principal business is in direct competition with national and
19 state banks.
- 20 (7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise,
21 refers to the laws of the United States or to the Internal Revenue Code as they are amended and
22 in effect:
- 23 (a) On December 31, 2008[.]; or
- 24 (b) **If related to the definition of taxable income, as applicable to the tax year of the**
25 **taxpayer.**
- 26 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS
27 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
28 ORS 317.650 to 317.665.
- 29 (9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers
30 in subsection (11) of this section and ORS 317.650 to 317.665.
- 31 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a
32 corporation for which no federal taxable income or loss is determined, as would be determined, un-
33 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States
34 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,
35 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-
36 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or
37 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a
38 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of
39 income from transactions or activities carried on both within and without the state) applies, to
40 derive taxable income or loss, the following shall occur:
- 41 (a) From the amount otherwise determined under this subsection, subtract nonbusiness income,
42 or add nonbusiness loss, whichever is applicable.
- 43 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-
44 portionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The
45 resulting product shall be Oregon apportioned income or loss.

1 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this
 2 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to
 3 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to
 4 314.645. The resulting figure is “taxable income or loss” for those corporations carrying on taxable
 5 transactions or activities both within and without Oregon.

6 (11) As used in ORS 317.122 and 317.650 to 317.665, “insurer” means any domestic, foreign or
 7 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-
 8 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting
 9 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or
 10 interinsurance exchange. However, “insurer” does not include title insurers or health care service
 11 contractors operating pursuant to ORS 750.005 to 750.095.

12 **SECTION 5.** ORS 317.018, as amended by section 30, chapter 5, Oregon Laws 2009 (Enrolled
 13 House Bill 2157), is amended to read:

14 317.018. It is the intent of the Legislative Assembly:

15 (1) To make the Oregon corporate excise tax law, insofar as it relates to the measurement of
 16 taxable income, identical to the provisions of the federal Internal Revenue Code, as in effect and
 17 applicable [on December 31, 2008] **for the tax year of the taxpayer**, to the end that taxable income
 18 of a corporation for Oregon purposes is the same as it is for federal income tax purposes, subject
 19 to Oregon’s jurisdiction to tax, and subject to the additions, subtractions, adjustments and modifi-
 20 cations contained in this chapter.

21 (2) To achieve the results desired under subsection (1) of this section by application of the var-
 22 ious provisions of the federal Internal Revenue Code relating to the definitions for corporations, of
 23 income, deductions, accounting methods, accounting periods, taxation of corporations, basis and
 24 other pertinent provisions relating to gross income. It is not the intent of the Legislative Assembly
 25 to adopt federal Internal Revenue Code provisions dealing with the computation of tax, tax credits
 26 or any other provisions designed to mitigate the amount of tax due.

27 (3) To impose on each corporation doing business within this state an excise tax for the privi-
 28 lege of carrying on or doing that business measured by its federal taxable income as adjusted in this
 29 chapter.

30 **SECTION 6.** The amendments to ORS 314.011, 316.012, 316.013, 317.010 and 317.018 by
 31 sections 1 to 5 of this 2009 Act apply to tax years beginning on or after January 1, 2009.

32 **SECTION 7.** This 2009 Act takes effect on the 91st day after the date on which the reg-
 33 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.