

Senate Bill 180

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SUMMARY

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

Requires corporation that files state return to include certain entities in consolidated state tax return if corporation owns at least 80 percent of stock of entity.

Applies to tax years beginning on or after January 1, 2010.

A BILL FOR AN ACT

1
2 Relating to consolidated state tax returns; creating new provisions; and amending ORS 314.260,
3 314.712, 317.010 and 317.710.

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

5 **SECTION 1.** ORS 317.710 is amended to read:

6 317.710. (1) A corporation shall make a return with respect to the tax imposed by this chapter
7 as provided in this section.

8 (2) If the corporation is a member of an affiliated group of corporations making a consolidated
9 federal return, it shall file a return and determine its Oregon taxable income as provided in ORS
10 317.715. The corporation's tax liability shall be joint and several with any other corporation that is
11 included in a consolidated state return with the corporation under subsection (5) of this section.

12 (3) If the corporation makes a separate return for federal income tax purposes, it shall file a
13 separate return under this chapter. The corporation shall determine its Oregon taxable income and
14 tax liability separately from any other corporation.

15 (4) For purposes of subsection (3) of this section, if the corporation is not subject to taxation
16 under the Internal Revenue Code a return for federal income tax purposes includes any form of re-
17 turn required to be made in lieu of an income tax return under the Internal Revenue Code or reg-
18 ulations thereunder.

19 (5)(a) If two or more corporations subject to taxation under this chapter are members of the
20 same affiliated group making a consolidated federal return and are members of the same unitary
21 group, they shall file a consolidated state return. The Department of Revenue shall prescribe by rule
22 the method by which a consolidated state return shall be filed.

23 (b) If any corporation that is a member of an affiliated group is permitted or required to deter-
24 mine its Oregon taxable income on a separate basis under ORS 314.670, or if any corporation is
25 permitted or required by statute or rule to use different apportionment factors than a corporation
26 with which it is affiliated, the corporation shall not be included in a consolidated state return under
27 paragraph (a) of this subsection.

28 (c) Whenever two or more corporations are required to file a consolidated state return under
29 paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of de-
30 riving Oregon taxable income shall be treated as a reference to all corporations that are included

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 in the consolidated state return.

2 **(6) Notwithstanding subsections (3) to (5) of this section, if a corporation files a state**
 3 **return, each entity that would form an affiliated group with the corporation as provided in**
 4 **section 1504 of the Internal Revenue Code, if not for the exceptions in section 1504(b) of the**
 5 **Internal Revenue Code, shall be included in the corporation's consolidated state return. If**
 6 **the corporation is subject to apportionment under ORS 314.605 to 314.675, the income of each**
 7 **entity shall be included in the apportionment calculation. This subsection applies only to:**

8 **(a) A regulated investment company, as defined in section 851 of the Internal Revenue**
 9 **Code.**

10 **(b) A real estate investment trust, as defined in section 856 of the Internal Revenue Code.**

11 **(c) A real estate mortgage investment conduit, as defined in section 860D of the Internal**
 12 **Revenue Code.**

13 **(d) A management company that is registered under 15 U.S.C. 80a-1 et seq.**

14 [(6)] **(7) If so directed by the department, by rule or instructions on the state tax return form,**
 15 every corporation required to make a return under this chapter shall also file with the return a true
 16 copy of the corporation's federal income tax return for the same taxable year. For purposes of this
 17 subsection, the corporation's federal income tax return includes a consolidated federal return for
 18 an affiliated group of which the corporation is a member. The department may, by rule or in-
 19 structions, permit a corporation to submit specified excerpts from its federal return in lieu of sub-
 20 mitting a copy of the entire federal return. The federal return or any part thereof required to be
 21 filed with the state return is incorporated in and shall be a part of the state return.

22 [(7)] **(8) Each foreign or alien insurer and each domestic insurer owned and controlled, directly**
 23 **or indirectly, by one or more foreign insurers shall determine its Oregon taxable income under ORS**
 24 **317.650 to 317.665 and make a return of the tax imposed by this chapter on a separate basis. An**
 25 **interinsurance and reciprocal exchange and its attorney in fact with respect to its attorney in fact**
 26 **net income as a corporate attorney in fact acting as attorney in compliance with ORS 731.458,**
 27 **731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange may file a consolidated**
 28 **return under the circumstances in the manner and subject to the rules adopted by the department.**

29 **SECTION 2. ORS 317.010, as amended by section 14, chapter 45, Oregon Laws 2008, is amended**
 30 **to read:**

31 317.010. As used in this chapter, unless the context requires otherwise:

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

34 (2) "Department" means the Department of Revenue.

35 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a
 36 group of affiliated corporations under section 1501 of the Internal Revenue Code.

37 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5) **or**
 38 **(6).**

39 (4) "Doing business" means any transaction or transactions in the course of its activities con-
 40 ducted within the state by a national banking association, or any other corporation; provided, how-
 41 ever, that a foreign corporation whose activities in this state are confined to purchases of personal
 42 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
 43 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
 44 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-
 45 termined as provided in section 1504 of the Internal Revenue Code.

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

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

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

12 (a) On December 31, 2007; or

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

14 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS
15 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
16 ORS 317.650 to 317.665.

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

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

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

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

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

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

45 **SECTION 3.** ORS 314.260 is amended to read:

1 314.260. (1)(a) **Except as provided in ORS 317.710 (6)**, an entity described in section 860D of
2 the Internal Revenue Code (a real estate mortgage investment conduit or REMIC) is not subject to
3 a tax under ORS chapter 316, 317 or 318 (and may not be treated as a corporation, partnership or
4 trust for purposes of ORS chapter 316, 317 or 318).

5 (b) If a REMIC engages in a prohibited transaction as defined in section 860F(a)(2) of the
6 Internal Revenue Code, the REMIC shall be subject to a tax equal to six and six-tenths percent of
7 the net income derived from the prohibited transaction. The tax imposed under this paragraph shall
8 be assessed and collected under this chapter and ORS chapter 305 and shall be credited to the
9 General Fund to be made available for general governmental expenses.

10 (2) The income of any REMIC shall be taxable to the holders of the interests in the REMIC
11 under ORS chapter 316, 317 or 318, whichever is applicable.

12 (3) Taxable income or loss with respect to income received as the holder of any interest in a
13 REMIC shall be determined under sections 860A to 860G of the Internal Revenue Code.

14 (4) To determine the portion of the income of a REMIC that is taxable to a nonresident holder
15 of an interest in the REMIC, there shall be included only that part derived from or connected with
16 sources in this state, as such part is determined under rules adopted by the Department of Revenue
17 in accordance with the general rules in ORS 316.352 (1987 Replacement Part).

18 **SECTION 4.** ORS 314.712 is amended to read:

19 314.712. (1) Except as provided in ORS 314.722, [*or*] 314.723[,] **or 317.710 (6)**, a partnership as
20 such is not subject to the tax imposed by ORS chapter 316, 317 or 318. Partnership income shall be
21 computed pursuant to section 703 of the Internal Revenue Code, with the modifications, additions
22 and subtractions provided in this chapter and ORS chapter 316. Persons carrying on business as
23 partners are liable for the tax imposed by ORS chapter 316, 317 or 318 on their distributive shares
24 of partnership income only in their separate or individual capacities.

25 (2) If a partner engages in a transaction with a partnership other than in the partner's capacity
26 as a member of the partnership, the transaction shall be treated in the manner described in section
27 707 of the Internal Revenue Code.

28 (3) If a partnership is an electing large partnership under section 775 of the Internal Revenue
29 Code, the modifications of law applicable to an electing large partnership for federal tax purposes
30 are applicable to the electing large partnership for purposes of the tax imposed by this chapter or
31 ORS chapter 316, 317 or 318.

32 **SECTION 5.** **The amendments to ORS 314.260, 314.712, 317.010 and 317.710 by sections 1**
33 **to 4 of this 2009 Act apply to tax years beginning on or after January 1, 2010.**

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