

A-Engrossed Senate Bill 182

Ordered by the Senate April 8
Including Senate Amendments dated April 8

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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.

[Modifies definition of "financial organization" for corporate excise and income tax purposes.]
Changes term "financial organization" to "financial institution" for statutes relating to corporate excise and income tax. Modifies definition of term.

Applies to tax years beginning on or after January 1, 2009. In case of certain corporate entities, applies to tax years for which returns are subject to appeal or to audit or adjustment by Department of Revenue, or for which claim for refund may be made.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to treatment of financial organizations in tax law; creating new provisions; amending ORS
3 314.280, 314.610, 314.615, 317.010, 317.070 and 317.090; repealing ORS 317.056; and prescribing
4 an effective date.

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

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

7 314.610. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

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

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

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

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

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

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

24 (c) **A national bank organized and existing as a national bank association under the Na-**

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 tional Bank Act, 12 U.S.C. 21 et seq., as amended.

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

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

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

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

6 (h) A state credit union with loan assets that exceed \$50,000,000 as of the first day of the
7 taxable year of the state credit union.

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

9 (j) A corporation, more than 50 percent of the voting stock of which is owned, directly
10 or indirectly, by a person, corporation or other business entity described in paragraphs (a)
11 to (i) of this subsection, provided that the corporation is not an insurer taxable under ORS
12 317.655.

13 (k) An entity that is not otherwise described in this subsection, that is not an insurer
14 taxable under ORS 317.655 and that derives more than 50 percent of its gross income from
15 activities that a person, corporation or entity described in paragraph (c), (d), (e), (f), (g), (h),
16 (i) or (L) of this subsection is authorized to conduct, not taking into account any income
17 derived from nonrecurring extraordinary sources.

18 (L) A person that derives at least 50 percent of the person's annual average gross in-
19 come, for financial accounting purposes for the current tax year and the two preceding tax
20 years, from finance leases, excluding any gross income from incidental or occasional trans-
21 actions. For purposes of this paragraph, "finance lease" means:

22 (A) A lease transaction that is the functional equivalent of an extension of credit and
23 that transfers substantially all of the benefits and risks of the ownership of the leased
24 property;

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

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

29 (5) "Nonbusiness income" means all income other than business income.

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

34 (7) "Sales" means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

35 (8) "State" means any state of the United States, the District of Columbia, the Commonwealth
36 of Puerto Rico, any territory or possession of the United States, and any foreign country or political
37 subdivision thereof.

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

40 317.010. As used in this chapter, unless the context requires otherwise:

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

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

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

1 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

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

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

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

17 **(6) "Financial institution" has the meaning given that term in ORS 314.610 except that**
18 **it does not include a credit union as defined in ORS 723.006, an interstate credit union as**
19 **defined in ORS 723.001 or a federal credit union.**

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, 2007; or

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

25 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS
26 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
27 ORS 317.650 to 317.665.

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

30 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a
31 corporation for which no federal taxable income or loss is determined, as would be determined, un-
32 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States
33 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,
34 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-
35 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or
36 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a
37 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of
38 income from transactions or activities carried on both within and without the state) applies, to
39 derive taxable income or loss, the following shall occur:

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

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

45 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this

1 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to
 2 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to
 3 314.645. The resulting figure is “taxable income or loss” for those corporations carrying on taxable
 4 transactions or activities both within and without Oregon.

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

11 **SECTION 3.** ORS 317.070 is amended to read:

12 317.070. Every centrally assessed corporation, the property of which is assessed by the Depart-
 13 ment of Revenue under ORS 308.505 to 308.665, and every mercantile, manufacturing and business
 14 corporation **and every financial institution** doing business within this state, except as provided in
 15 ORS 317.080 and 317.090, shall annually pay to this state, for the privilege of carrying on or doing
 16 business by it within this state, an excise tax according to or measured by its Oregon taxable in-
 17 come, to be computed in the manner provided by this chapter, at the rate provided in ORS 317.061.

18 **SECTION 4.** ORS 317.090 is amended to read:

19 317.090. Each taxpayer named in ORS [317.056 or] 317.070 shall pay annually to the state, for
 20 the privilege of carrying on or doing business by it within this state, a minimum tax of \$10. The
 21 minimum tax shall not be apportionable (except in the case of a change of accounting periods), but
 22 shall be payable in full for any part of the year during which a corporation is subject to tax.

23 **SECTION 5.** ORS 314.280 is amended to read:

24 314.280. (1) If a taxpayer has income from business activity as a financial [organization] **insti-**
 25 **tution** or as a public utility (as defined respectively in ORS 314.610 (4) and (6)) which is taxable both
 26 within and without this state (as defined in ORS 314.610 (8) and 314.615), the determination of net
 27 income shall be based upon the business activity within the state, and the Department of Revenue
 28 shall have power to permit or require either the segregated method of reporting or the apportion-
 29 ment method of reporting, under rules and regulations adopted by the department, so as fairly and
 30 accurately to reflect the net income of the business done within the state.

31 (2) The provisions of subsection (1) of this section dealing with the apportionment of income
 32 earned from sources both within and without the State of Oregon are designed to allocate to the
 33 State of Oregon on a fair and equitable basis a proportion of such income earned from sources both
 34 within and without the state. Any taxpayer may submit an alternative basis of apportionment with
 35 respect to the income of the taxpayer and explain that basis in full in the return of the taxpayer.
 36 If approved by the department that method will be accepted as the basis of allocation.

37 (3)(a) Apportionment rules adopted by the department under this section must apply the
 38 weightings used in ORS 314.650 to comparable factors used to apportion income from business ac-
 39 tivity of taxpayers subject to this section.

40 (b) Notwithstanding paragraph (a) of this subsection, a taxpayer primarily engaged in utilities
 41 or telecommunications may elect to have income from business activity apportioned by applying the
 42 weightings used in ORS 314.650 (1999 Edition) to comparable factors used to apportion such income.

43 (c) The election shall be made in the time and manner prescribed by the department by rule.
 44 The election shall continue in force and effect for the tax year for which the election is made and
 45 for each subsequent tax year until the year in which the taxpayer revokes the election.

1 (d) An electing taxpayer may revoke the taxpayer's election by filing a revocation of election
2 in the time and manner prescribed by the department. The revocation shall apply to the tax year
3 following the year in which the election is made and to each subsequent tax year.

4 (e) As used in this subsection:

5 (A) "Telecommunications" means business operations that conduct, maintain or provide for the
6 transmission of voice data and text between network termination points and telecommunications
7 reselling. Transmission facilities may be based on one technology or a combination of technologies.

8 (B) "Utilities" means business operations that provide electric power, natural gas, steam supply,
9 water supply or sewage removal through a permanent infrastructure of lines, mains and pipes.

10 **SECTION 6.** ORS 314.615 is amended to read:

11 314.615. Any taxpayer having income from business activity which is taxable both within and
12 without this state, other than activity as a financial [*organization*] **institution** or public utility or
13 the rendering of purely personal services by an individual, shall allocate and apportion the net in-
14 come of the taxpayer as provided in ORS 314.605 to 314.675. Taxpayers engaged in activities as a
15 financial [*organization*] **institution** or public utility shall report their income as provided in ORS
16 314.280 and 314.675.

17 **SECTION 7.** ORS 317.056 is repealed.

18 **SECTION 8.** (1) Except as provided in subsection (2) of this section, the amendments to
19 ORS 314.280, 314.610, 314.615, 317.010, 317.070 and 317.090 by sections 1 to 6 of this 2009 Act
20 and the repeal of ORS 317.056 by section 7 of this 2009 Act apply to tax years beginning on
21 or after January 1, 2009.

22 (2) In the case of entities listed in ORS 314.610 (4)(a) to (i), the amendments to ORS
23 314.280, 314.610, 314.615, 317.010, 317.070 and 317.090 by sections 1 to 6 of this 2009 Act and the
24 repeal of ORS 317.056 by section 7 of this 2009 Act apply to any tax year for which a return
25 is subject to audit or adjustment by the Department of Revenue on or after the effective date
26 of this 2009 Act, any tax year for which a return is the subject of an appeal on or after the
27 effective date of this 2009 Act and any tax year for which a claim for refund may be made
28 on or after the effective date of this 2009 Act.

29 **SECTION 9.** This 2009 Act takes effect on the 91st day after the date on which the reg-
30 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.

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