

Senate Bill 182

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of 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**.

Modifies definition of "financial organization" for corporate excise and income tax purposes.

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
3 311.473, 314.610, 317.010, 317.070, 317.090 and 317.310; 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" means [*any financial institution or trust company, as those terms are*
17 *defined in ORS 706.008, any industrial bank, land bank, safe deposit company, private banker, coop-*
18 *erative bank, investment company, or any type of insurance company.*] **a person, corporation or**
19 **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-**
25 **tional Bank Act, 12 U.S.C. 21 et seq., as amended.**

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

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

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

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

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

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

5 (j) A corporation, more than 50 percent of the voting stock of which is owned, directly
6 or indirectly, by a person, corporation or other business entity described in paragraphs (a)
7 to (i) of this subsection, provided that the corporation is not an insurer taxable under ORS
8 317.655.

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

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

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

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

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

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

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

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

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

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

36 317.010. As used in this chapter, unless the context requires otherwise:

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

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

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

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

43 (4) "Doing business" means any transaction or transactions in the course of its activities con-
44 ducted within the state by a national banking association, or any other corporation; provided, how-
45 ever, that a foreign corporation whose activities in this state are confined to purchases of personal

1 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
 2 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
 3 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-
 4 termined as provided in section 1504 of the Internal Revenue Code.

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

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

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

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

19 (a) On December 31, 2007; or

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

21 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS
 22 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
 23 ORS 317.650 to 317.665.

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

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

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

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

41 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this
 42 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to
 43 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to
 44 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable
 45 transactions or activities both within and without Oregon.

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

SECTION 3. ORS 317.070 is amended to read:

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

SECTION 4. ORS 317.090 is amended to read:

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

SECTION 5. ORS 317.310 is amended to read:

317.310. (1) To derive Oregon taxable income of a financial [institution] **organization** [which] **that** has changed from the reserve method of accounting to the specific charge-off method of accounting for federal tax purposes, there shall be subtracted from federal taxable income amounts which the financial [institution] **organization** recognized pursuant to section 585(c)(3) of the Internal Revenue Code.

(2) To derive Oregon taxable income, after the modification prescribed in subsection (1) of this section, the balance in the reserve for bad debts, as determined under ORS 317.333 (2) (1985 Replacement Part), shall be taken into income using the same method as the financial [institution] **organization** used for federal tax purposes pursuant to section 585(c)(3) of the Internal Revenue Code.

(3) Subsections (1) and (2) of this section shall not apply to bad debt reserves for which an election under section 585(c)(4) of the Internal Revenue Code has been made. A financial [institution] **organization** which uses the method described in section 585(c)(4) of the Internal Revenue Code shall apply that same method to the balance in the reserve for bad debts, as determined under ORS 317.333 (2) (1985 Replacement Part), and adjust its Oregon taxable income accordingly.

SECTION 6. ORS 311.473 is amended to read:

311.473. (1) Any financial [institution] **organization**, as defined in ORS 317.010, or agent or representative of a financial [institution] **organization**, that, in the process of foreclosing any security interest or other lien on taxable personal property, including property classified as real property machinery and equipment, or after the lien is foreclosed, causes the property to be removed, or is knowledgeable that the property will be removed by another after the foreclosure sale, from the county in which the property is assessed or seized, shall notify the tax collector of that county prior to the removal. The notice shall be mailed to the tax collector, return receipt requested, and shall contain a description of the property that is the subject of the foreclosure, together with the name and address of the owner or owners of the property.

(2) Failure to give the notice required under subsection (1) of this section shall not affect the foreclosure, but the tax collector shall have recourse against the financial [institution] **organization**

1 on behalf of the taxing units for any damages sustained on account of failure to mail the notice.

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

3 **SECTION 8. (1) Except as provided in subsection (2) of this section, the amendments to**
4 **ORS 314.610, 317.010, 317.070, 317.090 and 317.310 by sections 1 to 5 of this 2009 Act and the**
5 **repeal of ORS 317.056 by section 7 of this 2009 Act apply to tax years beginning on or after**
6 **January 1, 2009.**

7 **(2) In the case of entities listed in ORS 314.610 (4)(a) to (i), the amendments to ORS**
8 **314.610, 317.010, 317.070, 317.090 and 317.310 by sections 1 to 5 of this 2009 Act and the repeal**
9 **of ORS 317.056 by section 7 of this 2009 Act apply to any tax year for which a return is sub-**
10 **ject to audit or adjustment by the Department of Revenue on or after the effective date of**
11 **this 2009 Act, any tax year for which a return is the subject of an appeal on or after the**
12 **effective date of this 2009 Act and any tax year for which a claim for refund may be made**
13 **on or after the effective date of this 2009 Act.**

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

16