

House Bill 2539

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**.

Bases corporate minimum tax levied on C corporations on level of business activity in state. Discontinues minimum tax applicable to C corporations based on level of Oregon sales.

Applies to tax years beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to corporate minimum tax; creating new provisions; amending ORS 317.090; and prescribing
3 an effective date.

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

5 **SECTION 1.** ORS 317.090, as amended by section 1, chapter 745, Oregon Laws 2009, is amended
6 to read:

7 317.090. *[(1) As used in this section, "Oregon sales" means:]*

8 *[(a) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax*
9 *purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes*
10 *of ORS 314.665;]*

11 *[(b) If the corporation does not apportion business income for Oregon tax purposes, the total sales*
12 *in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the tax-*
13 *payer were required to apportion business income for Oregon tax purposes; or]*

14 *[(c) If the corporation apportions business income using a method different from the method pre-*
15 *scribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.]*

16 **[(2)] (1)** Each corporation or affiliated group of corporations filing a return under ORS 317.710
17 shall pay annually to the state, for the privilege of carrying on or doing business by it within this
18 state, a minimum tax **of the greater of \$10 or the amount required by sections 2 and 3 of this**
19 **2011 Act.** *[as follows:]*

20 *[(a) If Oregon sales properly reported on a return are:]*

21 *[(A) Less than \$500,000, the minimum tax is \$150.]*

22 *[(B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.]*

23 *[(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.]*

24 *[(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.]*

25 *[(E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.]*

26 *[(F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.]*

27 *[(G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.]*

28 *[(H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.]*

29 *[(I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.]*

30 *[(J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.]*

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 *[(K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.]*

2 *[(L) \$100 million or more, the minimum tax is \$100,000.]*

3 *[(b)] (2) If a corporation is an S corporation, the minimum tax is \$150.*

4 (3) The minimum tax is not apportionable (except in the case of a change of accounting periods),
5 and is payable in full for any part of the year during which a corporation is subject to tax.

6 **SECTION 2. As used in this section and section 3 of this 2011 Act, unless the context**
7 **requires otherwise:**

8 (1)(a) **“Business activity” means a transfer of legal or equitable title to or rental of**
9 **property, whether real, personal or mixed, tangible or intangible, or the performance of**
10 **services, or a combination thereof, made or engaged in, or caused to be made or engaged in,**
11 **within this state, whether in intrastate, interstate or foreign commerce, with the object of**
12 **gain, benefit or advantage, whether direct or indirect, to the taxpayer or to others.**

13 (b) **“Business activity” does not include services rendered by an employee to the**
14 **employee’s employer, services rendered as a director of a corporation, or a casual trans-**
15 **action.**

16 (c) **“Business activity” includes activity of a taxpayer incidental to the taxpayer’s other**
17 **business activities.**

18 (2) **“Casual transaction” means a transaction made or engaged in other than in the or-**
19 **inary course of repeated and successive transactions of a like character, except that a**
20 **transaction made or engaged in by a taxpayer that is incidental to that taxpayer’s regular**
21 **business activity constitutes a business activity under this section and section 3 of this 2011**
22 **Act.**

23 (3)(a) **“Compensation” means all wages, salaries, fees, bonuses, commissions or payments**
24 **made in the tax year on behalf of or for the benefit of employees, officers or directors of the**
25 **taxpayer.**

26 (b) **“Compensation” includes, but is not limited to, payments that are subject to or spe-**
27 **cifically exempt or excepted from withholding under sections 3401 to 3406 of the Internal**
28 **Revenue Code.**

29 (c) **“Compensation” also includes, on a cash or accrual basis consistent with the**
30 **taxpayer’s method of accounting for federal income tax purposes, payments to state and**
31 **federal unemployment compensation funds, payments under the Federal Insurance Contri-**
32 **butions Act and similar social insurance programs, payments, including self-insurance, for**
33 **workers’ compensation insurance, payments to individuals not currently working, payments**
34 **to dependents and heirs of individuals because of current or former labor services rendered**
35 **by those individuals, payments to a pension, retirement or profit sharing plan, and payments**
36 **for insurance for which employees are the beneficiaries, including payments under health**
37 **and welfare and noninsured benefit plans and payments of fees for the administration of**
38 **health and welfare and noninsured benefit plans.**

39 (d) **“Compensation” does not include any of the following:**

40 (A) **Discounts on the price of the taxpayer’s merchandise or services sold to the**
41 **taxpayer’s employees, officers or directors that are not available to other customers.**

42 (B) **Payments to an independent contractor.**

43 (C) **Payments to state and federal unemployment compensation funds.**

44 (4)(a) **“Dividends” means any distribution of money or property, other than the distrib-**
45 **ution of newly issued stock of the same enterprise, to the owners of a business enterprise**

1 with respect to their ownership interest in the enterprise from the accumulated revenues
2 and profits of the enterprise.

3 (b) "Dividends" does not include any of the following:

4 (A) Distributions of money or property to beneficiaries of a trust qualified under section
5 401 of the Internal Revenue Code.

6 (B) Cash or noncash payments of life, sickness, accident or other benefits to members
7 or their dependents or designated beneficiaries from a voluntary employees' beneficiary as-
8 sociation qualified under section 501(c)(9) of the Internal Revenue Code.

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

11 (D) Policyholder dividends as defined under section 808 of the Internal Revenue Code, to
12 the extent the dividends are not reduced pursuant to the Internal Revenue Code.

13 (E) Payment of interest on deposits of depositors of a mutual bank or credit union.

14 (F) Distributions of money or property to or on behalf of beneficiaries of a trust that is
15 either subject to taxation under section 641 of the Internal Revenue Code or described in
16 section 664 of the Internal Revenue Code, if the trust limits its activities to personal in-
17 vestment activities that do not constitute business activities and those incidental to or in
18 support of such personal investment activities.

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

22 (6) "Employer" means an employer as defined in section 3401(d) of the Internal Revenue
23 Code. A person required to withhold for federal income tax purposes shall prima facie be
24 deemed an employer.

25 (7) "Enterprise value tax base" means the sum of all compensation paid or accrued, in-
26 terest paid or accrued and dividends paid by the business enterprise, before apportionment
27 or allocation.

28 (8)(a) "Gross receipts" means the sum of sales and rent or lease receipts.

29 (b) "Gross receipts" does not include the amounts received in an agency or other repre-
30 sentative capacity, solely on behalf of another or others, excluding amounts received by
31 persons having the power or authority to expend or otherwise appropriate such amounts in
32 payment for or in consideration of sales or services made or rendered by themselves or by
33 others acting under their direction and control or by such fiduciaries as guardians, execu-
34 tors, administrators, receivers, conservators or trustees other than trustees of taxes re-
35 ceived or collected from others under direction of the laws of the federal government or of
36 any state or local government.

37 (9)(a) "Interest" means all amounts paid or accrued for the use or forbearance of money
38 or property.

39 (b) "Interest" does not include amounts paid, credited or set aside in connection with
40 reserves by insurers to fulfill policy and contractual responsibilities to policyholders or by
41 voluntary employees' beneficiary associations qualified under section 501(c)(9) of the Internal
42 Revenue Code to fulfill obligations to members.

43 **SECTION 3.** (1) For each tax year, there is levied and imposed a tax at the rate of
44 _____ percent of the enterprise value tax base, after allocation or apportionment, of every
45 C corporation with business activity in this state.

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

4 **SECTION 4.** Sections 2 and 3 of this 2011 Act and the amendments to ORS 317.090 by
5 section 1 of this 2011 Act apply to tax years beginning on or after January 1, 2012.

6 **SECTION 5.** This 2011 Act takes effect on the 91st day after the date on which the 2011
7 session of the Seventy-sixth Legislative Assembly adjourns sine die.

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