

# House Bill 3263

Sponsored by 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**.

Imposes corporate excise tax on state-chartered credit unions and interstate credit unions holding one or more deposits of public funds that exceed \$250,000 or holding commercial loans that in aggregate exceed amount equal to 10 percent of credit union assets.

Applies to tax years beginning on or after January 1, 2011.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to treatment of credit unions in tax law; creating new provisions; amending ORS 311.473,  
3 314.610, 317.010, 317.080 and 723.752; prescribing an effective date; and providing for revenue  
4 raising that requires approval by a three-fifths majority.

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 institution" means a person, corporation or other business entity that is any of  
17 the following:

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

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

22 (c) A national bank organized and existing as a national bank association under the National  
23 Bank Act, 12 U.S.C. 21 et seq., as amended.

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

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

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

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

28 (h) A [*state*] credit union **as defined in ORS 723.006** with loan assets that exceed \$50,000,000  
29 as of the first day of the taxable year of the [*state*] credit union.

30 (i) **An interstate credit union as defined in ORS 723.001 with loan assets that exceed**

**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 **\$50,000,000 as of the first day of the taxable year of the interstate credit union.**

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

3 **(k) A credit union as defined in ORS 723.006 that at any time during the taxable year of**  
 4 **the credit union:**

5 **(A) Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
 6 **\$250,000; or**

7 **(B) Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
 8 **of the assets of the credit union.**

9 **(L) An interstate credit union as defined in ORS 723.001 that at any time during the**  
 10 **taxable year of the interstate credit union:**

11 **(A) Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
 12 **\$250,000; or**

13 **(B) Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
 14 **of the assets of the interstate credit union.**

15 [(j)] (m) A corporation, more than 50 percent of the voting stock of which is owned, directly or  
 16 indirectly, by a person, corporation or other business entity described in paragraphs (a) to [(i)] (L)  
 17 of this subsection, provided that the corporation is not an insurer taxable under ORS 317.655.

18 [(k)] (n) An entity that is not otherwise described in this subsection, that is not an insurer  
 19 taxable under ORS 317.655 and that derives more than 50 percent of its gross income from activities  
 20 that a person, corporation or entity described in paragraph (c), (d), (e), (f), (g), (h), (i), (j), (k), (L)  
 21 or [(L)] (o) of this subsection is authorized to conduct, not taking into account any income derived  
 22 from nonrecurring extraordinary sources.

23 [(L)] (o) A person that derives at least 50 percent of the person's annual average gross income,  
 24 for financial accounting purposes for the current tax year and the two preceding tax years, from  
 25 finance leases, excluding any gross income from incidental or occasional transactions. For purposes  
 26 of this paragraph, "finance lease" means:

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

29 (B) A direct financing lease or a leverage lease that meets the criteria of Financial Accounting  
 30 Standards Board Statement No. 13; or

31 (C) Any other lease that is accounted for as a financing by a lessor under generally accepted  
 32 accounting principles.

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

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

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

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

42 **SECTION 2.** ORS 317.010, as amended by section 27, chapter 909, Oregon Laws 2009, and sec-  
 43 tion 28, chapter 82, Oregon Laws 2010, is amended to read:

44 317.010. As used in this chapter, unless the context requires otherwise:

45 (1) "Centrally assessed corporation" means every corporation the property of which is assessed

1 by the Department of Revenue under ORS 308.505 to 308.665.

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

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

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

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

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

16 (6)(a) "Financial institution" has the meaning given that term in ORS 314.610 *[except that it]*.

17 (b) "**Financial institution**" does not include:

18 (A) A credit union as defined in ORS 723.006 **that at no time during the taxable year of the**  
19 **credit union:**

20 (i) **Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
21 **\$250,000; or**

22 (ii) **Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
23 **of the assets of the credit union[.];**

24 (B) An interstate credit union as defined in ORS 723.001 **that at no time during the taxable**  
25 **year of the interstate credit union:**

26 (i) **Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
27 **\$250,000; or**

28 (ii) **Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
29 **of the assets of the interstate credit union; or**

30 (C) A federal credit union.

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

34 (a) On December 31, 2009; or

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

36 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS  
37 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and  
38 ORS 317.650 to 317.665.

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

41 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a  
42 corporation for which no federal taxable income or loss is determined, as would be determined **if**  
43 **that entity were taxable for federal purposes**, under chapter 1, Subtitle A of the Internal Revenue  
44 Code and any other laws of the United States relating to the determination of taxable income or loss  
45 of corporate taxpayers, with the additions, subtractions, adjustments and other modifications as are

1 specifically prescribed by this chapter except that in determining taxable income or loss for any  
 2 year, no deduction under ORS 317.476 or 317.478 and section 45b, chapter 293, Oregon Laws 1987,  
 3 shall be allowed. If the corporation is a corporation to which ORS 314.280 or 314.605 to 314.675  
 4 (requiring or permitting apportionment of income from transactions or activities carried on both  
 5 within and without the state) applies, to derive taxable income or loss, the following shall occur:

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

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

11 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this  
 12 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to  
 13 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to  
 14 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable  
 15 transactions or activities both within and without Oregon.

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

22 **SECTION 3.** ORS 317.080 is amended to read:

23 317.080. The following corporations are exempt from the taxes imposed by this chapter:

24 (1) Organizations described in subsection (c) and subsection (j) of section 501 of the Internal  
 25 Revenue Code unless:

26 (a) The exemption is denied under subsection (h), (i) or (m) of section 501 or under section 502,  
 27 503 or 505 of the Internal Revenue Code;

28 (b) **The organization is a credit union as defined in ORS 723.006 that at any time during**  
 29 **the taxable year of the credit union:**

30 (A) **Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
 31 **\$250,000; or**

32 (B) **Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
 33 **of the assets of the credit union; or**

34 (c) **The organization is an interstate credit union as defined in ORS 723.001 that at any**  
 35 **time during the taxable year of the interstate credit union:**

36 (A) **Holds one or more deposits of public funds as defined in ORS 295.001 that exceed**  
 37 **\$250,000; or**

38 (B) **Holds commercial loans that in the aggregate exceed an amount equal to 10 percent**  
 39 **of the assets of the interstate credit union.**

40 (2) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption  
 41 is denied under section 502 or 503 of the Internal Revenue Code.

42 (3) Organizations described in section 501(e) of the Internal Revenue Code.

43 (4) Organizations described in section 501(f) of the Internal Revenue Code.

44 (5) Charitable risk pools described in section 501(n) of the Internal Revenue Code.

45 (6) Organizations described in section 521 of the Internal Revenue Code.

1 (7) Qualified state tuition programs described in section 529 of the Internal Revenue Code.

2 (8) Foreign or alien insurance companies, but only with respect to the underwriting profit de-  
 3 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and  
 4 731.828.

5 (9) Corporations, organized and operated primarily for the purpose of furnishing permanent res-  
 6 idential, recreational and social facilities primarily for elderly persons, which:

7 (a) Are corporations not for profit, authorized to transact business in this state pursuant to ORS  
 8 chapter 65 or any statute repealed by chapter 580, Oregon Laws 1959;

9 (b) Receive not less than 95 percent of their operating gross income (excluding any investment  
 10 income) solely from payments for living, medical, recreational, and social services and facilities, paid  
 11 by or on behalf of the elderly persons using the facilities of such corporation;

12 (c) Permit no part of their net earnings to inure to the benefit of any private stockholder or  
 13 individual; and

14 (d) Provide in their articles or other governing instrument that, upon dissolution, the assets re-  
 15 maining after satisfying all lawful debts and liabilities shall be distributed to one or more corpo-  
 16 rations exempt from taxation under this chapter as corporations organized and operated exclusively  
 17 for religious, charitable, scientific, literary or educational purposes.

18 (10) People's utility districts established under ORS chapter 261.

19 **SECTION 4.** ORS 723.752 is amended to read:

20 723.752. (1) Any credit union subject to this chapter [*shall be deemed*] **is considered** an insti-  
 21 tution for savings within the meaning of the law that exempts such institutions from taxation.  
 22 [*No*] **A** law, except as stated in this section, that taxes corporations in any form, or the shares  
 23 thereof or the accumulations therein, [*shall*] **may not** apply to credit unions doing business in ac-  
 24 cordance with this chapter unless the credit unions are specifically named in the law.

25 **(2) Subsection (1) of this section does not apply to taxes imposed under ORS chapter 317.**

26 **SECTION 5.** ORS 311.473 is amended to read:

27 311.473. (1) Any financial institution, as defined in ORS [*317.010*] **706.008**, or agent or represen-  
 28 tative of a financial institution, that, in the process of foreclosing any security interest or other lien  
 29 on taxable personal property, including property classified as real property machinery and equip-  
 30 ment, or after the lien is foreclosed, causes the property to be removed, or is knowledgeable that  
 31 the property will be removed by another after the foreclosure sale, from the county in which the  
 32 property is assessed or seized, shall notify the tax collector of that county prior to the removal. The  
 33 notice shall be mailed to the tax collector, return receipt requested, and shall contain a description  
 34 of the property that is the subject of the foreclosure, together with the name and address of the  
 35 owner or owners of the property.

36 (2) Failure to give the notice required under subsection (1) of this section shall not affect the  
 37 foreclosure, but the tax collector shall have recourse against the financial institution on behalf of  
 38 the taxing units for any damages sustained on account of failure to mail the notice.

39 **SECTION 6. The amendments to ORS 311.473, 314.610, 317.010, 317.080 and 723.752 by**  
 40 **sections 1 to 5 of this 2011 Act apply to tax years beginning on or after January 1, 2011.**

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