

# Senate Bill 311

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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**.

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.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45        (4)(a) **“Dividends” means any distribution of money or property, other than the distrib-**

1    **ution of newly issued stock of the same enterprise, to the owners of a business enterprise**  
 2    **with respect to their ownership interest in the enterprise from the accumulated revenues**  
 3    **and profits of the enterprise.**

4    **(b) “Dividends” does not include any of the following:**

5    **(A) Distributions of money or property to beneficiaries of a trust qualified under section**  
 6    **401 of the Internal Revenue Code.**

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

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

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

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

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

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

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

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

29   **(8)(a) “Gross receipts” means the sum of sales and rent or lease receipts.**

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

38   **(9)(a) “Interest” means all amounts paid or accrued for the use or forbearance of money**  
 39   **or property.**

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

44    **SECTION 3. (1) For each tax year, there is levied and imposed a tax at the rate of**  
 45    **\_\_\_\_\_ percent of the enterprise value tax base, after allocation or apportionment, of every**

1 **C corporation with business activity in this state.**

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

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

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

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