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May 30, 2013

HB 3069-4: Add-back for Intangible Expense

What the concept does:

There are two amendments to ORS 314.296 –

- *Add language to exclude transactions that are between related entities where one is a foreign corporation. This change is retroactively effective for 2010, 2011 and 2012.
- *Repeal ORS 314.296, effective 1/1/2013.
- *Proponents state that this change corrects an unintended consequence.

Testimony

This document corrects my verbal testimony of May 29, 2013. When we adopted this statute in 2009, we intended to just solidify our current practice. We adopted model MTC language that is not identical to the model language and we are the only state that has so far adopted it. We have administrative issues with establishing the veracity of the tax credit because the credit is based on the tax the foreign affiliate pays and we do not easily or readily have access to that information through the taxpayer.

To the extent that the proponents believe that this corrects unintended consequences, we do not object to this change. We believe we still have authority under ORS 314.295 for add-back of intangible expenses. Our attorney and our technical programs staff agree that ORS 314.296 is not necessary and could be repealed without impacting our authority.

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