

A-Engrossed
House Bill 3069

Ordered by the House May 31
Including House Amendments dated May 31

Sponsored by Representatives GILLIAM, DAVIS; Representatives BAILEY, GARRETT, READ, WHISNANT, Senators BATES, GEORGE, HASS, JOHNSON (at the request of Mentor Graphics)

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.

Provides that, for purposes of corporate taxation, expenses paid to related member for use of intangible property and required to be added to federal taxable income do not include expenses paid **for valid business purpose to person that is not related member** or to foreign corporation not connected with United States trade or business. **Allows application to foreign transactions of provision allowing for disallowance of certain intercompany transactions involving intangible assets.**

Applies to tax years beginning on or after January 1, 2010.

Repeals provision requiring taxpayer to add back expenses paid to related member for use of intangible property.

Applies to tax years beginning on or after January 1, 2013.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax treatment of intangible expenses; creating new provisions; amending ORS 314.296;
3 repealing ORS 314.296; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.296 is amended to read:

6 314.296. (1) As used in this section:

7 (a) "Intangible expense" includes:

8 (A) Expenses, losses and costs for, related to or in connection directly or indirectly with the
9 direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any
10 other disposition of intangible property to the extent such amounts are allowed as deductions or
11 costs in determining taxable income before net operating loss deductions and special deductions for
12 the taxable year under the Internal Revenue Code;

13 (B) Amounts directly or indirectly allowed as deductions under section 163 of the Internal Re-
14 venue Code for purposes of determining taxable income under the code to the extent such expenses
15 and costs are directly or indirectly for, related to or in connection with the expenses, losses and
16 costs described in subparagraph (A) of this paragraph;

17 (C) Losses related to, or incurred in connection directly or indirectly with, factoring trans-
18 actions or discounting transactions;

19 (D) Royalty, patent, technical and copyright fees;

20 (E) Licensing fees; and

21 (F) Other similar expenses and costs.

22 (b) "Intangible property" includes patents, patent applications, trade names, trademarks, service

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 marks, copyrights, mask works, trade secrets and similar types of intangible assets.

2 (c) "Related entity" means:

3 (A) A stockholder who is an individual, or a member of the stockholder's family as defined in
4 section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's
5 family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent
6 of the value of the taxpayer's outstanding stock;

7 (B) A stockholder, partnership, limited liability company, estate, trust or corporation, if the
8 stockholder and the stockholder's partnerships, limited liability companies, estates, trusts or corpo-
9 rations own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent
10 of the value of the taxpayer's outstanding stock; or

11 (C) A corporation, or a party related to the corporation in a manner that would require an at-
12 tribution of stock from the corporation to the party or from the party to the corporation under the
13 attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially
14 or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attri-
15 bution rules of the code shall apply for purposes of determining whether the ownership requirements
16 of this definition have been met.

17 (d) "Related member" means a person that, with respect to the taxpayer during all or any por-
18 tion of the taxable year, is:

19 (A) A related entity;

20 (B) A component member as defined in section 1563(b) of the Internal Revenue Code;

21 (C) A person to or from whom there is attribution of stock ownership in accordance with section
22 1563(e) of the Internal Revenue Code; or

23 (D) A person that, notwithstanding the person's form of organization, bears the same relation-
24 ship to the taxpayer as a person described in this paragraph.

25 (e) "Valid business purpose" means one or more business purposes, other than the evasion or
26 improper avoidance of taxation, that alone or in combination constitute the primary motivation for
27 a business activity or transaction, if the activity or transaction changes in a meaningful way, apart
28 from tax effects, the economic position of the taxpayer. The economic position of the taxpayer in-
29 cludes an increase in the market share of the taxpayer or the entry by the taxpayer into a new
30 business market.

31 (2) To derive Oregon taxable income there shall be added to federal taxable income amounts:

32 (a) That are intangible expenses;

33 (b) That are otherwise deductible;

34 (c) That have been received by one or more related members that are not included in the same
35 state tax return as the taxpayer; and

36 (d) That have been directly or indirectly paid, accrued or incurred in connection with one or
37 more direct or indirect transactions with one or more related members.

38 (3)(a) A taxpayer is allowed a credit against the taxes otherwise due under ORS chapter 317 or
39 318 if a related member pays tax on the same income that has been added back under subsection (2)
40 of this section.

41 (b) The amount from which the credit shall be derived shall be the greater of:

42 (A) The tax paid by the related member with respect to the portion of the related member's in-
43 come representing the intangible expense paid, accrued or incurred by the taxpayer; or

44 (B) The tax that would have been paid by the related member with respect to that portion of
45 the related member's income if that portion had not been offset by expenses or losses and the re-

1 sulting tax liability had not been offset by any other credit.

2 (c) If the taxpayer is subject to apportionment, the credit shall be calculated by multiplying the
3 amount in paragraph (b) of this subsection by the taxpayer's apportionment factor provided by ORS
4 314.605 to 314.675.

5 (d) The credit may not exceed that portion of the taxpayer's liability that results from the net
6 income taxed as a result of subsection (2) of this section.

7 *[(4) The adjustment required in subsection (2) of this section and the credit allowed in subsection
8 (3) of this section do not apply to any portion of the intangible expense that the related member directly
9 or indirectly paid, accrued or incurred to a person that is not a related member, if the transaction
10 giving rise to the intangible expense was undertaken for a valid business purpose.]*

11 **(4) The adjustment required in subsection (2) of this section and the credit allowed in
12 subsection (3) of this section do not apply to any portion of the intangible expense:**

13 **(a) That the related member directly or indirectly paid, accrued or incurred to a person
14 that is not a related member, if the transaction giving rise to the intangible expense was
15 undertaken for a valid business purpose; or**

16 **(b) If the transaction giving rise to the intangible expense was undertaken by the tax-
17 payer for a valid business purpose and the related member is a foreign corporation described
18 in section 1563(b)(2)(C) of the Internal Revenue Code.**

19 **(5) Nothing in this section prohibits the Department of Revenue from applying the pro-
20 visions of ORS 314.295 to any transaction with related members located in a foreign country.**

21 **SECTION 2. The amendments to ORS 314.296 by section 1 of this 2013 Act apply to tax
22 years beginning on or after January 1, 2010, and before January 1, 2013.**

23 **SECTION 3. ORS 314.296 is repealed.**

24 **SECTION 4. The repeal of ORS 314.296 by section 3 of this 2013 Act applies to tax years
25 beginning on or after January 1, 2013.**

26 **SECTION 5. This 2013 Act takes effect on the 91st day after the date on which the 2013
27 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

28