

House Bill 3069

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 **as introduced**.

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 to foreign corporation not connected with United States trade or business.

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

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

24 (c) "Related entity" means:

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

29 (B) A stockholder, partnership, limited liability company, estate, trust or corporation, if the

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 stockholder and the stockholder's partnerships, limited liability companies, estates, trusts or corpo-
 2 rations own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent
 3 of the value of the taxpayer's outstanding stock; or

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

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

12 (A) A related entity;

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

14 (C) A person to or from whom there is attribution of stock ownership in accordance with section
 15 1563(e) of the Internal Revenue Code; or

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

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

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

25 (a) That are intangible expenses;

26 (b) That are otherwise deductible;

27 (c) That have been received by one or more related members, **other than a corporation de-**
 28 **scribed in section 1563(b)(2)(C) of the Internal Revenue Code**, that are not included in the same
 29 state tax return as the taxpayer; and

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

32 (3)(a) A taxpayer is allowed a credit against the taxes otherwise due under ORS chapter 317 or
 33 318 if a related member pays tax on the same income that has been added back under subsection (2)
 34 of this section.

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

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

38 (B) The tax that would have been paid by the related member with respect to that portion of
 39 the related member's income if that portion had not been offset by expenses or losses and the re-
 40 sulting tax liability had not been offset by any other credit.

41 (c) If the taxpayer is subject to apportionment, the credit shall be calculated by multiplying the
 42 amount in paragraph (b) of this subsection by the taxpayer's apportionment factor provided by ORS
 43 314.605 to 314.675.

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

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

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

7 **SECTION 3. This 2013 Act takes effect on the 91st day after the date on which the 2013**
8 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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