

A-Engrossed
Senate Bill 307

Ordered by the Senate May 7
Including Senate Amendments dated May 7

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and 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.

[Requires interest on moneys in General Fund to be deposited into Oregon Rainy Day Fund. Modifies amount transferred to Oregon Rainy Day Fund each biennium to one percent of amount of General Fund appropriations, less amount of interest deposited in Oregon Rainy Day Fund during biennium.]

Withdraws Oregon from Multistate Tax Compact by repealing compact. Enacts Multistate Tax Compact without articles applicable to income tax and apportionment of business income for corporate tax purposes. Becomes operative on day following effective date of Act. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 314.606; repealing ORS 305.655;
3 and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 305.**

6 **SECTION 2. The Multistate Tax Compact is hereby enacted into law and entered into on**
7 **behalf of this state with all other jurisdictions legally joining therein in a form substantially**
8 **as follows:**

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10
11 **ARTICLE I**
12 **PURPOSES**

13
14 **The purposes of this compact are to:**

15 **1. Facilitate proper determination of state and local tax liability of multistate taxpayers,**
16 **including the equitable apportionment of tax bases and settlement of apportionment disputes.**

17 **2. Promote uniformity or compatibility in significant components of tax systems.**

18 **3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other**
19 **phases of tax administration.**

20 **4. Avoid duplicative taxation.**

21
22 **ARTICLE II**
23 **DEFINITIONS**

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 As used in this compact:

2 1. "State" means a state of the United States, the District of Columbia, the Common-
3 wealth of Puerto Rico, or any territory or possession of the United States.

4 2. "Subdivision" means any governmental unit or special district of a state.

5 3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit
6 or agency or person acting as a business entity in more than one state.

7 4. "Income tax" means a tax imposed on or measured by net income including any tax
8 imposed on or measured by an amount arrived at by deducting expenses from gross income,
9 one or more forms of which expenses are not specifically and directly related to particular
10 transactions.

11 5. "Capital stock tax" means a tax measured in any way by the capital of a corporation
12 considered in its entirety.

13 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or
14 measured by the gross volume of business, in terms of gross receipts or in other terms, and
15 in the determination of which no deduction is allowed which would constitute the tax an in-
16 come tax.

17 7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of
18 ownership, possession or custody of tangible personal property or the rendering of services
19 measured by the price of the tangible personal property transferred or services rendered and
20 which is required by state or local law to be separately stated from the sales price by the
21 seller, or which is customarily separately stated from the sales price, but does not include
22 a tax imposed exclusively on the sale of a specifically identified commodity or article or class
23 of commodities or articles.

24 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on
25 or with respect to the exercise or enjoyment of any right or power over tangible personal
26 property incident to the ownership, possession or custody of that property or the leasing of
27 that property from another including any consumption, keeping, retention, or other use of
28 tangible personal property and (b) is complementary to a sales tax.

29 9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax,
30 and any other tax which has a multistate impact, except that the provisions of Article V of
31 this compact shall apply only to the taxes specifically designated therein.

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33 **ARTICLE III**
34 **ELEMENTS OF INCOME TAX LAWS (Intentionally omitted)**

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36
37 **ARTICLE IV**
38 **DIVISION OF INCOME (Intentionally omitted)**

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41 **ARTICLE V**
42 **ELEMENTS OF SALES AND**
43 **USE TAX LAWS**

44
45 1. Tax credit. Each purchaser liable for a use tax on tangible personal property shall be

1 entitled to full credit for the combined amount or amounts of legally imposed sales or use
2 taxes paid by him with respect to the same property to another state and any subdivision
3 thereof. The credit shall be applied first against the amount of any use tax due the state,
4 and any unused portion of the credit shall then be applied against the amount of any use tax
5 due a subdivision.

6 2. Exemption certificates, vendors may rely. Whenever a vendor receives and accepts in
7 good faith from a purchaser a resale or other exemption certificate or other written evidence
8 of exemption authorized by the appropriate state or subdivision taxing authority, the vendor
9 shall be relieved of liability for a sales or use tax with respect to the transaction.

10
11 **ARTICLE VI**
12 **THE COMMISSION**
13

14 1. Organization and management. (a) The Multistate Tax Commission is hereby estab-
15 lished. It shall be composed of one "member" from each party state who shall be the head
16 of the state agency charged with the administration of the types of taxes to which this
17 compact applies. If there is more than one such agency the state shall provide by law for the
18 selection of the commission member from the heads of the relevant agencies. State law may
19 provide that a member of the commission be represented by an alternate but only if there
20 is on file with the commission written notification of the designation and identity of the al-
21 ternate. The Attorney General of each party state or his designee, or other counsel if the
22 laws of the party state specifically provide, shall be entitled to attend the meetings of the
23 commission, but shall not vote. Such Attorneys General, designees or other counsel shall
24 receive all notices of meetings required under paragraph 1 (e) of this Article.

25 (b) Each party state shall provide by law for the selection of representatives from its
26 subdivisions affected by this compact to consult with the commission member from that
27 state.

28 (c) Each member shall be entitled to one vote. The commission shall not act unless a
29 majority of the members are present, and no action shall be binding unless approved by a
30 majority of the total number of members.

31 (d) The commission shall adopt an official seal to be used as it may provide.

32 (e) The commission shall hold an annual meeting and such other regular meetings as its
33 bylaws may provide and such special meetings as its Executive Committee may determine.
34 The commission bylaws shall specify the dates of the annual and any other regular meetings,
35 and shall provide for the giving of notice of annual, regular and special meetings. Notices of
36 special meetings shall include the reasons therefor and an agenda of the items to be consid-
37 ered.

38 (f) The commission shall elect annually, from among its members, a Chairman, a Vice
39 Chairman and a Treasurer. The commission shall appoint an Executive Director who shall
40 serve at its pleasure, and it shall fix his duties and compensation. The Executive Director
41 shall be secretary of the commission. The commission shall make provision for the bonding
42 of such of its officers and employees as it may deem appropriate.

43 (g) Irrespective of the civil service, personnel or other merit system laws of any party
44 state, the Executive Director shall appoint or discharge such personnel as may be necessary
45 for the performance of the functions of the commission and shall fix their duties and com-

1 **penation. The commission bylaws shall provide for personnel policies and programs.**

2 **(h) The commission may borrow, accept or contract for the services of personnel from**
3 **any state, the United States or any other governmental entity.**

4 **(i) The commission may accept for any of its purposes and functions any and all do-**
5 **nations and grants of money, equipment, supplies, materials and services, conditional or**
6 **otherwise, from any governmental entity, and may utilize and dispose of the same.**

7 **(j) The commission may establish one or more offices for the transacting of its business.**

8 **(k) The commission shall adopt bylaws for the conduct of its business. The commission**
9 **shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any**
10 **amendments thereto with the appropriate agency or officer in each of the party states.**

11 **(L) The commission annually shall make to the Governor and legislature of each party**
12 **state a report covering its activities for the preceding year. Any donation or grant accepted**
13 **by the commission or services borrowed shall be reported in the annual report of the com-**
14 **mission, and shall include the nature, amount and conditions, if any, of the donation, gift,**
15 **grant or services borrowed and the identity of the donor or lender. The commission may**
16 **make additional reports as it may deem desirable.**

17 **2. Committees. (a) To assist in the conduct of its business when the full commission is**
18 **not meeting, the commission shall have an Executive Committee of seven members, includ-**
19 **ing the Chairman, Vice Chairman, Treasurer and four other members elected annually by the**
20 **commission. The Executive Committee, subject to the provisions of this compact and con-**
21 **sistent with the policies of the commission, shall function as provided in the bylaws of the**
22 **commission.**

23 **(b) The commission may establish advisory and technical committees, membership on**
24 **which may include private persons and public officials, in furthering any of its activities.**
25 **Such committees may consider any matter of concern to the commission, including problems**
26 **of special interest to any party state and problems dealing with particular types of taxes.**

27 **(c) The commission may establish such additional committees as its bylaws may provide.**

28 **3. Powers. In addition to powers conferred elsewhere in this compact, the commission**
29 **shall have power to:**

30 **(a) Study state and local tax systems and particular types of state and local taxes.**

31 **(b) Develop and recommend proposals for an increase in uniformity or compatibility of**
32 **state and local tax laws with a view toward encouraging the simplification and improvement**
33 **of state and local tax law and administration.**

34 **(c) Compile and publish information as in its judgment would assist the party states in**
35 **implementation of the compact and taxpayers in complying with state and local tax laws.**

36 **(d) Do all things necessary and incidental to the administration of its functions pursuant**
37 **to this compact.**

38 **4. Finance. (a) The commission shall submit to the Governor or designated officer or of-**
39 **ficers of each party state a budget of its estimated expenditures for such period as may be**
40 **required by the laws of that state for presentation to the legislature thereof.**

41 **(b) Each of the commission's budgets of estimated expenditures shall contain specific**
42 **recommendations of the amounts to be appropriated by each of the party states. The total**
43 **amount of appropriations requested under any such budget shall be apportioned among the**
44 **party states as follows: one-tenth in equal shares; and the remainder in proportion to the**
45 **amount of revenue collected by each party state and its subdivisions from income taxes,**

1 capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts,
2 the commission shall employ such available public sources of information as, in its judgment,
3 present the most equitable and accurate comparisons among the party states. Each of the
4 commission's budgets of estimated expenditures and requests for appropriations shall indi-
5 cate the sources used in obtaining information employed in applying the formula contained
6 in this paragraph.

7 (c) The commission shall not pledge the credit of any party state. The commission may
8 meet any of its obligations in whole or in part with funds available to it under paragraph 1
9 (i) of this Article: provided that the commission takes specific action setting aside such funds
10 prior to incurring any obligation to be met in whole or in part in such manner. Except where
11 the commission makes use of funds available to it under paragraph 1 (i), the commission
12 shall not incur any obligation prior to the allotment of funds by the party states adequate
13 to meet the same.

14 (d) The commission shall keep accurate accounts of all receipts and disbursements. The
15 receipts and disbursements of the commission shall be subject to the audit and accounting
16 procedures established under its bylaws. All receipts and disbursements of funds handled by
17 the commission shall be audited yearly by a certified or licensed public accountant and the
18 report of the audit shall be included in and become part of the annual report of the com-
19 mission.

20 (e) The accounts of the commission shall be open at any reasonable time for inspection
21 by duly constituted officers of the party states and by any persons authorized by the com-
22 mission.

23 (f) Nothing contained in this Article shall be construed to prevent commission compli-
24 ance with laws relating to audit or inspection of accounts by or on behalf of any government
25 contributing to the support of the commission.

26
27 **ARTICLE VII**
28 **UNIFORM REGULATIONS AND**
29 **FORMS**
30

31 1. Whenever any two or more party states, or subdivisions of party states, have uniform
32 or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax,
33 sales or use tax, the commission may adopt uniform regulations for any phase of the ad-
34 ministration of such law, including assertion of jurisdiction to tax, or prescribing uniform
35 tax forms.

36 2. Prior to the adoption of any regulation, the commission shall:

37 (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected
38 party states and subdivisions thereof and to all taxpayers and other persons who have made
39 timely request of the commission for advance notice of its regulation-making proceedings.

40 (b) Afford all affected party states and subdivisions and interested persons an opportu-
41 nity to submit relevant written data and views, which shall be considered fully by the com-
42 mission.

43 3. The commission shall submit any regulations adopted by it to the appropriate officials
44 of all party states and subdivisions to which they might apply. Each such state and subdivi-
45 sion shall consider any such regulation for adoption in accordance with its own laws and

1 **procedures.**

2
3 **ARTICLE VIII**
4 **INTERSTATE AUDITS**

5
6 **1. This Article shall be in force only in those party states that specifically provide**
7 **therefor by statute.**

8 **2. Any party state or subdivision thereof desiring to make or participate in an audit of**
9 **any accounts, books, papers, records or other documents may request the commission to**
10 **perform the audit on its behalf. In responding to the request, the commission shall have**
11 **access to and may examine, at any reasonable time, such accounts, books, papers, records,**
12 **and other documents and any relevant property or stock of merchandise. The commission**
13 **may enter into agreements with party states or their subdivisions for assistance in per-**
14 **formance of the audit. The commission shall make charges, to be paid by the state or local**
15 **government or governments for which it performs the service, for any audits performed by**
16 **it in order to reimburse itself for the actual costs incurred in making the audit.**

17 **3. The commission may require the attendance of any person within the state where it**
18 **is conducting an audit or part thereof at a time and place fixed by it within such state for**
19 **the purpose of giving testimony with respect to any account, book, paper, document, other**
20 **record, property or stock of merchandise being examined in connection with the audit. If the**
21 **person is not within the jurisdiction, he may be required to attend for such purpose at any**
22 **time and place fixed by the commission within the state of which he is a resident: provided**
23 **that such state has adopted this Article.**

24 **4. The commission may apply to any court having power to issue compulsory process for**
25 **orders in aid of its powers and responsibilities pursuant to this Article and any and all such**
26 **courts shall have jurisdiction to issue such orders. Failure of any person to obey any such**
27 **order shall be punishable as contempt of the issuing court. If the party or subject matter**
28 **on account of which the commission seeks an order is within the jurisdiction of the court**
29 **to which application is made, such application may be to a court in the state or subdivision**
30 **on behalf of which the audit is being made or a court in the state in which the object of the**
31 **order being sought is situated. The provisions of this paragraph apply only to courts in a**
32 **state that has adopted this Article.**

33 **5. The commission may decline to perform any audit requested if it finds that its avail-**
34 **able personnel or other resources are insufficient for the purpose or that, in the terms re-**
35 **quested, the audit is impracticable of satisfactory performance. If the commission, on the**
36 **basis of its experience, has reason to believe that an audit of a particular taxpayer, either**
37 **at a particular time or on a particular schedule, would be of interest to a number of party**
38 **states or their subdivisions, it may offer to make the audit or audits, the offer to be con-**
39 **tingent on sufficient participation therein as determined by the commission.**

40 **6. Information obtained by any audit pursuant to this Article shall be confidential and**
41 **available only for tax purposes to party states, their subdivisions or the United States.**
42 **Availability of information shall be in accordance with the laws of the states or subdivisions**
43 **on whose account the commission performs the audit, and only through the appropriate**
44 **agencies or officers of such states or subdivisions. Nothing in this Article shall be construed**
45 **to require any taxpayer to keep records for any period not otherwise required by law.**

1 **7. Other arrangements made or authorized pursuant to law for cooperative audit by or**
2 **on behalf of the party states or any of their subdivisions are not superseded or invalidated**
3 **by this Article.**

4 **8. In no event shall the commission make any charge against a taxpayer for an audit.**

5 **9. As used in this Article, “tax,” in addition to the meaning ascribed to it in Article II,**
6 **means any tax or license fee imposed in whole or in part for revenue purposes.**

7
8 **ARTICLE IX**
9 **ARBITRATION**

10
11 **1. Whenever the commission finds a need for settling disputes concerning apportionment**
12 **and allocations by arbitration, it may adopt a regulation placing this Article in effect,**
13 **notwithstanding the provisions of Article VII.**

14 **2. The commission shall select and maintain an arbitration panel composed of officers**
15 **and employees of state and local governments and private persons who shall be knowledge-**
16 **able and experienced in matters of tax law and administration.**

17 **3. Whenever the laws of the party state or subdivision thereof are substantially identical**
18 **with the relevant provisions of ORS 314.605 to 314.675, the taxpayer, by written notice to the**
19 **commission and to each party state or subdivision thereof that would be affected, may secure**
20 **arbitration of an apportionment or allocation, if he is dissatisfied with the final administra-**
21 **tive determination of the tax agency of the state or subdivision with respect thereto on the**
22 **ground that it would subject him to double or multiple taxation by two or more party states**
23 **or subdivisions thereof. Each party state and subdivision thereof hereby consents to the ar-**
24 **bitration as provided herein, and agrees to be bound thereby.**

25 **4. The arbitration board shall be composed of one person selected by the taxpayer, one**
26 **by the agency or agencies involved, and one member of the commission’s arbitration panel.**
27 **If the agencies involved are unable to agree on the person to be selected by them, such**
28 **person shall be selected by lot from the total membership of the arbitration panel. The two**
29 **persons selected for the board in the manner provided by the foregoing provisions of this**
30 **paragraph shall jointly select the third member of the board. If they are unable to agree on**
31 **the selection, the third member shall be selected by lot from among the total membership**
32 **of the arbitration panel. No member of a board selected by lot shall be qualified to serve if**
33 **he is an officer or employee or is otherwise affiliated with any party to the arbitration pro-**
34 **ceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not**
35 **constitute affiliation within the meaning of this paragraph.**

36 **5. The board may sit in any state or subdivision party to the proceeding, in the state of**
37 **the taxpayer’s incorporation, residence or domicile, in any state where the taxpayer does**
38 **business, or in any place that it finds most appropriate for gaining access to evidence rele-**
39 **vant to the matter before it.**

40 **6. The board shall give due notice of the times and places of its hearings. The parties**
41 **shall be entitled to be heard, to present evidence, and to examine and cross-examine wit-**
42 **nesses. The board shall act by majority vote.**

43 **7. The board shall have power to administer oaths, take testimony, subpoena and require**
44 **the attendance of witnesses and the production of accounts, books, papers, records, and**
45 **other documents, and issue commissions to take testimony. Subpoenas may be signed by any**

1 member of the board. In case of failure to obey a subpoena, and upon application by the
2 board, any judge of a court of competent jurisdiction of the state in which the board is sitting
3 or in which the person to whom the subpoena is directed may be found may make an order
4 requiring compliance with the subpoena, and the court may punish failure to obey the order
5 as a contempt. The provisions of this paragraph apply only in states that have adopted this
6 Article.

7 8. Unless the parties otherwise agree the expenses and other costs of the arbitration
8 shall be assessed and allocated among the parties by the board in such manner as it may
9 determine. The commission shall fix a schedule of compensation for members of arbitration
10 boards and of other allowable expenses and costs. No officer or employee of a state or local
11 government who serves as a member of a board shall be entitled to compensation therefor
12 unless he is required on account of his service to forego the regular compensation attaching
13 to his public employment, but any such board member shall be entitled to expenses.

14 9. The board shall determine the disputed apportionment or allocation and any matters
15 necessary thereto. The determinations of the board shall be final for purposes of making the
16 apportionment or allocation, but for no other purpose.

17 10. The board shall file with the commission and with each tax agency represented in the
18 proceeding: the determination of the board; the board's written statement of its reasons
19 therefor; the record of the board's proceedings; and any other documents required by the
20 arbitration rules of the commission to be filed.

21 11. The commission shall publish the determinations of boards together with the state-
22 ments of the reasons therefor.

23 12. The commission shall adopt and publish rules of procedure and practice and shall file
24 a copy of such rules and of any amendment thereto with the appropriate agency or officer
25 in each of the party states.

26 13. Nothing contained herein shall prevent at any time a written compromise of any
27 matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceed-
28 ing.

29
30 **ARTICLE X**
31 **ENTRY INTO FORCE AND**
32 **WITHDRAWAL**
33

34 1. This compact shall enter into force when enacted into law by any seven states.
35 Thereafter, this compact shall become effective as to any other state upon its enactment
36 thereof. The commission shall arrange for notification of all party states whenever there is
37 a new enactment of the compact.

38 2. Any party state may withdraw from this compact by enacting a statute repealing the
39 same. No withdrawal shall affect any liability already incurred by or chargeable to a party
40 state prior to the time of such withdrawal.

41 3. No proceeding commenced before an arbitration board prior to the withdrawal of a
42 state and to which the withdrawing state or any subdivision thereof is a party shall be dis-
43 continued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over
44 any of the parties to the proceeding necessary to make a binding determination therein.
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ARTICLE XI
EFFECT ON OTHER LAWS AND
JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of “tax” in Article VIII 9 may apply for the purposes of that Article and the commission’s powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

SECTION 3. ORS 314.606 is amended to read:

314.606. In any case in which the provisions of ORS 314.605 to 314.675 are inconsistent with the provisions of [*ORS 305.655*] **section 2 of this 2013 Act**, the provisions of ORS 314.605 to 314.675 shall control.

SECTION 4. **ORS 305.655 is repealed.**

SECTION 5. **Section 2 of this 2013 Act becomes operative on the day following the effective date of this 2013 Act.**

SECTION 6. **This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**