

SENATE AMENDMENTS TO SENATE BILL 307

By COMMITTEE ON FINANCE AND REVENUE

May 7

1 On page 1 of the printed bill, line 2, delete “and” and after “ORS” delete the rest of the line
2 and line 3 and insert “314.606; repealing ORS 305.655; and prescribing an effective date.”.

3 Delete lines 5 through 29 and delete pages 2 and 3 and insert:

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

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

8 “

9
10 **ARTICLE I**

11 **PURPOSES**

12
13 **The purposes of this compact are to:**

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

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

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

19 **4. Avoid duplicative taxation.**

20
21 **ARTICLE II**

22 **DEFINITIONS**

23
24 **As used in this compact:**

25 **1. “State” means a state of the United States, the District of Columbia, the Common-**
26 **wealth of Puerto Rico, or any territory or possession of the United States.**

27 **2. “Subdivision” means any governmental unit or special district of a state.**

28 **3. “Taxpayer” means any corporation, partnership, firm, association, governmental unit**
29 **or agency or person acting as a business entity in more than one state.**

30 **4. “Income tax” means a tax imposed on or measured by net income including any tax**
31 **imposed on or measured by an amount arrived at by deducting expenses from gross income,**
32 **one or more forms of which expenses are not specifically and directly related to particular**
33 **transactions.**

34 **5. “Capital stock tax” means a tax measured in any way by the capital of a corporation**
35 **considered in its entirety.**

1 **1. Organization and management.** (a) The Multistate Tax Commission is hereby estab-
2 lished. It shall be composed of one “member” from each party state who shall be the head
3 of the state agency charged with the administration of the types of taxes to which this
4 compact applies. If there is more than one such agency the state shall provide by law for the
5 selection of the commission member from the heads of the relevant agencies. State law may
6 provide that a member of the commission be represented by an alternate but only if there
7 is on file with the commission written notification of the designation and identity of the al-
8 ternate. The Attorney General of each party state or his designee, or other counsel if the
9 laws of the party state specifically provide, shall be entitled to attend the meetings of the
10 commission, but shall not vote. Such Attorneys General, designees or other counsel shall
11 receive all notices of meetings required under paragraph 1 (e) of this Article.

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

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

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

19 (e) The commission shall hold an annual meeting and such other regular meetings as its
20 bylaws may provide and such special meetings as its Executive Committee may determine.
21 The commission bylaws shall specify the dates of the annual and any other regular meetings,
22 and shall provide for the giving of notice of annual, regular and special meetings. Notices of
23 special meetings shall include the reasons therefor and an agenda of the items to be consid-
24 ered.

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

30 (g) Irrespective of the civil service, personnel or other merit system laws of any party
31 state, the Executive Director shall appoint or discharge such personnel as may be necessary
32 for the performance of the functions of the commission and shall fix their duties and com-
33 pensation. The commission bylaws shall provide for personnel policies and programs.

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

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

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

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

43 (L) The commission annually shall make to the Governor and legislature of each party
44 state a report covering its activities for the preceding year. Any donation or grant accepted
45 by the commission or services borrowed shall be reported in the annual report of the com-

1 mission, and shall include the nature, amount and conditions, if any, of the donation, gift,
2 grant or services borrowed and the identity of the donor or lender. The commission may
3 make additional reports as it may deem desirable.

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

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

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

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

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

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

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

23 (d) Do all things necessary and incidental to the administration of its functions pursuant
24 to this compact.

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

28 (b) Each of the commission's budgets of estimated expenditures shall contain specific
29 recommendations of the amounts to be appropriated by each of the party states. The total
30 amount of appropriations requested under any such budget shall be apportioned among the
31 party states as follows: one-tenth in equal shares; and the remainder in proportion to the
32 amount of revenue collected by each party state and its subdivisions from income taxes,
33 capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts,
34 the commission shall employ such available public sources of information as, in its judgment,
35 present the most equitable and accurate comparisons among the party states. Each of the
36 commission's budgets of estimated expenditures and requests for appropriations shall indi-
37 cate the sources used in obtaining information employed in applying the formula contained
38 in this paragraph.

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

1 (d) The commission shall keep accurate accounts of all receipts and disbursements. The
2 receipts and disbursements of the commission shall be subject to the audit and accounting
3 procedures established under its bylaws. All receipts and disbursements of funds handled by
4 the commission shall be audited yearly by a certified or licensed public accountant and the
5 report of the audit shall be included in and become part of the annual report of the com-
6 mission.

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

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

13
14 **ARTICLE VII**
15 **UNIFORM REGULATIONS AND**
16 **FORMS**
17

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

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

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

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

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

34
35 **ARTICLE VIII**
36 **INTERSTATE AUDITS**
37

38 1. This Article shall be in force only in those party states that specifically provide
39 therefor by statute.

40 2. Any party state or subdivision thereof desiring to make or participate in an audit of
41 any accounts, books, papers, records or other documents may request the commission to
42 perform the audit on its behalf. In responding to the request, the commission shall have
43 access to and may examine, at any reasonable time, such accounts, books, papers, records,
44 and other documents and any relevant property or stock of merchandise. The commission
45 may enter into agreements with party states or their subdivisions for assistance in per-

1 formance of the audit. The commission shall make charges, to be paid by the state or local
2 government or governments for which it performs the service, for any audits performed by
3 it in order to reimburse itself for the actual costs incurred in making the audit.

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

11 4. The commission may apply to any court having power to issue compulsory process for
12 orders in aid of its powers and responsibilities pursuant to this Article and any and all such
13 courts shall have jurisdiction to issue such orders. Failure of any person to obey any such
14 order shall be punishable as contempt of the issuing court. If the party or subject matter
15 on account of which the commission seeks an order is within the jurisdiction of the court
16 to which application is made, such application may be to a court in the state or subdivision
17 on behalf of which the audit is being made or a court in the state in which the object of the
18 order being sought is situated. The provisions of this paragraph apply only to courts in a
19 state that has adopted this Article.

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

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

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

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

37 9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II,
38 means any tax or license fee imposed in whole or in part for revenue purposes.

39
40 **ARTICLE IX**
41 **ARBITRATION**
42

43 1. Whenever the commission finds a need for settling disputes concerning apportionment
44 and allocations by arbitration, it may adopt a regulation placing this Article in effect,
45 notwithstanding the provisions of Article VII.

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

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

12 **4. The arbitration board shall be composed of one person selected by the taxpayer, one**
13 **by the agency or agencies involved, and one member of the commission's arbitration panel.**
14 **If the agencies involved are unable to agree on the person to be selected by them, such**
15 **person shall be selected by lot from the total membership of the arbitration panel. The two**
16 **persons selected for the board in the manner provided by the foregoing provisions of this**
17 **paragraph shall jointly select the third member of the board. If they are unable to agree on**
18 **the selection, the third member shall be selected by lot from among the total membership**
19 **of the arbitration panel. No member of a board selected by lot shall be qualified to serve if**
20 **he is an officer or employee or is otherwise affiliated with any party to the arbitration pro-**
21 **ceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not**
22 **constitute affiliation within the meaning of this paragraph.**

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

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

30 **7. The board shall have power to administer oaths, take testimony, subpoena and require**
31 **the attendance of witnesses and the production of accounts, books, papers, records, and**
32 **other documents, and issue commissions to take testimony. Subpoenas may be signed by any**
33 **member of the board. In case of failure to obey a subpoena, and upon application by the**
34 **board, any judge of a court of competent jurisdiction of the state in which the board is sitting**
35 **or in which the person to whom the subpoena is directed may be found may make an order**
36 **requiring compliance with the subpoena, and the court may punish failure to obey the order**
37 **as a contempt. The provisions of this paragraph apply only in states that have adopted this**
38 **Article.**

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

1 another agency or body.

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

3
4 **ARTICLE XII**
5 **CONSTRUCTION AND SEVERABILITY**
6

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

16 “

17
18 **“SECTION 3.** ORS 314.606 is amended to read:

19 “314.606. In any case in which the provisions of ORS 314.605 to 314.675 are inconsistent with
20 the provisions of [ORS 305.655] **section 2 of this 2013 Act**, the provisions of ORS 314.605 to 314.675
21 shall control.

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

23 **“SECTION 5.** Section 2 of this 2013 Act becomes operative on the day following the ef-
24 fective date of this 2013 Act.

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