Senate Bill 543

Sponsored by Senator GEORGE

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 exception, based on amount of annual sales, to general rule that sale made to purchaser in state where taxpayer is not taxable is considered sale in Oregon for apportionment of business income for corporate income tax purposes.

Applies to tax years beginning on or after January 1, 2014.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to corporate apportionment; creating new provisions; amending ORS 314.665; and prescribing an effective date.

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

SECTION 1. ORS 314.665 is amended to read:

314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser. For purposes of this paragraph:

(A) The sale of goods shipped from a public warehouse is not considered to take place in this state if:

(i) The taxpayer's only activity in Oregon is the storage of the goods in the public warehouse prior to shipment; or

(ii) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products; and

(B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an affiliate of the person storing goods in a public warehouse or a person that is related under section 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

(3) Subsection (2)(b) of this section [*shall*] **does** not apply to sales of tangible personal property if:

(a)**(A)** The sales are included in the numerator of a formula used to apportion business income to another state of the United States, a foreign country or the District of Columbia; and

[*(b)*] **(B)** The other state, a foreign country or the District of Columbia has imposed a tax on or measured by the apportioned business income[.]**; or**

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.

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(b) The taxpayer is not taxable in the state of the purchaser and makes annual sales to purchasers outside this state of $25 million or less.

(4) Sales, other than sales of tangible personal property, are in this state if**:**

(a) The income-producing activity is performed in this state; or**:**

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are consistent with the determination of the sales factor under this section.

(6) For purposes of this section, "sales":

(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible assets, including but not limited to securities, unless those receipts are derived from the taxpayer's primary business activity.

(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from the primary business activity of the taxpayer but included in the taxpayer's business income.

(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets used in the regular course of the taxpayer's trade or business if a substantial amount of the gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state.

(7) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.

(8) As used in this section, "public warehouse":

(a) Means a warehouse owned or operated by a person that does not own the goods stored in the warehouse; and

(b) Does not include a warehouse that is owned by a person that is related to the person that owns goods that are stored in the warehouse, as determined under section 267 of the Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

SECTION 2. The amendments to ORS 314.665 by section 1 of this 2013 Act apply to tax years beginning on or after January 1, 2014.

SECTION 3. 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.