

B-Engrossed
House Bill 4138

Ordered by the Senate March 4
Including House Amendments dated February 18 and Senate Amendments
dated March 4

Sponsored by Representative VEGA PEDERSON (Presession filed.)

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.

Modifies method of apportionment of business income of interstate broadcaster for purposes of corporate excise taxation. In numerator of apportionment calculation, replaces ratio based on viewing audience with gross receipts from customers with in-state commercial domicile.

Applies to tax years beginning on or after January 1, 2014, and before January 1, [2020] **2017**.

Directs Legislative Revenue Officer to make report to Legislative Assembly addressing impact and utilization of apportionment method as modified in Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to apportionment of income of interstate broadcasters; creating new provisions; amending
3 ORS 314.680 and 314.684; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.680 is amended to read:

6 314.680. As used in ORS 314.680 to 314.690, unless the context requires otherwise:

7 (1) "Broadcasting" means the activity of transmitting any one-way electronic signal by radio
8 waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

9 (2) "Commercial domicile" has the meaning given that term in ORS 314.610.

10 (3) "Customer" means an advertiser, a licensee or any other person that has a direct
11 contractual relationship with an interstate broadcaster under which revenue is derived by
12 the interstate broadcaster.

13 [(2)] (4) "Gross receipts from broadcasting" means [all] **income from advertising, licensing**
14 **or distributing video programming or audio programming and all other** gross receipts of an
15 interstate broadcaster from transactions and activities in the regular course of its trade or business
16 except receipts from sales of real or tangible personal property.

17 [(3)] (5) "Interstate broadcaster" means a taxpayer that engages in the for-profit business of
18 broadcasting to [subscribers or to an audience] **persons** located both within and without this state
19 **and that for the tax year is of a class or type of taxpayer that would properly be subject to**
20 **apportionment under ORS 314.680 to 314.690 as in effect prior to the effective date of this 2014**
21 **Act.** [The audience or subscribers ratio shall be determined by rule of the Department of Revenue.]

22 (6) "Resident of this state" has the meaning given that term in ORS 316.027.

23 **SECTION 2.** ORS 314.684 is amended to read:

24 314.684. (1) The sales factor for an interstate broadcaster shall be determined as provided in this
25 section.

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 (2) The denominator of the sales factor shall include the total gross receipts derived by the
2 interstate broadcaster from transactions and activities in the regular course of its trade or business,
3 except receipts excluded under rules of the Department of Revenue.

4 (3) The numerator of the sales factor shall include all gross receipts attributable to this state,
5 with gross receipts from broadcasting to be included as specified in subsection (4) of this section.

6 (4) Gross receipts from broadcasting of an interstate broadcaster *[which]* **that** engages in
7 income-producing activity in this state shall be included in the numerator of the sales factor *[in the*
8 *ratio that the interstate broadcaster's audience or subscribers located in this state bears to its total*
9 *audience and subscribers located both within and without]* **if the commercial domicile of the cus-**
10 **tomer is in this state or, in the case of an individual, the customer is a resident of this state.**

11 **SECTION 3.** ORS 314.680, as amended by section 1 of this 2014 Act, is amended to read:

12 314.680. As used in ORS 314.680 to 314.690, unless the context requires otherwise:

13 (1) "Broadcasting" means the activity of transmitting any one-way electronic signal by radio
14 waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

15 [(2) "Commercial domicile" has the meaning given that term in ORS 314.610.]

16 [(3) "Customer" means an advertiser, a licensee or any other person that has a direct contractual
17 relationship with an interstate broadcaster under which revenue is derived by the interstate
18 broadcaster.]

19 [(4)] (2) "Gross receipts from broadcasting" means *[income from advertising, licensing or distrib-*
20 *uting video programming or audio programming and all other]* **all** gross receipts of an interstate
21 broadcaster from transactions and activities in the regular course of its trade or business except
22 receipts from sales of real or tangible personal property.

23 [(5)] (3) "Interstate broadcaster" means a taxpayer that engages in the for-profit business of
24 broadcasting to *[persons]* **subscribers or to an audience** located both within and without this state
25 *[and that for the tax year is of a class or type of taxpayer that would properly be subject to appor-*
26 *tionment under ORS 314.680 to 314.690 as in effect prior to the effective date of this 2014 Act]*. **The**
27 **audience or subscribers ratio shall be determined by rule of the Department of Revenue.**

28 [(6) "Resident of this state" has the meaning given that term in ORS 316.027.]

29 **SECTION 4.** ORS 314.684, as amended by section 2 of this 2014 Act, is amended to read:

30 314.684. (1) The sales factor for an interstate broadcaster shall be determined as provided in this
31 section.

32 (2) The denominator of the sales factor shall include the total gross receipts derived by the
33 interstate broadcaster from transactions and activities in the regular course of its trade or business,
34 except receipts excluded under rules of the Department of Revenue.

35 (3) The numerator of the sales factor shall include all gross receipts attributable to this state,
36 with gross receipts from broadcasting to be included as specified in subsection (4) of this section.

37 (4) Gross receipts from broadcasting of an interstate broadcaster that engages in income-
38 producing activity in this state shall be included in the numerator of the sales factor *[if the com-*
39 *mercial domicile of the customer is in this state or, in the case of an individual, the customer is a*
40 *resident of]* **in the ratio that the interstate broadcaster's audience or subscribers located in**
41 **this state bears to its total audience and subscribers located both within and without this**
42 **state.**

43 **SECTION 5.** (1) **The amendments to ORS 314.680 and 314.684 by sections 1 and 2 of this**
44 **2014 Act apply to tax years beginning on or after January 1, 2014, and before January 1, 2017.**

45 (2) **The amendments to ORS 314.680 and 314.684 by sections 3 and 4 of this 2014 Act apply**

1 to tax years beginning on or after January 1, 2017.

2 **SECTION 6.** Not later than February 1, 2017, the Legislative Revenue Officer, after con-
3 sultation with the Department of Revenue, shall make a report to an interim committee of
4 the Legislative Assembly related to revenue. The report shall address the amendments to
5 ORS 314.680 and 314.684 by sections 1 and 2 of this 2014 Act. The Legislative Revenue Officer
6 shall conduct an analysis, based on existing statutory authority, of the impact and utilization
7 of the affected method of apportionment.

8 **SECTION 7.** This 2014 Act takes effect on the 91st day after the date on which the 2014
9 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

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