A-Engrossed
Senate Bill 1534

Ordered by the Senate February 19
Including Senate Amendments dated February 19

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession 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.

Makes corrections to provisions related to income tax subtraction for senior medical expenses, tax treatment of domestic international sales corporations and distribution of proceeds from cigarette tax. Modifies conditions for optional reduced rates of personal income tax on nonpassive income attributable to partnership or S corporation to align material participation requirement with federal provision. States that provision allowing Department of Revenue to waive penalty or interest on underpayment or underreporting of taxes attributable to retroactive application of legislation applies to immediate tax year.

Provides that additional personal exemption credits allowed for child with disability or for taxpayer with severe disability are not phased out or eliminated based on income. Applies to tax years beginning on or after January 1, 2013.

Retroactively reinstates reciprocal tax exemptions applicable to interstate bridges.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to taxation; creating new provisions; amending ORS 316.043, 316.099, 316.693, 316.749, 316.758, 317.283 and 323.455 and section 7, chapter 5, Oregon Laws 2013 (special session); and prescribing an effective date.

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

SECTION 1. ORS 316.693 is amended to read:

316.693. (1)(a) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount paid for medical care of an individual and not compensated for by insurance or otherwise, as described in section [*213(a)*] **213** of the Internal Revenue Code, if the individual meets the age requirement for the tax year under subsection (2) of this section. The amount subtracted under this section may not exceed:

(A) $3,600 for a joint return if both spouses meet the age requirement for the tax year under subsection (2) of this section, with no more than $1,800 attributable to the medical care of either spouse;

(B) $1,800 for a joint return if only one spouse meets the age requirement for the tax year under subsection (2) of this section, with no more than $1,800 attributable to the medical care of that spouse; or

(C) $1,800 for each individual filing a return who meets the age requirement for the tax year under subsection (2) of this section, with no more than $1,800 attributable to the medical care of that individual.

(b) The subtraction under this section may not include amounts that have previously been de-

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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ducted in the calculation of Oregon taxable income.

(2) The subtraction under this section is available only if the individual has attained the following age before the close of the tax year:

(a) For tax years beginning on or after January 1, 2013, and before January 1, 2014, an individual must attain 62 years of age before the close of the tax year.

(b) For tax years beginning on or after January 1, 2014, and before January 1, 2016, an individual must attain 63 years of age before the close of the tax year.

(c) For tax years beginning on or after January 1, 2016, and before January 1, 2018, an individual must attain 64 years of age before the close of the tax year.

(d) For tax years beginning on or after January 1, 2018, and before January 1, 2020, an individual must attain 65 years of age before the close of the tax year.

(e) For tax years beginning on or after January 1, 2020, an individual must attain 66 years of age before the close of the tax year.

(3) Notwithstanding the amount calculated under subsection (1) of this section, the maximum amount allowed for a subtraction under this section may not exceed:

(a) $1,400 per individual, if the federal adjusted gross income of the taxpayer for the tax year is $50,000 or more and less than $100,000 for a taxpayer who files a return jointly, as a head of household or as a surviving spouse, or for all other taxpayers, $25,000 or more and less than $50,000.

(b) $1,000 per individual, if the federal adjusted gross income of the taxpayer for the tax year is $100,000 or more [*and less than*] **but does not exceed** $200,000 for a taxpayer who files a return jointly, as a head of household or as a surviving spouse, or for all other taxpayers, $50,000 or more [*and less than*] **but does not exceed** $100,000.

(4) A subtraction may not be claimed under this section if the federal adjusted gross income of the taxpayer for the tax year exceeds:

(a) $200,000 for joint return filers, a surviving spouse or a head of household; or

(b) $100,000 for an individual who is not a married individual and is not a surviving spouse, or is a married individual who files a separate return.

SECTION 2. ORS 317.283 is amended to read:

317.283. (1) To derive Oregon taxable income, federal taxable income shall be modified to the extent necessary to not recognize for Oregon tax purposes any transaction between the taxpayer and a related domestic international sales corporation. The taxpayer shall be considered to have entered directly into any transactions with third parties that are treated for federal income tax purposes as having been entered into by a related domestic international sales corporation. To satisfy the requirements of this section:

(a) No deduction shall be allowed to any taxpayer for any payment to a related domestic international sales corporation;

(b) No income or expense that would be attributed to a taxpayer but for the provisions of sections 991 to 996 of the Internal Revenue Code shall be treated as attributable to a related domestic international sales corporation; and

(c) No deduction shall be allowed to a taxpayer for interest on DISC-related deferred tax liability paid pursuant to section 995(f) of the Internal Revenue Code.

(2) Notwithstanding subsection (1) of this section**, if a domestic international sales corporation is formed on or before January 1, 2014**:

(a) A tax shall be imposed under this chapter at a rate of 2.5 percent on any commission received by [*a*] **the** domestic international sales corporation **on or after January 1, 2013**; and

(b) A deduction shall be allowed for commission payments to [*a*] **the** domestic international sales corporation[*, if the domestic international sales corporation is formed on or before January 1, 2014*] **made on or after January 1, 2013, if the tax in paragraph (a) of this subsection is imposed on the commission**.

(3) As used in this section, "domestic international sales corporation" means a domestic international sales corporation as defined in section 992 of the Internal Revenue Code.

SECTION 3. ORS 316.749 is amended to read:

316.749. (1) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any dividend received by the taxpayer **on or after January 1, 2013,** from a domestic international sales corporation **formed on or before January 1, 2014, and subject to the tax imposed under ORS 317.283 (2)(a)**.

(2) As used in this section, "domestic international sales corporation" means a domestic international sales corporation as defined in section 992 of the Internal Revenue Code.

SECTION 4. Section 7, chapter 5, Oregon Laws 2013 (special session), is amended to read:

Sec. 7. (1) [*Sections 4 and 6c of this 2013 special session Act*] **ORS 316.693** and the amendments to ORS 316.085, 316.695, 317.061[*, 317.283*] and 317.635 by sections 1, 2, 5[*,*] **and** 6 [*and 6a of this 2013 special session Act*]**, chapter 5, Oregon Laws 2013 (special session),** apply to tax years beginning on or after January 1, 2013.

(2) The amendments to ORS 315.266 by section 6d [*of this 2013 special session Act*]**, chapter 5, Oregon Laws 2013 (special session),** apply to tax years beginning on or after January 1, 2014.

SECTION 5. ORS 323.455 is amended to read:

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. The department may pay expenses for administration and enforcement of ORS 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account. After the payment of administrative and enforcement expenses and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

(2) The moneys appropriated to cities and counties under subsection (1) of this section shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under [*subsection (1)*] **subsections (1) and (5)(b)**

of this section, 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for the medical assistance program under ORS chapter 414, or to funding the maintenance of the benefits available under the program, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

(5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, the balance shall be credited as follows:

(a) 76.92 percent to the Oregon Health Authority Fund established by ORS 413.101, for the purpose of providing the services described in ORS 430.630.

(b) 23.08 percent [*according to the distribution formula provided in subsection (4) of this section*] **to the General Fund**.

SECTION 6. ORS 316.043 is amended to read:

316.043. (1) As used in this section:

(a) "Material participation" has the meaning given that term in section 469 of the Internal Revenue Code.

[*(a)*] **(b)** "Nonpassive income" means income other than income from passive activity as determined under section 469 of the Internal Revenue Code. "Nonpassive income" does not include wages, interest, dividends or capital gains.

[*(b)*] **(c)** "Nonpassive loss" means loss other than loss from passive activity as determined under section 469 of the Internal Revenue Code.

(2) If a taxpayer that meets the conditions of subsection (6) of this section has nonpassive income attributable to any partnership or S corporation after reduction for nonpassive losses, that portion of the taxpayer's income that meets the conditions of subsection (6) of this section shall be taxed at [*a rate of*]:

(a) The rate applicable under ORS 316.037; or

(b) At the election of the taxpayer, a rate of:

[*(a)(A)*] **(A)** Seven percent of the first $250,000 of taxable income, or fraction thereof;

(B) Seven and two-tenths percent of taxable income exceeding $250,000 but not exceeding $500,000;

(C) Seven and six-tenths percent of taxable income exceeding $500,000 but not exceeding $1 million;

(D) Eight percent of taxable income exceeding $1 million but not exceeding $2.5 million;

(E) Nine percent of taxable income exceeding $2.5 million but not exceeding $5 million; and

(F) Nine and nine-tenths percent of taxable income exceeding $5 million[*; or*]**.**

[*(b) At the election of the taxpayer, the rate otherwise applicable under ORS 316.037.*]

(3) The reduced rates allowed under subsection [*(2)*] **(2)(b)** of this section may be adjusted as provided in ORS 316.044.

(4) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which the taxpayer uses the reduced rates allowed under subsection [*(2)*] **(2)(b)** of this section shall be any depreciation adjustment directly related to the partnership or S corporation.

(5) The election under subsection (2)(b) of this section shall be irrevocable and shall be made on the taxpayer's original return. If the taxpayer uses the reduced rates allowed under subsection [*(2)*] **(2)(b)** of this section, the calculation of income shall be substantiated on a form prescribed by

the Department of Revenue and filed with the taxpayer's tax return for the tax year or at such other time and manner as the department may prescribe by rule. A taxpayer who uses the reduced rates available under subsection [*(2)*] **(2)(b)** of this section may not join in the filing of a composite return under ORS 314.778.

(6) The rates listed in subsection [*(2)*] **(2)(b)** of this section apply to nonpassive income attributable to a partnership or S corporation only if:

(a) The taxpayer materially participates in [*the day-to-day operations of*] the trade or business;

(b) The partnership or S corporation employs at least one person who is not an owner, member or limited partner of the partnership or S corporation; and

(c) At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of this subsection and who are employed by the partnership or S corporation. In determining whether this requirement is met, only hours worked in a week in which a worker works at least 30 hours may be considered.

(7)(a) A nonresident may apply the reduced rates allowed under subsection [*(2)*] **(2)(b)** of this section only to income earned in Oregon.

(b) A part-year resident shall calculate the tax due using the reduced rates allowed under subsection [*(2)*] **(2)(b)** of this section by first applying those rates to the taxpayer's nonpassive income that meets the requirements of subsection (6) of this section, and then multiplying that amount by the ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive income from all sources.

SECTION 7. Section 24, chapter 5, Oregon Laws 2013 (special session), applies to tax years beginning on or after January 1, 2013, and before January 1, 2014.

SECTION 8. ORS 316.099 is amended to read:

316.099. (1) As used in this section, unless the context requires otherwise:

(a) "Child with a disability" means a qualifying child under section 152 of the Internal Revenue Code who has been determined eligible for early intervention services or is diagnosed for the purposes of special education as being mentally retarded, multidisabled, visually impaired, hard of hearing, deaf-blind, orthopedically impaired or other health impaired or as having autism, emotional disturbance or traumatic brain injury, in accordance with State Board of Education rules.

(b) "Early intervention services" means programs of treatment and habilitation designed to address a child's developmental deficits in sensory, motor, communication, self-help and socialization areas.

(c) "Special education" means specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction and instruction in hospitals, institutions and special schools.

(2) The State Board of Education shall adopt rules further defining "child with a disability" for purposes of this section. A diagnosis obtained for the purposes of entitlement to special education or early intervention services shall serve as the basis for a claim for the additional credit allowed under subsection (3) of this section.

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent of the taxpayer, there shall be allowed an additional personal exemption credit for a child with a disability if the child is a child with a disability at the close of the tax year. The amount of the credit **allowed for the dependent for the tax year** shall be [*equal to the amount allowed as the personal exemption credit for the dependent for state personal income tax*

purposes for the tax year] **calculated as provided in ORS 316.085, except that the amount may not be reduced on the basis of income under ORS 316.085 (5)**.

(4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section may claim the credit on the personal income tax return. However, the claim shall be substantiated by any proof of entitlement to the credit as may be required by the state board by rule.

SECTION 9. ORS 316.758 is amended to read:

316.758. In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes, there shall be allowed an additional personal exemption credit for the taxpayer if the taxpayer has a severe disability at the close of the taxable year. The amount of the credit **allowed for the tax year** shall be [*equal to the amount allowed as the personal exemption credit for the taxpayer for state personal income tax purposes for the taxable year*] **calculated as provided in ORS 316.085, except that the amount may not be reduced on the basis of income under ORS 316.085 (5)**.

SECTION 10. The amendments to ORS 316.099 and 316.758 by sections 8 and 9 of this 2014 Act apply to tax years beginning on or after January 1, 2013.

SECTION 11. Every bridge that passes over a river or body of water forming a boundary between this state and another state, and that has been constructed or acquired and is being operated by the other state or by any county, city or other municipality of the other state, shall, together with its approaches, be exempt from all property and other taxes in this state, if the other state exempts from all taxation every such interstate bridge, together with its approaches, constructed or acquired and operated by this state or by any county, city or other municipality of this state.

SECTION 12. Section 11 of this 2014 Act is operative retroactively to January 1, 2008, and the operation and effect of section 11 of this 2014 Act shall continue unaffected from January 1, 2008, to the effective date of this 2014 Act and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under authority of section 11 of this 2014 Act after January 1, 2008, and before the effective date of this 2014 Act is ratified and approved.

SECTION 13. This 2014 Act takes effect on the 91st day after the date on which the 2014 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.