

House Bill 2094

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on 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 **as introduced**.

Creates rebuttable presumptions of control over entity, and of unreported income, if United States person conducts transactions involving foreign financial institution. Requires United States person with relationship to passive foreign investment company to file annual report. Treats certain foreign corporations as domestic corporations if management and control of corporation occur primarily within United States. Requires withholding agent for nonresident aliens and foreign corporation to make return to Department of Revenue.

Applies to transactions occurring after January 1, 2016, and to tax years beginning on or after January 1, 2016.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1 Relating to enforcement of tax laws; and prescribing an effective date.

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

3 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS**
4 **chapter 305.**

5 **SECTION 2. (1) As used in this section and section 3 of this 2015 Act:**

6 (a) "Entity" includes a trust, corporation, limited liability company, partnership or
7 foundation.

8 (b) "FATCA" means the federal Foreign Account Tax Compliance Act.

9 (c) "Non-FATCA institution" means any financial institution that does not meet the re-
10 porting requirements of section 1471(b) of the Internal Revenue Code.

11 (d) "United States person" has the meaning given that term in section 7701 of the
12 Internal Revenue Code.

13 (2) For purposes of any judicial or administrative proceeding to determine or collect tax,
14 there shall be rebuttable presumptions that:

15 (a) A United States person (other than an entity with shares regularly traded on an es-
16 tablished securities market), who directly or indirectly formed, transferred assets to, was a
17 beneficiary of, had a beneficial interest in, or received money or property or the use thereof
18 from, an entity (other than an entity with shares regularly traded on an established securi-
19 ties market) that holds an account or in any other manner has assets in a non-FATCA in-
20 stitution, exercised control over the entity. The presumption of control created by this
21 paragraph may not be applied to prevent the Director of the Department of Revenue from
22 determining or arguing the absence of control.

23 (b)(A) Any amount or thing of value received by a United States person (other than an
24 entity with shares regularly traded on an established securities market) directly or indirectly
25 from an account in a non-FATCA institution, or from an entity (other than an entity with
26 shares regularly traded on an established securities market) that holds an account or in any
27

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 other manner has assets in a non-FATCA institution, constitutes income of the person tax-
2 able in the year of receipt; and

3 (B) Any amount or thing of value paid or transferred by or on behalf of a United States
4 person (other than an entity with shares regularly traded on an established securities mar-
5 ket) directly or indirectly to an account in a non-FATCA institution, or to an entity (other
6 than an entity with shares regularly traded on an established securities market) that holds
7 an account or in any other manner has assets in a non-FATCA institution, represents pre-
8 viously unreported income of the person taxable in the year of the payment or transfer.

9 (3) The presumptions established in this section may be rebutted only by clear and con-
10 vincing evidence, including detailed documentary, testimonial, and transactional evidence,
11 establishing that:

12 (a) In subsection (2)(a) of this section, the taxpayer exercised no control, directly or in-
13 directly, over the account or entity at the time in question; and

14 (b) In subsection (2)(b) of this section, the amount or thing of value did not represent
15 income related to the United States person.

16 (4) Any court having jurisdiction over a civil proceeding in which the control of an off-
17 shore account or offshore entity, or the income character of the receipts or amounts
18 transferred, is an issue shall prohibit the introduction by the taxpayer of any foreign-based
19 document that is not authenticated in open court by a person with knowledge of the docu-
20 ment, or any other evidence supplied by a person outside the jurisdiction of a United States
21 court, unless the person appears before the court.

22 SECTION 3. Except as otherwise provided by the Director of the Department of Revenue,
23 each United States person who is a shareholder of, or who directly or indirectly forms,
24 transfers assets to, is a beneficiary of, has a beneficial interest in, or receives money or
25 property or the use thereof from, a passive foreign investment company shall file an annual
26 report containing any information that the director may require.

27 SECTION 4. Section 5 of this 2015 Act is added to and made a part of the Oregon Secu-
28 rities Law.

29 SECTION 5. (1) As used in this section:

30 (a) "Entity" includes a trust, corporation, limited liability company, partnership or
31 foundation.

32 (b) "FATCA" means the federal Foreign Account Tax Compliance Act.

33 (c) "Non-FATCA institution" means any financial institution that does not meet the re-
34 porting requirements of section 1471(b) of the Internal Revenue Code.

35 (d) "United States person" has the meaning given that term in section 7701 of the
36 Internal Revenue Code.

37 (2) For purposes of any civil judicial or administrative proceeding under the Oregon Se-
38 curities Law, there shall be a rebuttable presumption that:

39 (a) A United States person (other than an entity with shares regularly traded on an es-
40 tablished securities market), who directly or indirectly formed, transferred assets to, was a
41 beneficiary of, had a beneficial interest in, or received money or property or the use thereof
42 from, an entity (other than an entity with shares regularly traded on an established securi-
43 ties market) that holds an account or in any other manner has assets in a non-FATCA in-
44 stitution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986), exercised
45 control over the entity. The presumption of control created by this paragraph may not be

1 applied to prevent the Director of the Department of Revenue from determining or arguing
2 the absence of control.

3 (b) Securities that are nominally owned by an entity (other than an entity with shares
4 regularly traded on an established securities market) and that are held in a non-FATCA in-
5 stitution are beneficially owned by any United States person (other than an entity with
6 shares regularly traded on an established securities market) who directly or indirectly exer-
7 cised control over the entity. The presumption of beneficial ownership created by this para-
8 graph may not be applied to prevent the director from determining or arguing the absence
9 of beneficial ownership.

10 SECTION 6. Section 7 of this 2015 Act is added to and made a part of ORS chapter 317.

11 SECTION 7. (1) A corporation that would not otherwise be treated as a domestic corpo-
12 ration under section 7701 of the Internal Revenue Code and this chapter shall be treated as
13 a domestic corporation if:

14 (a) The stock of the corporation is regularly traded on an established securities market;

15 (b) The aggregate gross assets of the corporation (or any predecessor thereof), including
16 assets under management for investors, whether held directly or indirectly, at any time
17 during the tax year or any preceding tax year is \$50 million or more; and

18 (c) The management and control of the corporation directly or indirectly occurs prima-
19 rily within the United States.

20 (2) The management and control of a corporation shall be treated as occurring primarily
21 within the United States if:

22 (a)(A) Substantially all of the executive officers and senior management of the corpo-
23 ration who exercise day-to-day responsibility for making decisions involving strategic, finan-
24 cial and operational policies of the corporation are located primarily within the United
25 States; and

26 (B) Individuals who are not executive officers and senior management of the corporation,
27 including individuals who are officers or employees of other corporations in the same chain
28 of corporations as the corporation, shall be treated as executive officers and senior man-
29 agement if these individuals exercise the day-to-day responsibilities of the corporation; or

30 (b) The assets of the corporation directly or indirectly consist primarily of assets being
31 managed on behalf of investors and decisions about how to invest the assets are made within
32 the United States.

33 SECTION 8. Section 9 of this 2015 Act is added to and made a part of ORS chapter 314.

34 SECTION 9. (1) As used in this section:

35 (a) "Entity" includes a trust, corporation, limited liability company, partnership or
36 foundation.

37 (b) "FATCA" means the federal Foreign Account Tax Compliance Act.

38 (c) "Non-FATCA institution" means any financial institution that does not meet the re-
39 porting requirements of section 1471(b) of the Internal Revenue Code.

40 (d) "United States person" has the meaning given that term in section 7701 of the
41 Internal Revenue Code.

42 (2) A withholding agent under sections 1441 and 1442 of the Internal Revenue Code shall
43 make a return to Department of Revenue, according to the forms or regulations prescribed
44 by the Director of the Department of Revenue, if the withholding agent:

45 (a) Has the control, receipt, custody, disposal or payment of any amount constituting

1 **gross income from sources within the United States of any foreign entity (other than an**
 2 **entity with shares regularly traded on an established securities market); and**

3 **(b) Determines for purposes of titles 14, 18 or 31 of the United States Code that a United**
 4 **States person has any beneficial interest in the foreign entity or in an account in the entity's**
 5 **name.**

6 **(3) The information required to be included on the return made under subsection (2) of**
 7 **this section shall include:**

8 **(a) The name, address and, if known, the taxpayer identification number of the United**
 9 **States beneficial owner;**

10 **(b) The known facts pertaining to the relationship of the United States beneficial owner**
 11 **to the foreign entity and the account;**

12 **(c) The gross amount of income from sources within the United States (including gross**
 13 **proceeds from brokerage transactions); and**

14 **(d) Any other information as the department may by forms or rule require.**

15 **(4)(a) A withholding agent required to make a return under subsection (2) of this section**
 16 **shall furnish to each United States beneficial owner whose name is required to be set forth**
 17 **in the return a written statement showing:**

18 **(A) The name, address and telephone number of the information contact of the person**
 19 **required to make the return; and**

20 **(B) The information required to be shown on the return with respect to the United States**
 21 **beneficial owner.**

22 **(b) The written statement required under paragraph (a) of this subsection shall be fur-**
 23 **nished to the United States beneficial owner on or before January 31 of the year following**
 24 **the calendar year for which the return under subsection (1) of this section is required to be**
 25 **made. In the event the person filing the return does not have a current address for the**
 26 **United States beneficial owner, the written statement may be mailed to the address of the**
 27 **foreign entity.**

28 **(5) Any financial institution directly or indirectly opening a bank, brokerage or other fi-**
 29 **nancial account for or on behalf of an offshore entity (other than an entity with shares**
 30 **regularly traded on an established securities market) in a non-FATCA institution (as defined**
 31 **in section 7701(a)(51) of the Internal Revenue Code of 1986), or at the direction of, on behalf**
 32 **of, or for the benefit of a United States person, shall make a return according to the forms**
 33 **or regulations prescribed by the director.**

34 **(6) For purposes of subsection (5) of this section, the information required to be included**
 35 **on the return shall include:**

36 **(a) The name, address and taxpayer identification number of the United States person;**

37 **(b) The name and address of the financial institution at which a financial account is**
 38 **opened, the type of account, the account number, the name under which the account was**
 39 **opened and the amount of the initial deposit;**

40 **(c) If the account is held in the name of an entity, the name and address of the entity,**
 41 **the type of entity and the name and address of any company formation agent or other pro-**
 42 **fessional employed to form or acquire the entity; and**

43 **(d) Any other information as the director may by form or rule require.**

44 **(7)(a) A financial institution required to make a return under subsection (5) of this sec-**
 45 **tion shall furnish to each United States person whose name is required to be set forth in the**

1 return a written statement showing:

2 (A) The name, address and telephone number of the information contact of the person
3 required to make the return; and

4 (B) The information required to be shown on the return with respect to the United States
5 person.

6 (b) The written statement required under paragraph (a) of this subsection shall be fur-
7 nished to the United States person on or before January 31 of the year following the calendar
8 year for which the return under subsection (5) of this section is required to be made.

9 (8) The director may by rule exempt any class of United States persons, or any class of
10 accounts or entities, from the requirements of this section if the director determines that
11 applying this section to the persons, accounts or entities is not necessary to carry out the
12 purposes of this section.

13 SECTION 10. Sections 2, 3, 5, 7 and 9 of this 2015 Act apply to transactions occurring
14 after January 1, 2016, and to tax years beginning on or after January 1, 2016.

15 SECTION 11. This 2015 Act takes effect on the 91st day after the date on which the 2015
16 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

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