

B-Engrossed
Senate Bill 61

Ordered by the House July 2
Including Senate Amendments dated June 29 and House Amendments
dated July 2

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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 list of jurisdictions of incorporation for which income must be included on Oregon corporate excise tax return, if corporation is member of unitary group with Oregon corporation. [*Allows adjustment of reported income received in listed jurisdiction but not attributable to transactions or activity of United States affiliates.*] **Confirms that additional methods of determining business activity may apply, per petition of taxpayer or with permission of Department of Revenue.** Sets forth criteria to be used to determine listed jurisdictions. Directs Legislative Revenue Officer to report to Legislative Assembly on policy requiring corporations with subsidiaries in listed jurisdictions to report income in those jurisdictions.

Applies 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
2 Relating to tax reporting of multinational corporations; creating new provisions; amending ORS
3 317.267, 317.715 and 317.717; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 317.**

6 **SECTION 2. (1)(a) For purposes of determining Oregon taxable income, the taxable in-**
7 **come or loss of any corporation that is a member of a unitary group or that is a corporation**
8 **that files a separate return and that is incorporated in any of the jurisdictions listed in**
9 **paragraph (b) of this subsection shall be added to the federal consolidated taxable income of**
10 **the unitary group filing a consolidated Oregon return or to the federal taxable income of the**
11 **corporation filing a separate return.**

12 **(b) This section applies to Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas,**
13 **Bahrain, Barbados, Belize, Bermuda, Bonaire, the British Virgin Islands, the Cayman Is-**
14 **lands, the Cook Islands, Curacao, Cyprus, Dominica, Gibraltar, Grenada, Guatemala,**
15 **Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta,**
16 **the Marshall Islands, Mauritius, Montserrat, Nauru, Niue, Saba, Samoa, San Marino,**
17 **Seychelles, Sint Eustatius, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the**
18 **Grenadines, Trinidad and Tobago, the Turks and Caicos Islands, the U.S. Virgin Islands and**
19 **Vanuatu.**

20 **(2) Nothing in subsection (1)(a) of this section precludes either a taxpayer or the De-**
21 **partment of Revenue from asserting that the provisions of ORS 314.667 apply.**

22 **(3) The department shall adopt rules:**

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 **(a) To determine the computation of income or loss for a corporation that is a member**
2 **of a unitary group and that is not otherwise required to file a consolidated federal return.**

3 **(b) To prevent double taxation or double deduction of any amount included in the com-**
4 **putation of income under this section.**

5 **(c) To implement this section.**

6 **SECTION 3.** ORS 317.715 is amended to read:

7 317.715. (1) If a corporation required to make a return under this chapter is a member of an
8 affiliated group of corporations making a consolidated federal return under sections 1501 to 1505
9 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined begin-
10 ning with federal consolidated taxable income of the affiliated group as provided in this section.

11 [(2)(a) *For purposes of determining Oregon taxable income, the taxable income or loss of any cor-*
12 *poration that is a member of a unitary group and that is incorporated in any of the following juris-*
13 *dictions shall be added to federal consolidated taxable income:]*

14 [(b) *Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize,*
15 *Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica,*
16 *Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein,*
17 *Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands*
18 *Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the*
19 *Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.]*

20 [(3)] **(2)** If the affiliated group, of which the corporation subject to taxation under this chapter
21 is a member, consists of more than one unitary group, before the additions, subtractions, adjustments
22 and modifications to federal taxable income provided for in this chapter are made, and before allo-
23 cation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated
24 taxable income shall be computed. Modified federal consolidated taxable income shall be determined
25 by eliminating from the federal consolidated taxable income of the affiliated group the separate
26 taxable income, as determined under Treasury Regulations adopted under section 1502 of the Inter-
27 nal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for
28 which consolidated treatment is prescribed under Treasury Regulations adopted under section 1502
29 of the Internal Revenue Code, attributable to the member or members of any unitary group of which
30 the corporation is not a member.

31 [(4)(a)] **(3)(a)** After modified federal consolidated taxable income is determined under subsection
32 [(3)] **(2)** of this section, the additions, subtractions, adjustments and modifications prescribed by this
33 chapter shall be made to the modified federal consolidated taxable income of the remaining members
34 of the affiliated group, where applicable, as if all such members were subject to taxation under this
35 chapter. After those modifications are made, Oregon taxable income or loss shall be determined as
36 provided in ORS 317.010 (10)(a) to (c), if necessary.

37 (b) In the computation of the Oregon apportionment percentage for a corporation that is a
38 member of an affiliated group filing a consolidated federal return, there shall be taken into consid-
39 eration only the property, payroll, sales or other factors of those members of the affiliated group[,
40 *and of those corporations described in subsection (2) of this section,*] whose items of income, expense,
41 gain or loss remain in modified federal consolidated taxable income after the eliminations required
42 under subsection [(3)] **(2)** of this section. Those members of an affiliated group making a consolidated
43 federal return or a consolidated state return may not be treated as one taxpayer for purposes of
44 determining whether any member of the group is taxable in this state or any other state with re-
45 spect to questions of jurisdiction to tax or the composition of the apportionment factors used to at-

1 tribute income to this state under ORS 314.280 or 314.605 to 314.675.

2 [(5) *The Department of Revenue shall adopt rules:*]

3 [(a) *To determine the computation of income or loss for a corporation that is a member of a unitary*
4 *group and that is not otherwise required to file a consolidated federal return.*]

5 [(b) *To prevent double taxation or double deduction of any amount included in the computation of*
6 *income under this section.*]

7 **SECTION 4.** ORS 317.717 is amended to read:

8 317.717. On or before January 1 of each odd-numbered year, the Department of Revenue shall
9 submit a report to the Legislative Assembly in the manner provided by ORS 192.245. The report
10 shall include recommendations for legislation related to jurisdictions listed in [ORS 317.715 (2)(b)]
11 **section 2 of this 2015 Act**, including recommendations for additions to or subtractions from the list
12 of jurisdictions in [ORS 317.715 (2)(b).] **section 2 of this 2015 Act. In making the determination**
13 **of which jurisdictions to recommend for inclusion, the department shall determine whether**
14 **a jurisdiction is one that for the tax year has no or nominal effective tax on the relevant**
15 **income and for which at least one of the following applies:**

16 (1) **The jurisdiction has laws or practices that prevent effective exchange of information**
17 **for tax purposes with other governments about taxpayers benefiting from the tax regime.**

18 (2) **The jurisdiction has a tax regime that lacks transparency. A tax regime lacks trans-**
19 **parency if the details of legislative, legal or administrative provisions are not open and ap-**
20 **parent or are not consistently applied among similarly situated taxpayers, or if the**
21 **information needed by tax authorities to determine a taxpayer's correct tax liability, such**
22 **as accounting records and underlying documentation, is not adequately available.**

23 (3) **The jurisdiction facilitates the establishment of foreign-owned entities without the**
24 **need for a local substantive presence or prohibits these entities from having any commercial**
25 **impact on the local economy.**

26 (4) **The jurisdiction explicitly or implicitly excludes the jurisdiction's resident taxpayers**
27 **from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from**
28 **the regime from operating in the jurisdiction's domestic market.**

29 (5) **The jurisdiction has created a tax regime that is favorable for tax avoidance, based**
30 **upon an overall assessment of relevant factors, including whether the jurisdiction has a**
31 **significant untaxed offshore financial or other services sector relative to its overall economy.**

32 **SECTION 5.** ORS 317.267 is amended to read:

33 317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income
34 amounts received as dividends from corporations deducted for federal purposes pursuant to section
35 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code,
36 amounts paid as dividends by a public utility or telecommunications utility and deducted for federal
37 purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under
38 Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by
39 members of an affiliated group that are eliminated from a consolidated federal return pursuant to
40 ORS 317.715 [(3)] (2).

41 (2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of
42 this section, there shall be subtracted from federal taxable income an amount equal to 70 percent
43 of dividends (determined without regard to section 78 of the Internal Revenue Code) received or
44 deemed received from corporations if such dividends are included in federal taxable income. How-
45 ever:

1 (a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of
2 the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the
3 same conditions and in same amount as the dividends received deduction otherwise allowable for
4 federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

5 (b) In the case of any dividend received from a 20 percent owned corporation, as defined in
6 section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting “80
7 percent” for “70 percent.”

8 (c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal
9 Revenue Code may not be treated as a dividend for purposes of this subsection.

10 (d) If a dividends received deduction is not allowed for federal tax purposes because of section
11 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for
12 received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

13 (3) There shall be excluded from the sales factor of any apportionment formula employed to at-
14 tribute income to this state any amount subtracted from federal taxable income under subsection (2)
15 of this section.

16 **SECTION 6. Section 2 of this 2015 Act and the amendments to ORS 317.715 and 317.267**
17 **by sections 3 and 5 of this 2015 Act apply to tax years beginning on or after January 1, 2016.**

18 **SECTION 7. Not later than March 15, 2017, the Legislative Revenue Officer, after con-**
19 **sultation with the Department of Revenue, shall prepare a report for submission to a com-**
20 **mittee of the Legislative Assembly related to revenue. The Legislative Revenue Officer shall**
21 **include in the report an assessment of the cost-effectiveness of the enactment by the Leg-**
22 **islative Assembly of the policy, such as the provisions of section 2 of this 2015 Act, governing**
23 **the tax treatment of corporations incorporated in offshore jurisdictions.**

24 **SECTION 8. This 2015 Act takes effect on the 91st day after the date on which the 2015**
25 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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