

**PROPOSED AMENDMENTS TO
HOUSE BILL 2099**

1 On page 1 of the printed bill, line 3, delete “317.715” and insert “317.267,
2 317.715 and 317.717”.

3 Delete lines 5 through 30 and delete page 2 and insert:

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

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

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

1 **Islands, the U.S. Virgin Islands and Vanuatu.**

2 **“(2) After making any addition required by subsection (1)(a) of this**
3 **section, any item of income, gain, loss or expense of a corporation that**
4 **is a member of a unitary group and that is incorporated in any of the**
5 **jurisdictions that are listed in subsection (1)(b) of this section shall**
6 **be eliminated from federal taxable income if the item is not attribut-**
7 **able directly or indirectly to activity of or transactions with a unitary**
8 **group member included in a federal consolidated or separate return.**

9 **“(3) The Department of Revenue shall adopt rules:**

10 **“(a) To determine the computation of income or loss for a corpo-**
11 **ration that is a member of a unitary group and that is not otherwise**
12 **required to file a consolidated federal return.**

13 **“(b) To prevent double taxation or double deduction of any amount**
14 **included in the computation of income under this section.**

15 **“(c) To implement this section.**

16 **“SECTION 3. ORS 317.715 is amended to read:**

17 **“317.715. (1) If a corporation required to make a return under this chapter**
18 **is a member of an affiliated group of corporations making a consolidated**
19 **federal return under sections 1501 to 1505 of the Internal Revenue Code, the**
20 **corporation’s Oregon taxable income shall be determined beginning with**
21 **federal consolidated taxable income of the affiliated group as provided in this**
22 **section.**

23 ***“[(2)(a) For purposes of determining Oregon taxable income, the taxable***
24 ***income or loss of any corporation that is a member of a unitary group and that***
25 ***is incorporated in any of the following jurisdictions shall be added to federal***
26 ***consolidated taxable income:]***

27 ***“[(b) Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas,***
28 ***Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman***
29 ***Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-***
30 ***Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg,***

1 *Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the*
2 *Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and*
3 *Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Is-*
4 *lands, the U.S. Virgin Islands and Vanuatu.]*

5 “[(3)] **(2)** If the affiliated group, of which the corporation subject to tax-
6 ation under this chapter is a member, consists of more than one unitary
7 group, before the additions, subtractions, adjustments and modifications to
8 federal taxable income provided for in this chapter are made, and before al-
9 location and apportionment as provided in ORS 317.010 (10), if any, modified
10 federal consolidated taxable income shall be computed. Modified federal
11 consolidated taxable income shall be determined by eliminating from the
12 federal consolidated taxable income of the affiliated group the separate tax-
13 able income, as determined under Treasury Regulations adopted under sec-
14 tion 1502 of the Internal Revenue Code, and any deductions or additions or
15 items of income, expense, gain or loss for which consolidated treatment is
16 prescribed under Treasury Regulations adopted under section 1502 of the
17 Internal Revenue Code, attributable to the member or members of any
18 unitary group of which the corporation is not a member.

19 “[4)(a)] **(3)(a)** After modified federal consolidated taxable income is de-
20 termined under subsection [(3)] **(2)** of this section, the additions, sub-
21 tractions, adjustments and modifications prescribed by this chapter shall be
22 made to the modified federal consolidated taxable income of the remaining
23 members of the affiliated group, where applicable, as if all such members
24 were subject to taxation under this chapter. After those modifications are
25 made, Oregon taxable income or loss shall be determined as provided in ORS
26 317.010 (10)(a) to (c), if necessary.

27 “(b) In the computation of the Oregon apportionment percentage for a
28 corporation that is a member of an affiliated group filing a consolidated
29 federal return, there shall be taken into consideration only the property,
30 payroll, sales or other factors of those members of the affiliated group[, and

1 *of those corporations described in subsection (2) of this section,*] whose items
2 of income, expense, gain or loss remain in modified federal consolidated
3 taxable income after the eliminations required under subsection [(3)] **(2)** of
4 this section. Those members of an affiliated group making a consolidated
5 federal return or a consolidated state return may not be treated as one tax-
6 payer for purposes of determining whether any member of the group is tax-
7 able in this state or any other state with respect to questions of jurisdiction
8 to tax or the composition of the apportionment factors used to attribute in-
9 come to this state under ORS 314.280 or 314.605 to 314.675.

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

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

14 “[*(b) To prevent double taxation or double deduction of any amount in-*
15 *cluded in the computation of income under this section.*]

16 **“SECTION 4.** ORS 317.717 is amended to read:

17 “317.717. On or before January 1 of each odd-numbered year, the Depart-
18 ment of Revenue shall submit a report to the Legislative Assembly in the
19 manner provided by ORS 192.245. The report shall include recommendations
20 for legislation related to jurisdictions listed in [*ORS 317.715 (2)(b)*] **section**
21 **2 of this 2015 Act**, including recommendations for additions to or sub-
22 tractions from the list of jurisdictions in [*ORS 317.715 (2)(b)*] **section 2 of**
23 **this 2015 Act. In making the determination of which jurisdictions to**
24 **recommend for inclusion, the department shall determine whether the**
25 **jurisdiction:**

26 **“(1) Has laws or practices that prevent effective exchange of infor-**
27 **mation for tax purposes with other governments about taxpayers**
28 **benefiting from the tax regime.**

29 **“(2) Has a tax regime that lacks transparency. A tax regime lacks**
30 **transparency if the details of legislative, legal or administrative pro-**

1 **visions are not open and apparent or are not consistently applied**
2 **among similarly situated taxpayers, or if the information needed by**
3 **tax authorities to determine a taxpayer's correct tax liability, such as**
4 **accounting records and underlying documentation, is not adequately**
5 **available.**

6 **“(3) Facilitates the establishment of foreign-owned entities without**
7 **the need for a local substantive presence or prohibits these entities**
8 **from having any commercial impact on the local economy.**

9 **“(4) Explicitly or implicitly excludes the jurisdiction's resident tax-**
10 **payers from taking advantage of the tax regime's benefits or prohibits**
11 **enterprises that benefit from the regime from operating in the**
12 **jurisdiction's domestic market.**

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

17 **“SECTION 5. ORS 317.267 is amended to read:**

18 **“317.267. (1) To derive Oregon taxable income, there shall be added to**
19 **federal taxable income amounts received as dividends from corporations de-**
20 **ducted for federal purposes pursuant to section 243 or 245 of the Internal**
21 **Revenue Code, except section 245(c) of the Internal Revenue Code, amounts**
22 **paid as dividends by a public utility or telecommunications utility and de-**
23 **ducted for federal purposes pursuant to section 247 of the Internal Revenue**
24 **Code or dividends eliminated under Treasury Regulations adopted under**
25 **section 1502 of the Internal Revenue Code that are paid by members of an**
26 **affiliated group that are eliminated from a consolidated federal return pur-**
27 **suant to ORS 317.715 [(3)] (2).**

28 **“(2) To derive Oregon taxable income, after the modification prescribed**
29 **under subsection (1) of this section, there shall be subtracted from federal**
30 **taxable income an amount equal to 70 percent of dividends (determined**

1 without regard to section 78 of the Internal Revenue Code) received or
2 deemed received from corporations if such dividends are included in federal
3 taxable income. However:

4 “(a) In the case of any dividend on debt-financed portfolio stock as de-
5 scribed in section 246A of the Internal Revenue Code, the subtraction al-
6 lowed under this subsection shall be reduced under the same conditions and
7 in same amount as the dividends received deduction otherwise allowable for
8 federal income tax purposes is reduced under section 246A of the Internal
9 Revenue Code.

10 “(b) In the case of any dividend received from a 20 percent owned corpo-
11 ration, as defined in section 243(c) of the Internal Revenue Code, this sub-
12 section shall be applied by substituting ‘80 percent’ for ‘70 percent.’

13 “(c) A dividend that is not treated as a dividend under section 243(d) or
14 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for
15 purposes of this subsection.

16 “(d) If a dividends received deduction is not allowed for federal tax pur-
17 poses because of section 246(a) or (c) of the Internal Revenue Code, a sub-
18 traction may not be made under this subsection for received dividends that
19 are described in section 246(a) or (c) of the Internal Revenue Code.

20 “(3) There shall be excluded from the sales factor of any apportionment
21 formula employed to attribute income to this state any amount subtracted
22 from federal taxable income under subsection (2) of this section.

23 **“SECTION 6. Section 2 of this 2015 Act and the amendments to ORS**
24 **317.715 and 317.267 by sections 3 and 5 of this 2015 Act apply to tax**
25 **years beginning on or after January 1, 2016.**

26 **“SECTION 7. This 2015 Act takes effect on the 91st day after the**
27 **date on which the 2015 regular session of the Seventy-eighth Legisla-**
28 **tive Assembly adjourns sine die.”.**

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