

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2099**

1 On page 1 of the printed bill, line 2, after “ORS” insert “317.267 and”.

2 In line 3, after the semicolon insert “repealing ORS 317.717;”.

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

4 **“SECTION 1.** ORS 317.715 is amended to read:

5 **“317.715. (1) As used in this section:**

6 **“(a) ‘Federal income tax treaty’ means a comprehensive tax treaty**  
7 **between the United States and a foreign jurisdiction.**

8 **“(b)(A) ‘Tax haven’ means a jurisdiction that for the tax year has**  
9 **no or nominal effective tax on the relevant income and that:**

10 **“(i) Has laws or practices that prevent effective exchange of infor-**  
11 **mation for tax purposes with other governments about taxpayers**  
12 **benefiting from the tax regime;**

13 **“(ii) Has a tax regime that lacks transparency;**

14 **“(iii) Facilitates the establishment of foreign-owned entities without**  
15 **the need for a local substantive presence or prohibits these entities**  
16 **from having any commercial impact on the local economy;**

17 **“(iv) Explicitly or implicitly excludes the jurisdiction’s resident**  
18 **taxpayers from taking advantage of the tax regime’s benefits or pro-**  
19 **hibits enterprises that benefit from the regime from operating in the**  
20 **jurisdiction’s domestic market; or**

21 **“(v) Has created a tax regime that is favorable for tax avoidance,**  
22 **based upon an overall assessment of relevant factors, including**

1 **whether the jurisdiction has a significant untaxed offshore financial**  
2 **or other services sector relative to its overall economy.**

3 **“(B) For purposes of subparagraph (A)(ii) of this paragraph, a tax**  
4 **regime lacks transparency if the details of legislative, legal or admin-**  
5 **istrative provisions are not open and apparent or are not consistently**  
6 **applied among similarly situated taxpayers, or if the information**  
7 **needed by tax authorities to determine a taxpayer’s correct tax liabil-**  
8 **ity, such as accounting records and underlying documentation, is not**  
9 **adequately available.**

10 **“[(1)] (2) If a corporation required to make a return under this chapter**  
11 **is a member of an affiliated group of corporations making a consolidated**  
12 **federal return under sections 1501 to 1505 of the Internal Revenue Code, the**  
13 **corporation’s Oregon taxable income shall be determined beginning with**  
14 **federal consolidated taxable income of the affiliated group as provided in this**  
15 **section.**

16 **“[(2)(a)] (3) Except as provided in subsection (4) of this subsection,**  
17 **for purposes of determining Oregon taxable income, the [taxable income or**  
18 **loss] income that is effectively connected, or treated as effectively**  
19 **connected under the provisions of the Internal Revenue Code, with the**  
20 **conduct of a trade or business within the United States of any corpo-**  
21 **ration that is a member of a unitary group and that is incorporated in [any**  
22 **of the following jurisdictions] a tax haven shall be added to federal consol-**  
23 **idated taxable income[:].**

24 **“(4) There is no requirement to add income to federal consolidated**  
25 **taxable income if:**

26 **“(a) The corporation’s property, payroll or sales factor within the**  
27 **United States is less than 20 percent;**

28 **“(b) The tax haven is subject to the provisions of a federal income**  
29 **tax treaty; or**

30 **“(c) The income results from transactions conducted between**

1 **unitary group members at arm’s length, without the principal purpose**  
2 **to avoid the payment of taxes.**

3 “[*(b)* *Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas,*  
4 *Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman*  
5 *Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-*  
6 *Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg,*  
7 *Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the*  
8 *Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and*  
9 *Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Is-*  
10 *lands, the U.S. Virgin Islands and Vanuatu.*]

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

25 “[*(4)(a)*] **(6)(a)** After modified federal consolidated taxable income is de-  
26 termined under subsection [*(3)*] **(5)** of this section, the additions, sub-  
27 tractions, adjustments and modifications prescribed by this chapter shall be  
28 made to the modified federal consolidated taxable income of the remaining  
29 members of the affiliated group, where applicable, as if all such members  
30 were subject to taxation under this chapter. After those modifications are

1 made, Oregon taxable income or loss shall be determined as provided in ORS  
2 317.010 (10)(a) to (c), if necessary.

3 “(b) In the computation of the Oregon apportionment percentage for a  
4 corporation that is a member of an affiliated group filing a consolidated  
5 federal return, there shall be taken into consideration only the property,  
6 payroll, sales or other factors of those members of the affiliated group[, *and*  
7 *of those corporations described in subsection (2) of this section,*] whose items  
8 of income, expense, gain or loss remain in modified federal consolidated  
9 taxable income after the eliminations required under subsection [(3)] (5) of  
10 this section. Those members of an affiliated group making a consolidated  
11 federal return or a consolidated state return may not be treated as one tax-  
12 payer for purposes of determining whether any member of the group is tax-  
13 able in this state or any other state with respect to questions of jurisdiction  
14 to tax or the composition of the apportionment factors used to attribute in-  
15 come to this state under ORS 314.280 or 314.605 to 314.675.

16 “[5] (7) The Department of Revenue shall adopt rules:

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

20 “(b) To prevent double taxation or double deduction of any amount in-  
21 cluded in the computation of income under this section.

22 **“SECTION 2.** ORS 317.267 is amended to read:

23 “317.267. (1) To derive Oregon taxable income, there shall be added to  
24 federal taxable income amounts received as dividends from corporations de-  
25 ducted for federal purposes pursuant to section 243 or 245 of the Internal  
26 Revenue Code, except section 245(c) of the Internal Revenue Code, amounts  
27 paid as dividends by a public utility or telecommunications utility and de-  
28 ducted for federal purposes pursuant to section 247 of the Internal Revenue  
29 Code or dividends eliminated under Treasury Regulations adopted under  
30 section 1502 of the Internal Revenue Code that are paid by members of an

1 affiliated group that are eliminated from a consolidated federal return pur-  
2 suant to ORS 317.715 [(3)] (5).

3 “(2) To derive Oregon taxable income, after the modification prescribed  
4 under subsection (1) of this section, there shall be subtracted from federal  
5 taxable income an amount equal to 70 percent of dividends (determined  
6 without regard to section 78 of the Internal Revenue Code) received or  
7 deemed received from corporations if such dividends are included in federal  
8 taxable income. However:

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

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

18 “(c) A dividend that is not treated as a dividend under section 243(d) or  
19 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for  
20 purposes of this subsection.

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

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

28 **“SECTION 3. The amendments to ORS 317.715 and 317.267 by**  
29 **sections 1 and 2 of this 2015 Act apply to tax years beginning on or**  
30 **after January 1, 2016.**

1       **“SECTION 4. ORS 317.717 is repealed.**

2       **“SECTION 5. This 2015 Act takes effect on the 91st day after the**  
3 **date on which the 2015 regular session of the Seventy-eighth Legisla-**  
4 **tive Assembly adjourns sine die.”.**

5

---