

House Bill 2274

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of 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**.

For purposes of corporate tax apportionment calculations, replaces sales factor with receipts factor. Defines "receipts" to mean gross receipts received from transactions and activity occurring in taxpayer's regular course of business, with certain exclusions. In determination of receipts factor, provides that sales other than sales of tangible personal property are in state if taxpayer's market for sales is in state. Enumerates conditions in which market for sales is deemed to be in state.

Applies to tax years beginning on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to corporate apportionment; creating new provisions; amending ORS 314.610, 314.635,
3 314.650, 314.665, 314.668, 314.669, 314.671, 314.684, 317.090, 317.122, 317.154, 317.267, 317.660 and
4 317.715; and prescribing an effective date.

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

6 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 314.605 to**
7 **314.675.**

8 **SECTION 2. (1) A taxpayer's market for receipts is in this state:**

9 (a) **In the case of the sale, rental, lease or license of real property, if and to the extent**
10 **the property is located in this state.**

11 (b) **In the case of the rental, lease or license of tangible personal property, if and to the**
12 **extent the property is located in this state.**

13 (c) **In the case of the sale of a service, if and to the extent the service is delivered to a**
14 **location in this state.**

15 (2) **A taxpayer's market for receipts is in this state in the case of intangible property that**
16 **is rented, leased or licensed, if and to the extent the property is used in this state. Intangible**
17 **property utilized in marketing a good or service to a consumer is deemed to be used in this**
18 **state if that good or service is purchased by a consumer that is in this state.**

19 (3) **A taxpayer's market for receipts is in this state in the case of intangible property that**
20 **is sold, if and to the extent the property is used in this state. Under this subsection:**

21 (a) **A contract right, government license or similar intangible property that authorizes**
22 **the holder to conduct a business activity in a specific geographic area is deemed to be used**
23 **in this state if the geographic area includes all or part of this state.**

24 (b) **Receipts from intangible property sales that are contingent on the productivity, use**
25 **or disposition of the intangible property shall be treated as receipts from the rental, lease**
26 **or licensing of such intangible property under subsection (2) of this section.**

27 (4) **Receipts from a sale of intangible property other than sales described in subsection**
28 **(3) of this section shall be excluded from the receipts factor.**

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 **(5) If the state or states of assignment under subsections (1) to (4) of this section cannot**
 2 **be determined, the state or states of assignment shall be reasonably approximated.**

3 **(6) If the taxpayer is not taxable in a state to which a receipt is assigned under sub-**
 4 **sections (1) to (5) of this section, or if the state of assignment cannot be determined under**
 5 **subsections (1) to (4) of this section or reasonably approximated under subsection (5) of this**
 6 **section, the receipt shall be excluded from the receipts factor.**

7 **SECTION 3.** ORS 314.610 is amended to read:

8 314.610. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

9 (1) “Business income” means income arising from transactions and activity in the regular course
 10 of the taxpayer’s trade or business and includes income from tangible and intangible property if the
 11 acquisition, the management, use or rental, and the disposition of the property constitute integral
 12 parts of the taxpayer’s regular trade or business operations.

13 (2) “Commercial domicile” means the principal place from which the trade or business of the
 14 taxpayer is directed or managed.

15 (3) “Compensation” means wages, salaries, commissions and any other form of remuneration paid
 16 to employees for personal services.

17 (4) “Financial institution” means a person, corporation or other business entity that is any of
 18 the following:

19 (a) A bank holding company under the laws of this state or under the federal Bank Holding
 20 Company Act of 1956, 12 U.S.C. 1841 et seq., as amended.

21 (b) A savings and loan holding company under the National Housing Act, 12 U.S.C. 1701 et seq.,
 22 as amended.

23 (c) A national bank organized and existing as a national bank association under the National
 24 Bank Act, 12 U.S.C. 21 et seq., as amended.

25 (d) A savings association, as defined in 12 U.S.C. 1813(b)(1), as amended.

26 (e) A bank or thrift institution incorporated or organized under the laws of any state.

27 (f) An entity organized under the provisions of 12 U.S.C. 611 to 631, as amended.

28 (g) An agency or branch of a foreign bank, as defined in 12 U.S.C. 3101, as amended.

29 (h) A state credit union with loan assets that exceed \$50,000,000 as of the first day of the tax-
 30 able year of the state credit union.

31 (i) A production credit association subject to 12 U.S.C. 2071 et seq., as amended.

32 (j) A corporation, more than 50 percent of the voting stock of which is owned, directly or indi-
 33 rectly, by a person, corporation or other business entity described in paragraphs (a) to (i) of this
 34 subsection, provided that the corporation is not an insurer taxable under ORS 317.655.

35 (k) An entity that is not otherwise described in this subsection, that is not an insurer taxable
 36 under ORS 317.655 and that derives more than 50 percent of its gross income from activities that
 37 a person, corporation or entity described in paragraph (c), (d), (e), (f), (g), (h), (i) or (L) of this sub-
 38 section is authorized to conduct, not taking into account any income derived from nonrecurring
 39 extraordinary sources.

40 (L) A person that derives at least 50 percent of the person’s annual average gross income, for
 41 financial accounting purposes for the current tax year and the two preceding tax years, from finance
 42 leases, excluding any gross income from incidental or occasional transactions. For purposes of this
 43 paragraph, “finance lease” means:

44 (A) A lease transaction that is the functional equivalent of an extension of credit and that
 45 transfers substantially all of the benefits and risks of the ownership of the leased property;

1 (B) A direct financing lease or a leverage lease that meets the criteria of Financial Accounting
 2 Standards Board Statement No. 13; or

3 (C) Any other lease that is accounted for as a financing by a lessor under generally accepted
 4 accounting principles.

5 (5) "Nonbusiness income" means all income other than business income.

6 (6) "Public utility" means any business entity whose principal business is ownership and opera-
 7 tion for public use of any plant, equipment, property, franchise, or license for the transmission of
 8 communications, transportation of goods or persons, or the production, storage, transmission, sale,
 9 delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

10 (7) ["Sales"] "**Receipts**" means all gross receipts of the taxpayer **that are** not allocated under
 11 ORS 314.615 to 314.645 **and that are received from transactions and activity occurring in the**
 12 **regular course of the taxpayer's trade or business, except receipts from hedging transactions**
 13 **and from the maturity, redemption, sale, exchange, loan or other disposition of cash or se-**
 14 **curities.**

15 (8) "State" means any state of the United States, the District of Columbia, the Commonwealth
 16 of Puerto Rico, any territory or possession of the United States, and any foreign country or political
 17 subdivision thereof.

18 **SECTION 4.** ORS 314.665 is amended to read:

19 314.665. (1) As used in ORS 314.650 **and section 2 of this 2017 Act**, the [sales] **receipts** factor
 20 is a fraction, the numerator of which is the total **receipts from** sales of the taxpayer in this state
 21 during the tax period, and the denominator of which is the total **receipts from** sales of the taxpayer
 22 everywhere during the tax period.

23 (2) **Receipts from** sales of tangible personal property are in this state if:

24 (a) The property is delivered or shipped to a purchaser, other than the United States Govern-
 25 ment, within this state regardless of the f.o.b. point or other conditions of the sale; or

26 (b) The property is shipped from an office, store, warehouse, factory, or other place of storage
 27 in this state and the purchaser is the United States Government or the taxpayer is not taxable in
 28 the state of the purchaser. For purposes of this paragraph:

29 (A) The sale of goods shipped from a public warehouse is not considered to take place in this
 30 state if:

31 (i) The taxpayer's only activity in Oregon is the storage of the goods in the public warehouse
 32 prior to shipment; or

33 (ii) The taxpayer's only activities in Oregon are the storage of the goods in the public ware-
 34 house prior to shipment and the presence of employees within this state solely for purposes of so-
 35 liciting sales of the taxpayer's products; and

36 (B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an
 37 affiliate of the person storing goods in a public warehouse or a person that is related under section
 38 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

39 (3) Subsection (2)(b) of this section [shall] **does** not apply to sales of tangible personal property
 40 if:

41 (a) The sales are included in the numerator of a formula used to apportion business income to
 42 another state of the United States, a foreign country or the District of Columbia; and

43 (b) The other state, a foreign country or the District of Columbia has imposed a tax on or
 44 measured by the apportioned business income.

45 (4) [Sales] **Receipts**, other than **receipts from** sales of tangible personal property, are in this

1 state if [(a) *the income-producing activity is performed in this state; or (b) the income-producing activity*
 2 *is performed both in and outside this state and a greater proportion of the income-producing activity*
 3 *is performed in this state than in any other state, based on costs of performance.] **the taxpayer's**
 4 **market for receipts is in this state, as determined under section 2 of this 2017 Act.***

5 (5) Where the [sales] **receipts** apportionment factor is determined by administrative rule pursu-
 6 ant to ORS 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that
 7 are consistent with the determination of the [sales] **receipts** factor under this section.

8 [(6) *For purposes of this section, "sales":*

9 [(a) *Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible*
 10 *assets, including but not limited to securities, unless those receipts are derived from the taxpayer's*
 11 *primary business activity.]*

12 [(b) *Includes net gain from the sale, exchange or redemption of intangible assets not derived from*
 13 *the primary business activity of the taxpayer but included in the taxpayer's business income.]*

14 [(c) *Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets*
 15 *used in the regular course of the taxpayer's trade or business if a substantial amount of the gross re-*
 16 *ceipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the*
 17 *regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from*
 18 *incidental or occasional transactions or activities may be excluded from the sales factor unless the ex-*
 19 *clusion would materially affect the amount of income apportioned to this state.]*

20 [(7)] (6) The department may determine that a warehouse that meets the definition of "public
 21 warehouse" under this section may not be treated as a public warehouse if the warehouse is being
 22 used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are
 23 primarily for tax avoidance purposes.

24 [(8)] (7) As used in this section, "public warehouse":

25 (a) Means a warehouse owned or operated by a person that does not own the goods stored in
 26 the warehouse; and

27 (b) Does not include a warehouse that is owned by a person that is related to the person that
 28 owns goods that are stored in the warehouse, as determined under section 267 of the Internal Re-
 29 venue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

30 **SECTION 5.** ORS 314.635 is amended to read:

31 314.635. (1) Capital gains and losses from sales of real property located in this state are
 32 allocable to this state.

33 (2) Capital gains and losses from sales of tangible personal property are allocable to this state
 34 if (a) the property had a situs in this state at the time of the sale, or (b) the taxpayer's commercial
 35 domicile is in this state and the taxpayer is not taxable in the state in which the property had a
 36 situs.

37 (3) Except in the case of the sale of a partnership interest, capital gains and losses from sales
 38 of intangible personal property are allocable to this state if the taxpayer's commercial domicile is
 39 in this state.

40 (4) Gain or loss from the sale of a partnership interest is allocable to this state in the ratio of
 41 the original cost of partnership tangible property in the state to the original cost of partnership
 42 tangible property everywhere, determined at the time of the sale. In the event that more than 50
 43 percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of
 44 the partnership interest shall be allocated to this state in accordance with the [sales] **receipts** factor
 45 of the partnership for its first full tax year immediately preceding its tax year during which the

1 partnership interest was sold.

2 **SECTION 6.** ORS 314.650 is amended to read:

3 314.650. All business income shall be apportioned to this state by multiplying the income by the
4 [sales] **receipts** factor.

5 **SECTION 7.** ORS 314.668 is amended to read:

6 314.668. As used in ORS 314.668 to 314.673:

7 (1) "Actual cost" means the costs of labor, materials, supplies, equipment rental, real or personal
8 property acquisition, permits, engineering, financing, required fees, insurance, administration, ac-
9 counting, maintenance, repair or replacement and debt service, and all other direct or indirect costs
10 incurred by a person in order to undertake a capital project, or of more than one capital project
11 undertaken by the same taxpayer as part of the same qualifying investment.

12 (2) "Capital project" means a project within this state for the construction, modification, re-
13 placement, repair, remodeling or renovation of a structure or structures, addition to a structure or
14 structures, or other capital improvement, that qualifies as a qualifying investment, including but not
15 limited to:

16 (a) Acquisition of a legal interest or right in land or property in conjunction with the capital
17 improvement, including but not limited to the purchase, lease or occupancy of real property, in-
18 cluding the buildings, structures, infrastructure and leasehold improvements on the land or property;

19 (b) Acquisition of existing structures, or legal interests or rights in structures, in conjunction
20 with the capital improvement;

21 (c) Acquisition and installation of machinery or equipment, furnishings, fixtures or other per-
22 sonal property or materials, in conjunction with the capital improvement; or

23 (d) Services and activities performed in relation to the capital improvement, including planning,
24 design, authorizing, issuing, carrying or repaying interim or permanent financing, research, study
25 of land use and environmental impacts, acquiring permits or licenses, or other services connected
26 with the capital improvement, and costs associated with the performance of these services and ac-
27 tivities.

28 (3) "Debt service" includes debt service payments or payments into reserve accounts for debt
29 service and payment of amounts necessary to meet debt service coverage requirements.

30 (4) "Qualifying investment" means expenditures made by the taxpayer relating to a capital
31 project:

32 (a) The actual cost of which exceeds \$150 million within a five-year period measured from the
33 commencement of the term of the qualifying investment contract; and

34 (b) That result in the taxpayer employing at least 500 more full-time equivalent employees in this
35 state than the taxpayer employed in this state when the qualifying investment was commenced.

36 (5) "Qualifying investment contract" means a contract between the State of Oregon and a tax-
37 payer that meets the requirements of ORS 314.671.

38 (6) "[Single sales] **Receipts** factor method" means the method of business income apportionment
39 required under ORS 314.650 and 314.665 and the rules adopted thereunder, as in effect on the date
40 a qualifying investment contract is executed.

41 (7) "Term of the qualifying investment contract" means the duration of the parties' obligations
42 under a qualifying investment contract.

43 **SECTION 8.** ORS 314.669 is amended to read:

44 314.669. (1) The Legislative Assembly finds that:

45 (a) The State of Oregon has a compelling interest in promoting and stimulating economic de-

1 velopment within this state to better provide for the welfare of its residents, in encouraging busi-
2 nesses to make significant capital investments within this state and in creating certainty in the
3 apportionment of business income for purposes of income and corporate excise taxation that
4 achieves these ends;

5 (b) Use of the [*single sales*] **receipts** factor method to apportion business income promotes an
6 economic development climate that encourages businesses to locate and remain within this state,
7 encourages existing Oregon businesses to expand their operations in Oregon and creates incentives
8 for businesses to make significant capital investments within this state;

9 (c) Qualifying investments will create significant, long-term economic benefits and serve as the
10 catalyst for additional economic expansion within the State of Oregon;

11 (d) It is in the interest of the State of Oregon to authorize the Governor, in consultation with
12 the Director of the Oregon Business Development Department and the Director of the Department
13 of Revenue, to enter into qualifying investment contracts for purposes of stimulating economic de-
14 velopment through qualifying investments;

15 (e) In consideration for making qualifying investments, taxpayers should be entitled to rely on
16 the continued application of the [*single sales*] **receipts** factor method to apportion their business
17 income for tax purposes;

18 (f) Factors to be considered in determining the duration of the term of a qualifying investment
19 contract should include, without limitation, the number of new employees to be added to the Oregon
20 workforce of the taxpayer when the qualifying investment is complete, the duration and compen-
21 sation of the new jobs created, other economic development incentives received by the company and
22 the extent to which the qualifying investment will create employment opportunities in rural Oregon;
23 and

24 (g) The State of Oregon has a compelling interest in contractually guaranteeing to taxpayers
25 making qualifying investments that such taxpayers may rely on the [*single sales*] **receipts** factor
26 method as the applicable method to determine the portion of business income subject to income or
27 corporate excise tax in the State of Oregon.

28 (2) The purposes of ORS 314.668 to 314.673 are:

29 (a) To promote and stimulate economic development by creating an incentive for qualifying in-
30 vestments;

31 (b) To authorize the Governor, in consultation with the Director of the Oregon Business Devel-
32 opment Department and the Director of the Department of Revenue, to enter into qualifying in-
33 vestment contracts on behalf of this state; and

34 (c) To ratify any qualifying investment contracts entered into on or after December 14, 2012.

35 (3) The intent of the Legislative Assembly is for ORS 314.668 to 314.673 to establish a
36 contractually binding obligation under which taxpayers that execute qualifying investment contracts
37 with the State of Oregon may rely on the [*single sales*] **receipts** factor method of apportionment to
38 apportion their business income for each tax year of the taxpayer that ends during the term of the
39 qualifying investment contract.

40 **SECTION 9.** ORS 314.671 is amended to read:

41 314.671. (1) The Governor, in consultation with the Director of the Oregon Business Develop-
42 ment Department and the Director of the Department of Revenue, may enter into, on behalf of the
43 State of Oregon, a qualifying investment contract with any taxpayer according to the provisions of
44 ORS 314.668 to 314.673.

45 (2) Any contract executed pursuant to subsection (1) of this section on or after December 14,

1 2012, and before March 15, 2013, that meets the requirements of a qualifying investment contract is
2 ratified by ORS 314.668 to 314.673.

3 (3) A taxpayer may not satisfy the requirement that a qualifying investment result in an increase
4 in the number of employees of the taxpayer by gain of another entity's existing Oregon employees
5 through a merger or acquisition of any portion of that entity.

6 (4) A qualifying investment contract executed under ORS 314.668 to 314.673 may not be less than
7 five years' duration and may not exceed 30 years' duration.

8 (5) The obligations of the State of Oregon under a qualifying investment contract:

9 (a) Include the promise of this state that, if the taxpayer commences a qualifying investment, the
10 taxpayer's Oregon business income tax liability may not exceed the amount the taxpayer would pay
11 or owe under the [*single sales*] **receipts** factor method for each tax year that ends during the term
12 of the qualifying investment contract; and

13 (b) May not be abridged, impaired, limited or modified by any subsequent law.

14 (6) If a taxpayer that has executed a qualifying investment contract files a report or return with
15 the Department of Revenue for a tax year ending during the term of the qualifying investment con-
16 tract and reporting personal income taxes or corporate excise or income taxes imposed under ORS
17 chapter 316, 317 or 318, that are determined in whole or part by apportioning business income using
18 the [*single sales*] **receipts** factor method, the department may not assess a deficiency against the
19 taxpayer that is attributable to the use of a different method of apportionment.

20 (7) An action for a breach of a qualifying investment contract may be brought against the State
21 of Oregon.

22 (8) The sole and exclusive remedies for the State of Oregon in an action for breach of a quali-
23 fying investment contract brought by the state shall be:

24 (a) A judgment rescinding the qualifying investment contract; and

25 (b) A judgment awarding an amount equal to the difference, if any, between:

26 (A) The amount of taxes due from the taxpayer under the [*single sales*] **receipts** factor method
27 from the date of breach through termination of the qualifying investment contract; and

28 (B) The amount of taxes due from the taxpayer during the same period using the method of ap-
29 portioning business income:

30 (i) Under the tax laws that would have applied to the taxpayer but for the qualifying investment
31 contract; or

32 (ii) Identified in the judgment as fairly representing the extent of the taxpayer's business activ-
33 ity in this state.

34 **SECTION 10.** ORS 314.684, as amended by section 4, chapter 103, Oregon Laws 2014, is
35 amended to read:

36 314.684. (1) The [*sales*] **receipts** factor for an interstate broadcaster shall be determined as
37 provided in this section.

38 (2) The denominator of the [*sales*] **receipts** factor shall include the total gross receipts derived
39 by the interstate broadcaster from transactions and activities in the regular course of its trade or
40 business, except receipts excluded under rules of the Department of Revenue.

41 (3) The numerator of the [*sales*] **receipts** factor shall include all gross receipts attributable to
42 this state, with gross receipts from broadcasting to be included as specified in subsection (4) of this
43 section.

44 (4) Gross receipts from broadcasting of an interstate broadcaster that engages in income-
45 producing activity in this state shall be included in the numerator of the [*sales*] **receipts** factor in

1 the ratio that the interstate broadcaster’s audience or subscribers located in this state bears to its
 2 total audience and subscribers located both within and without this state.

3 **SECTION 11.** ORS 317.090 is amended to read:

4 317.090. (1) As used in this section:

5 (a) “Oregon [*sales*] **receipts**” means:

6 (A) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax
 7 purposes, the total [*sales*] **receipts** of the taxpayer in this state during the tax year, as determined
 8 for purposes of ORS 314.665;

9 (B) If the corporation does not apportion business income for Oregon tax purposes, the total
 10 [*sales*] **receipts** in this state that the taxpayer would have had, as determined for purposes of ORS
 11 314.665, if the taxpayer were required to apportion business income for Oregon tax purposes; or

12 (C) If the corporation apportions business income using a method different from the method
 13 prescribed by ORS 314.650 to 314.665, Oregon [*sales*] **receipts** as defined by the Department of Re-
 14 venue by rule.

15 (b) If the corporation is an agricultural cooperative that is a cooperative organization described
 16 in section 1381 of the Internal Revenue Code, “Oregon [*sales*] **receipts**” does not include [*sales*]
 17 **receipts** representing business done with or for members of the agricultural cooperative.

18 (2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall
 19 pay annually to the state, for the privilege of carrying on or doing business by it within this state,
 20 a minimum tax as follows:

21 (a) If Oregon [*sales*] **receipts** properly reported on a return are:

22 (A) Less than \$500,000, the minimum tax is \$150.

23 (B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

24 (C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

25 (D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

26 (E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

27 (F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

28 (G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

29 (H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

30 (I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

31 (J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

32 (K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

33 (L) \$100 million or more, the minimum tax is \$100,000.

34 (b) If a corporation is an S corporation, the minimum tax is \$150.

35 (3) The minimum tax is not apportionable (except in the case of a change of accounting periods),
 36 is payable in full for any part of the year during which a corporation is subject to tax, and may not
 37 be reduced, paid or otherwise satisfied through the use of any tax credit.

38 **SECTION 12.** ORS 317.090, as amended by section 44, chapter 701, Oregon Laws 2015, is
 39 amended to read:

40 317.090. (1) As used in this section:

41 (a) “Oregon [*sales*] **receipts**” means:

42 (A) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax
 43 purposes, the total [*sales*] **receipts** of the taxpayer in this state during the tax year, as determined
 44 for purposes of ORS 314.665;

45 (B) If the corporation does not apportion business income for Oregon tax purposes, the total

1 [sales] **receipts** in this state that the taxpayer would have had, as determined for purposes of ORS
2 314.665, if the taxpayer were required to apportion business income for Oregon tax purposes; or

3 (C) If the corporation apportions business income using a method different from the method
4 prescribed by ORS 314.650 to 314.665, Oregon [sales] **receipts** as defined by the Department of Re-
5 venue by rule.

6 (b) If the corporation is an agricultural cooperative that is a cooperative organization described
7 in section 1381 of the Internal Revenue Code, "Oregon [sales] **receipts**" does not include [sales]
8 **receipts** representing business done with or for members of the agricultural cooperative.

9 (2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall
10 pay annually to the state, for the privilege of carrying on or doing business by it within this state,
11 a minimum tax as follows:

12 (a) If Oregon [sales] **receipts** properly reported on a return are:

13 (A) Less than \$500,000, the minimum tax is \$150.

14 (B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

15 (C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

16 (D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

17 (E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

18 (F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

19 (G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

20 (H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

21 (I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

22 (J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

23 (K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

24 (L) \$100 million or more, the minimum tax is \$100,000.

25 (b) If a corporation is an S corporation, the minimum tax is \$150.

26 (3) The minimum tax is not apportionable (except in the case of a change of accounting periods),
27 and is payable in full for any part of the year during which a corporation is subject to tax.

28 **SECTION 13.** ORS 317.122 is amended to read:

29 317.122. (1) A credit against taxes imposed by this chapter shall be allowed insurers for the
30 gross premium tax paid on fire insurance premiums in accordance with ORS 731.820.

31 (2) A credit against the taxes otherwise due under this chapter shall be allowed to an insurer.
32 The amount of the credit shall be the lesser of:

33 (a) The amount of any assessments paid by the insurer during the tax year pursuant to ORS
34 656.612; or

35 (b) The total profit attributable to the workers' compensation line of business, net of reinsurance
36 and including all investment gain attributable to the workers' compensation line of business, deter-
37 mined in the manner prescribed under ORS 731.574 by the Director of the Department of Consumer
38 and Business Services, with the modifications under ORS 317.655 attributable to the workers' com-
39 pensation line of business, and then apportioned in accordance with ORS 317.660 and multiplied by
40 the corporate tax rate set forth in ORS 317.061. In making the apportionment under ORS 317.660 for
41 purposes of this paragraph, the insurance [sales] **receipts** factor shall be determined using only
42 items attributable to the workers' compensation line of business.

43 **SECTION 14.** ORS 317.154 is amended to read:

44 317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for quali-
45 fied research expenses that exceed 10 percent of Oregon [sales] **receipts**.

1 (2) For purposes of this section:

2 (a) "Oregon [*sales*] **receipts**" shall be computed using the laws and administrative rules for
3 calculating the numerator of the Oregon [*sales*] **receipts** factor under ORS 314.665.

4 (b) "Qualified research" has the meaning given the term under section 41(d) of the Internal Re-
5 venue Code and shall consist only of research conducted in Oregon.

6 (3) The credit under this section is equal to five percent of the amount by which the qualified
7 research expenses exceed 10 percent of Oregon [*sales*] **receipts**.

8 (4) The credit under this section shall not exceed \$10,000 times the number of percentage points
9 by which the qualifying research expenses exceed 10 percent of Oregon [*sales*] **receipts**.

10 (5) The maximum credit under this section may not exceed \$1 million.

11 (6) A deduction may not be taken for the portion of expenses or payments, otherwise allowable
12 as a deduction, that is equal to the amount of the credit claimed under this section.

13 (7) Any tax credit that is otherwise allowable under this section and that is not used by the
14 taxpayer in that year may be carried forward and offset against the taxpayer's tax liability for the
15 next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be
16 carried forward and used in the second succeeding tax year, and likewise any credit not used in that
17 second succeeding tax year may be carried forward and used in the third succeeding tax year, and
18 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
19 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
20 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
21 thereafter.

22 **SECTION 15.** ORS 317.267 is amended to read:

23 317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income
24 amounts received as dividends from corporations deducted for federal purposes pursuant to section
25 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code,
26 amounts paid as dividends by a public utility or telecommunications utility and deducted for federal
27 purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under
28 Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by
29 members of an affiliated group that are eliminated from a consolidated federal return pursuant to
30 ORS 317.715 (2).

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

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

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

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

45 (d) If a dividends received deduction is not allowed for federal tax purposes because of section

1 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for
2 received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

3 (3) There shall be excluded from the [sales] **receipts** factor of any apportionment formula em-
4 ployed to attribute income to this state any amount subtracted from federal taxable income under
5 subsection (2) of this section.

6 **SECTION 16.** ORS 317.660 is amended to read:

7 317.660. (1)(a) If the income of an insurer is derived from business done both within and without
8 this state, the determination of Oregon taxable income shall be arrived at by multiplying the
9 insurer's net income by the insurance [sales] **receipts** factor.

10 (b) The insurance [sales] **receipts** factor shall consist of a fraction, the numerator of which is
11 the amount of direct premiums (excluding reinsurance accepted and without deduction of reinsur-
12 ance ceded) received or earned by the insurer during the tax year on policies and contracts that
13 are allocated to this state and to other jurisdictions in which the insurer is not authorized to do
14 business, and the denominator of which is the total of such premiums received or earned by the
15 insurer during the tax year on policies and contracts that had been sold within and without this
16 state.

17 (2) For purposes of this section:

18 (a) "Net income" means net income properly recorded in the statement of income reported in
19 the annual statement filed by the insurer with the Director of the Department of Consumer and
20 Business Services.

21 (b) "Premiums" means sums properly included in those schedules of the annual statement filed
22 by the insurer with the Director of the Department of Consumer and Business Services that appro-
23 priately allocate premiums by jurisdiction. If the exclusion of reinsurance premiums results in an
24 insurance [sales] **receipts** factor that does not fairly represent the extent of the taxpayer's activity
25 in this state, the taxpayer may petition for and the Department of Revenue may permit, or the De-
26 partment of Revenue may require, the inclusion of reinsurance premiums in the insurance [sales]
27 **receipts** factor. If the annual statement of the insurer does not report received premiums then the
28 insurance [sales] **receipts** factor shall be determined based on earned premiums.

29 (3) If application of the apportionment formula described in subsection (1) of this section results
30 in an apportionment that does not fairly and equitably represent the taxpayer's insurance business
31 activity in this state, the taxpayer may petition the Department of Revenue for and the department
32 may permit, or the department may require, to achieve an apportionment that fairly and equitably
33 represents the taxpayer's insurance business activity:

34 (a)(A) The exclusion of the insurance [sales] **receipts** factor; and

35 (B) The inclusion of one or more additional factors that will fairly and equitably represent the
36 taxpayer's business activity in this state;

37 (b) The inclusion of the insurance [sales] **receipts** factor and one or more additional factors that
38 will fairly and equitably represent the taxpayer's business activity in this state; or

39 (c) The employment of any other method to achieve a fair and equitable apportionment of the
40 taxpayer's income.

41 **SECTION 17.** ORS 317.715 is amended to read:

42 317.715. (1) If a corporation required to make a return under this chapter is a member of an
43 affiliated group of corporations making a consolidated federal return under sections 1501 to 1505
44 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined begin-
45 ning with federal consolidated taxable income of the affiliated group as provided in this section.

1 (2) If the affiliated group, of which the corporation subject to taxation under this chapter is a
 2 member, consists of more than one unitary group, before the additions, subtractions, adjustments and
 3 modifications to federal taxable income provided for in this chapter are made, and before allocation
 4 and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable
 5 income shall be computed. Modified federal consolidated taxable income shall be determined by
 6 eliminating from the federal consolidated taxable income of the affiliated group the separate taxable
 7 income, as determined under Treasury Regulations adopted under section 1502 of the Internal Re-
 8 venue Code, and any deductions or additions or items of income, expense, gain or loss for which
 9 consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the
 10 Internal Revenue Code, attributable to the member or members of any unitary group of which the
 11 corporation is not a member.

12 (3)(a) After modified federal consolidated taxable income is determined under subsection (2) of
 13 this section, the additions, subtractions, adjustments and modifications prescribed by this chapter
 14 shall be made to the modified federal consolidated taxable income of the remaining members of the
 15 affiliated group, where applicable, as if all such members were subject to taxation under this chap-
 16 ter. After those modifications are made, Oregon taxable income or loss shall be determined as pro-
 17 vided in ORS 317.010 (10)(a) to (c), if necessary.

18 (b) In the computation of the Oregon apportionment percentage for a corporation that is a
 19 member of an affiliated group filing a consolidated federal return, there shall be taken into consid-
 20 eration only the property, payroll, [*sales*] **receipts** or other factors of those members of the affiliated
 21 group whose items of income, expense, gain or loss remain in modified federal consolidated taxable
 22 income after the eliminations required under subsection (2) of this section. Those members of an
 23 affiliated group making a consolidated federal return or a consolidated state return may not be
 24 treated as one taxpayer for purposes of determining whether any member of the group is taxable in
 25 this state or any other state with respect to questions of jurisdiction to tax or the composition of
 26 the apportionment factors used to attribute income to this state under ORS 314.280 or 314.605 to
 27 314.675.

28 **SECTION 18. Section 2 of this 2017 Act and the amendments to ORS 314.610, 314.635,**
 29 **314.650, 314.665, 314.668, 314.669, 314.671, 314.684, 317.090, 317.122, 317.154, 317.267, 317.660 and**
 30 **317.715 by sections 3 to 17 of this 2017 Act apply to tax years beginning on or after January**
 31 **1, 2018.**

32 **SECTION 19. This 2017 Act takes effect on the 91st day after the date on which the 2017**
 33 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**