

Enrolled
Senate Bill 153

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and Revenue)

CHAPTER

AN ACT

Relating to tax reporting requirements of insurers; creating new provisions; amending ORS 317.267, 317.710 and 317.715; and prescribing an effective date.

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

SECTION 1. ORS 317.267 is amended to read:

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

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

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

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

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

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

(e) In the case of any dividend received from an alien, domestic or foreign insurer, as defined in ORS 731.082, that would be included in the taxpayer's consolidated Oregon return

but for the application of ORS 317.710 (5) or (7), this subsection shall be applied by substituting “100 percent” for “70 percent.”

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

SECTION 2. ORS 317.710 is amended to read:

317.710. (1) A corporation shall make a return with respect to the tax imposed by this chapter as provided in this section.

(2) If the corporation is a member of an affiliated group of corporations making a consolidated federal return, it shall file a return and determine its Oregon taxable income as provided in ORS 317.715. The corporation's tax liability shall be joint and several with any other corporation that is included in a consolidated state return with the corporation under subsection (5) of this section.

(3) If the corporation makes a separate return for federal income tax purposes, it shall file a separate return under this chapter. The corporation shall determine its Oregon taxable income and tax liability separately from any other corporation.

(4) For purposes of subsection (3) of this section, if the corporation is not subject to taxation under the Internal Revenue Code a return for federal income tax purposes includes any form of return required to be made in lieu of an income tax return under the Internal Revenue Code or regulations thereunder.

(5)(a) **Except as otherwise provided in this section**, if two or more corporations subject to taxation under this chapter are members of the same affiliated group making a consolidated federal return and are members of the same unitary group, they shall file a consolidated state return.

(b) If any corporation that is a member of an affiliated group is permitted or required to determine its Oregon taxable income on a separate basis under ORS 314.667, or if any corporation is permitted or required by statute or rule to use different apportionment factors than a corporation with which it is affiliated, the corporation *[shall]* **may** not be included in a consolidated state return under paragraph (a) of this subsection.

(c) Whenever two or more corporations are required to file a consolidated state return under paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of deriving Oregon taxable income shall be treated as a reference to all corporations that are included in the consolidated state return.

(d) A corporation that would not be a member of an affiliated group filing a consolidated state return based solely on the application of section 1504(b)(6) of the Internal Revenue Code must be included in the consolidated state return filed by the affiliated group.

(6) If so directed by the department, by rule or instructions on the state tax return form, every corporation required to make a return under this chapter shall also file with the return a true copy of the corporation's federal income tax return for the same taxable year. For purposes of this subsection, the corporation's federal income tax return includes a consolidated federal return for an affiliated group of which the corporation is a member. The department may, by rule or instructions, permit a corporation to submit specified excerpts from its federal return in lieu of submitting a copy of the entire federal return. The federal return or any part thereof required to be filed with the state return is incorporated in and shall be a part of the state return.

(7)(a) Each foreign or alien insurer and each domestic insurer owned and controlled, directly or indirectly, by one or more foreign insurers:

(A) Shall determine its Oregon taxable income under ORS 317.650 to 317.665 *[and]*;

(B) **Shall** make a return of the tax imposed by this chapter on a separate basis; **and**

(C) **May not be included in a consolidated state return.**

(b) An interinsurance and reciprocal exchange and its attorney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange may file a consolidated return under the circumstances in the manner and subject to the rules adopted by the department.

(8) The Department of Revenue may prescribe by rule the method by which a consolidated state return shall be filed under this section.

SECTION 3. ORS 317.715 is amended to read:

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

(2) If the affiliated group, of which the corporation subject to taxation under this chapter is a member, consists of more than one unitary group **or includes any alien, domestic or foreign insurer, as defined in ORS 731.082, that is excluded from the consolidated state return under ORS 317.710 (5) or (7)**, before the additions, subtractions, adjustments and modifications to federal taxable income provided for in this chapter are made, and before allocation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed. Modified federal consolidated taxable income shall be determined by eliminating from the federal consolidated taxable income of the affiliated group the separate taxable income, as determined under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, attributable to the member or members of any unitary group of which the corporation is not a member **or to insurers excluded from the consolidated state return under ORS 317.710 (5) or (7)**.

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

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

SECTION 4. The amendments to ORS 317.267, 317.710 and 317.715 by sections 1 to 3 of this 2017 Act apply to any tax year for which:

(1) A return is subject to audit or adjustment by the Department of Revenue on or after the effective date of this 2017 Act;

(2) A return is subject to an appeal on or after the effective date of this 2017 Act; or

(3) A claim of refund may be made on or after the effective date of this 2017 Act.

SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by Senate May 1, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 1, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State