

# Senate Bill 153

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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 **as introduced**.

Conforms to federal law excise tax reporting requirements applicable to insurers by requiring taxpayer to file single consolidated state return and by measuring taxpayer income based on starting point of federal taxable income.

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 tax reporting requirements of insurers; creating new provisions; amending ORS 314.610,  
3 317.010, 317.122, 317.660, 317.710 and 317.715 and section 20, chapter 913, Oregon Laws 2009;  
4 repealing ORS 317.655; and prescribing an effective date.

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

6 **SECTION 1.** ORS 314.610 is amended to read:

7 314.610. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

**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 able year of the state credit union.

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

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

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

11 (L) A person that derives at least 50 percent of the person's annual average gross income, for  
12 financial accounting purposes for the current tax year and the two preceding tax years, from finance  
13 leases, excluding any gross income from incidental or occasional transactions. For purposes of this  
14 paragraph, "finance lease" means:

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

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

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

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

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

26 (7) "Sales" means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

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

30 **SECTION 2.** ORS 317.010, as amended by section 20, chapter 33, Oregon Laws 2016, is amended  
31 to read:

32 317.010. As used in this chapter, unless the context requires otherwise:

33 (1) "Centrally assessed corporation" means every corporation the property of which is assessed  
34 by the Department of Revenue under ORS 308.505 to 308.681.

35 (2) "Department" means the Department of Revenue.

36 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a  
37 group of affiliated corporations under section 1501 of the Internal Revenue Code.

38 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

39 (4) "Doing business" means any transaction or transactions in the course of its activities con-  
40 ducted within the state by a national banking association, or any other corporation; provided, how-  
41 ever, that a foreign corporation whose activities in this state are confined to purchases of personal  
42 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be  
43 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-  
44 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-  
45 termined as provided in section 1504 of the Internal Revenue Code.

1 (5) "Excise tax" means a tax measured by or according to net income imposed upon national  
2 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing  
3 and business corporations for the privilege of carrying on or doing business in this state.

4 (6) "Financial institution" has the meaning given that term in ORS 314.610 except that it does  
5 not include a credit union as defined in ORS 723.006, an interstate credit union as defined in ORS  
6 723.001 or a federal credit union.

7 (7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise,  
8 refers to the laws of the United States or to the Internal Revenue Code as they are amended and  
9 in effect:

10 (a) On December 31, 2015; or

11 (b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

12 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS  
13 317.476, except as otherwise provided with respect to insurers in [*subsection (11) of this section*  
14 *and*] ORS 317.650 [*to*] **and** 317.665.

15 (9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers  
16 in [*subsection (11) of this section and*] ORS 317.650 [*to*] **and** 317.665.

17 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a  
18 corporation for which no federal taxable income or loss is determined, as would be determined, un-  
19 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States  
20 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,  
21 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-  
22 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or  
23 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a  
24 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of  
25 income from transactions or activities carried on both within and without the state) applies, to  
26 derive taxable income or loss, the following shall occur:

27 (a) From the amount otherwise determined under this subsection, subtract nonbusiness income,  
28 or add nonbusiness loss, whichever is applicable.

29 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-  
30 portionment percentage defined under ORS 314.280, 314.650 or 314.667, whichever is applicable. The  
31 resulting product shall be Oregon apportioned income or loss.

32 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this  
33 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to  
34 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to  
35 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable  
36 transactions or activities both within and without Oregon.

37 [*(11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or*  
38 *alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-*  
39 *torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting as*  
40 *attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interin-*  
41 *surance exchange. However, "insurer" does not include title insurers or health care service contractors*  
42 *operating pursuant to ORS 750.005 to 750.095.]*

43 **SECTION 3.** ORS 317.122 is amended to read:

44 317.122. (1)(a) **As used in this section, "insurer" means any domestic, foreign or alien**  
45 **insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its**

1 **attorney-in-fact with respect to its attorney-in-fact net income as a corporate attorney-in-**  
 2 **fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the**  
 3 **reciprocal or interinsurance exchange.**

4 **(b) “Insurer” does not include title insurers or health care service contractors operating**  
 5 **pursuant to ORS 750.005 to 750.095.**

6 [(1)] (2) A credit against taxes imposed by this chapter shall be allowed insurers for the gross  
 7 premium tax paid on fire insurance premiums in accordance with ORS 731.820.

8 [(2)] (3) A credit against the taxes otherwise due under this chapter shall be allowed to an  
 9 insurer. The amount of the credit shall be the lesser of:

10 (a) The amount of any assessments paid by the insurer during the tax year pursuant to ORS  
 11 656.612; or

12 (b) The total profit attributable to the workers’ compensation line of business, net of reinsurance  
 13 and including all investment gain attributable to the workers’ compensation line of business, deter-  
 14 mined in the manner prescribed under ORS 731.574 by the Director of the Department of Consumer  
 15 and Business Services[, *with the modifications under ORS 317.655 attributable to the workers’ com-*  
 16 *penetration line of business,*] and then apportioned in accordance with ORS 317.660 and multiplied by  
 17 the corporate tax rate set forth in ORS 317.061. In making the apportionment under ORS 317.660 for  
 18 purposes of this paragraph, the insurance sales factor shall be determined using only items attrib-  
 19 utable to the workers’ compensation line of business.

20 **SECTION 4. ORS 317.660 is added to and made a part of ORS chapter 314.**

21 **SECTION 5.** ORS 317.660 is amended to read:

22 317.660. (1) **For purposes of this section, “premiums” means sums properly included in**  
 23 **those schedules of the annual statement filed by the insurer with the Director of the De-**  
 24 **partment of Consumer and Business Services that appropriately allocate premiums by juris-**  
 25 **isdiction.**

26 (2) **If, for a taxpayer that is an insurer, the exclusion of reinsurance premiums results**  
 27 **in an insurance sales factor that does not fairly represent the extent of the taxpayer’s ac-**  
 28 **tivity in this state, the taxpayer may petition for and the Department of Revenue may per-**  
 29 **mit, or the Department of Revenue may require, the inclusion of reinsurance premiums in**  
 30 **the insurance sales factor. If the annual statement of the insurer does not report received**  
 31 **premiums then the insurance sales factor shall be determined based on earned premiums.**

32 [(1)(a)] (3)(a) If the income of an insurer is derived from business done both within and without  
 33 this state, the determination of Oregon taxable income shall be arrived at by multiplying the  
 34 insurer’s net income by the insurance sales factor.

35 (b) The insurance sales factor shall consist of a fraction, the numerator of which is the amount  
 36 of direct premiums (excluding reinsurance accepted and without deduction of reinsurance ceded)  
 37 received or earned by the insurer during the tax year on policies and contracts that are allocated  
 38 to this state and to other jurisdictions in which the insurer is not authorized to do business, and the  
 39 denominator of which is the total of such premiums received or earned by the insurer during the tax  
 40 year on policies and contracts that had been sold within and without this state. **The insurance**  
 41 **sales factor may not be considered a different apportionment factor as provided in ORS**  
 42 **317.710 (5)(b) and may not require exclusion of an insurer from the consolidated state return**  
 43 **filed by a unitary affiliated group of corporations.**

44 [(2) For purposes of this section:]

45 [(a) “Net income” means net income properly recorded in the statement of income reported in the

1 *annual statement filed by the insurer with the Director of the Department of Consumer and Business*  
2 *Services.]*

3 *[(b) "Premiums" means sums properly included in those schedules of the annual statement filed by*  
4 *the insurer with the Director of the Department of Consumer and Business Services that appropriately*  
5 *allocate premiums by jurisdiction. If the exclusion of reinsurance premiums results in an insurance*  
6 *sales factor that does not fairly represent the extent of the taxpayer's activity in this state, the taxpayer*  
7 *may petition for and the Department of Revenue may permit, or the Department of Revenue may re-*  
8 *quire, the inclusion of reinsurance premiums in the insurance sales factor. If the annual statement of*  
9 *the insurer does not report received premiums then the insurance sales factor shall be determined based*  
10 *on earned premiums.]*

11 *[(3) If application of the apportionment formula described in subsection (1) of this section results*  
12 *in an apportionment that does not fairly and equitably represent the taxpayer's insurance business ac-*  
13 *tivity in this state, the taxpayer may petition the Department of Revenue for and the department may*  
14 *permit, or the department may require, to achieve an apportionment that fairly and equitably represents*  
15 *the taxpayer's insurance business activity:]*

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

17 *[(B) The inclusion of one or more additional factors that will fairly and equitably represent the*  
18 *taxpayer's business activity in this state;]*

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

21 *[(c) The employment of any other method to achieve a fair and equitable apportionment of the*  
22 *taxpayer's income.]*

23 **SECTION 6.** ORS 317.710 is amended to read:

24 317.710. (1) A corporation shall make a return with respect to the tax imposed by this chapter  
25 as provided in this section.

26 (2) If the corporation is a member of an affiliated group of corporations making a consolidated  
27 federal return, it shall file a return and determine its Oregon taxable income as provided in ORS  
28 317.715. The corporation's tax liability shall be joint and several with any other corporation that is  
29 included in a consolidated state return with the corporation under subsection (5) of this section.

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

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

37 (5)(a) If two or more corporations subject to taxation under this chapter are members of the  
38 same affiliated group making a consolidated federal return and are members of the same unitary  
39 group, they shall file a consolidated state return.

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

45 (c) Whenever two or more corporations are required to file a consolidated state return under

1 paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of de-  
 2 riving Oregon taxable income shall be treated as a reference to all corporations that are included  
 3 in the consolidated state return.

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

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

15 *[(7) Each foreign or alien insurer and each domestic insurer owned and controlled, directly or in-  
 16 directly, by one or more foreign insurers shall determine its Oregon taxable income under ORS 317.650  
 17 to 317.665 and make a return of the tax imposed by this chapter on a separate basis. An interinsurance  
 18 and reciprocal exchange and its attorney in fact with respect to its attorney in fact net income as a  
 19 corporate attorney in fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and  
 20 731.470 for the reciprocal or interinsurance exchange may file a consolidated return under the circum-  
 21 stances in the manner and subject to the rules adopted by the department.]*

22 ~~[(8)]~~ (7) The Department of Revenue may prescribe by rule the method by which:

23 (a) A consolidated state return shall be filed under this section.

24 (b) **The corporation excise tax liability of an insurer joining in a consolidated state return**  
 25 **may be separately identified for purposes of computing the retaliatory tax imposed under**  
 26 **ORS 731.854 and 731.859.**

27 **SECTION 7.** ORS 317.715 is amended to read:

28 317.715. (1) If a corporation required to make a return under this chapter is a member of an  
 29 affiliated group of corporations making a consolidated federal return under sections 1501 to 1505  
 30 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined begin-  
 31 ning with federal consolidated taxable income of the affiliated group as provided in this section.

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

43 (3)(a) After modified federal consolidated taxable income is determined under subsection (2) of  
 44 this section, the additions, subtractions, adjustments and modifications prescribed by this chapter  
 45 shall be made to the modified federal consolidated taxable income of the remaining members of the

1 affiliated group, where applicable, as if all such members were subject to taxation under this chap-  
 2 ter. After those modifications are made, Oregon taxable income or loss shall be determined as pro-  
 3 vided in ORS 317.010 (10)[(a) to (c)], if necessary.

4 (b) In the computation of the Oregon apportionment percentage for a corporation that is a  
 5 member of an affiliated group filing a consolidated federal return, there shall be taken into consid-  
 6 eration only the property, payroll, sales or other factors of those members of the affiliated group  
 7 whose items of income, expense, gain or loss remain in modified federal consolidated taxable income  
 8 after the eliminations required under subsection (2) of this section. Those members of an affiliated  
 9 group making a consolidated federal return or a consolidated state return may not be treated as one  
 10 taxpayer for purposes of determining whether any member of the group is taxable in this state or  
 11 any other state with respect to questions of jurisdiction to tax or the composition of the apporportion-  
 12 ment factors used to attribute income to this state under ORS 314.280, [or] 314.605 to 314.675 **or**  
 13 **317.660.**

14 **SECTION 8.** Section 20, chapter 913, Oregon Laws 2009, as amended by section 4, chapter 730,  
 15 Oregon Laws 2011, and section 46, chapter 750, Oregon Laws 2013, is amended to read:

16 **Sec. 20.** (1) A credit may not be claimed under ORS 317.122 [(1)] (2) for tax years beginning on  
 17 or after January 1, 2018.

18 (2) A credit may not be claimed under ORS 317.122 [(2)] (3) for tax years beginning on or after  
 19 January 1, 2014.

20 **SECTION 9. ORS 317.655 is repealed.**

21 **SECTION 10.** The amendments to ORS 314.610, 317.010, 317.122, 317.660, 317.710 and 317.715  
 22 by sections 1 to 3 and 5 to 7 of this 2017 Act and the repeal of ORS 317.655 by section 9 of  
 23 this 2017 Act apply to tax years beginning on or after January 1, 2018.

24 **SECTION 11.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
 25 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.