

Requested by Senator HASS

**PROPOSED AMENDMENTS TO  
SENATE BILL 153**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of  
2 the line and delete lines 3 and 4 and insert “ORS 317.267, 317.710 and 317.715;  
3 and prescribing an effective date.”.

4 Delete lines 6 through 28 and delete pages 2 through 7 and insert:

5 **“SECTION 1.** ORS 317.267 is amended to read:

6 “317.267. (1) To derive Oregon taxable income, there shall be added to  
7 federal taxable income amounts received as dividends from corporations de-  
8 ducted for federal purposes pursuant to section 243 or 245 of the Internal  
9 Revenue Code, except section 245(c) of the Internal Revenue Code, amounts  
10 paid as dividends by a public utility or telecommunications utility and de-  
11 ducted for federal purposes pursuant to section 247 of the Internal Revenue  
12 Code or dividends eliminated under Treasury Regulations adopted under  
13 section 1502 of the Internal Revenue Code that are paid by members of an  
14 affiliated group that are eliminated from a consolidated federal return pur-  
15 suant to ORS 317.715 (2).

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

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

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

10       “(c) A dividend that is not treated as a dividend under section 243(d) or  
11       965(c)(3) of the Internal Revenue Code may not be treated as a dividend for  
12       purposes of this subsection.

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

17       **“(e) In the case of any dividend received from an alien, domestic**  
18       **or foreign insurer, as defined in ORS 731.082, that would be included**  
19       **in the taxpayer’s consolidated Oregon return but for the application**  
20       **of ORS 317.710 (5) or (7), this subsection shall be applied by substitut-**  
21       **ing ‘100 percent’ for ‘70 percent.’**

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

25       **“SECTION 2.** ORS 317.710 is amended to read:

26       “317.710. (1) A corporation shall make a return with respect to the tax  
27       imposed by this chapter as provided in this section.

28       “(2) If the corporation is a member of an affiliated group of corporations  
29       making a consolidated federal return, it shall file a return and determine its  
30       Oregon taxable income as provided in ORS 317.715. The corporation’s tax li-

1 ability shall be joint and several with any other corporation that is included  
2 in a consolidated state return with the corporation under subsection (5) of  
3 this section.

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

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

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

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

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

28 “(d) A corporation that would not be a member of an affiliated group fil-  
29 ing a consolidated state return based solely on the application of section  
30 1504(b)(6) of the Internal Revenue Code must be included in the consolidated

1 state return filed by the affiliated group.

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

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

15 “(A) Shall determine its Oregon taxable income under ORS 317.650 to  
16 317.665 [*and*];

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

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

20 “(b) An interinsurance and reciprocal exchange and its attorney in fact  
21 with respect to its attorney in fact net income as a corporate attorney in fact  
22 acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and  
23 731.470 for the reciprocal or interinsurance exchange may file a consolidated  
24 return under the circumstances in the manner and subject to the rules  
25 adopted by the department.

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

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

29 “317.715. (1) If a corporation required to make a return under this chapter  
30 is a member of an affiliated group of corporations making a consolidated

1 federal return under sections 1501 to 1505 of the Internal Revenue Code, the  
2 corporation's Oregon taxable income shall be determined beginning with  
3 federal consolidated taxable income of the affiliated group as provided in this  
4 section.

5 “(2) If the affiliated group, of which the corporation subject to taxation  
6 under this chapter is a member, consists of more than one unitary group **or**  
7 **includes any member excluded from the consolidated state return un-**  
8 **der ORS 317.710 (5) or (7)**, before the additions, subtractions, adjustments  
9 and modifications to federal taxable income provided for in this chapter are  
10 made, and before allocation and apportionment as provided in ORS 317.010  
11 (10), if any, modified federal consolidated taxable income shall be computed.  
12 Modified federal consolidated taxable income shall be determined by elimi-  
13 nating from the federal consolidated taxable income of the affiliated group  
14 the separate taxable income, as determined under Treasury Regulations  
15 adopted under section 1502 of the Internal Revenue Code, and any deductions  
16 or additions or items of income, expense, gain or loss for which consolidated  
17 treatment is prescribed under Treasury Regulations adopted under section  
18 1502 of the Internal Revenue Code, attributable to the member or members  
19 of any unitary group of which the corporation is not a member **or to**  
20 **members excluded from the consolidated state return under ORS**  
21 **317.710 (5) or (7).**

22 “(3)(a) After modified federal consolidated taxable income is determined  
23 under subsection (2) of this section, the additions, subtractions, adjustments  
24 and modifications prescribed by this chapter shall be made to the modified  
25 federal consolidated taxable income of the remaining members of the affil-  
26 iated group, where applicable, as if all such members were subject to taxa-  
27 tion under this chapter. After those modifications are made, Oregon taxable  
28 income or loss shall be determined as provided in ORS 317.010 (10)(a) to (c),  
29 if necessary.

30 “(b) In the computation of the Oregon apportionment percentage for a

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

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

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

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

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

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

23

---