

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2273
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

1 On page 1 of the printed bill, line 3, delete “314.667” and insert “314.610
2 and 314.665”.

3 Delete lines 5 through 29 and delete page 2 and insert:

4 **“SECTION 1.** ORS 314.610 is amended to read:

5 “314.610. As used in ORS 314.605 to 314.675, unless the context otherwise
6 requires:

7 “(1) ‘Business income’ means income arising from transactions and activ-
8 ity in the regular course of the taxpayer’s trade or business and includes
9 income from tangible and intangible property if the acquisition, the man-
10 agement, 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
13 or business of the taxpayer is directed or managed.

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

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

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

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

3 “(c) A national bank organized and existing as a national bank associ-
4 ation under the National Bank Act, 12 U.S.C. 21 et seq., as amended.

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

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

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

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

12 “(h) A state credit union with loan assets that exceed \$50,000,000 as of the
13 first day of the taxable year of the state credit union.

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

16 “(j) A corporation, more than 50 percent of the voting stock of which is
17 owned, directly or indirectly, by a person, corporation or other business en-
18 tity described in paragraphs (a) to (i) of this subsection, provided that the
19 corporation is not an insurer taxable under ORS 317.655.

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

26 “(L) A person that derives at least 50 percent of the person’s annual av-
27 erage gross income, for financial accounting purposes for the current tax
28 year and the two preceding tax years, from finance leases, excluding any
29 gross income from incidental or occasional transactions. For purposes of this
30 paragraph, ‘finance lease’ means:

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

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

6 “(C) Any other lease that is accounted for as a financing by a lessor un-
7 der generally accepted accounting principles.

8 “(5) ‘Nonbusiness income’ means all income other than business income.

9 “(6) ‘Public utility’ means any business entity whose principal business
10 is ownership and operation for public use of any plant, equipment, property,
11 franchise, or license for the transmission of communications, transportation
12 of goods or persons, or the production, storage, transmission, sale, delivery,
13 or furnishing of electricity, water, steam, oil, oil products or gas.

14 “(7) ‘Sales’ means all gross receipts of the taxpayer **that are** not allocated
15 under ORS 314.615 to 314.645 **and that are received from transactions and**
16 **activity occurring in the regular course of the taxpayer’s trade or**
17 **business, except:**

18 “(a)(A) **Receipts from hedging transactions and from the maturity,**
19 **redemption, sale, exchange, loan or other disposition of cash or secu-**
20 **rities;**

21 “(B) **Property or money received or acquired by an agent, interme-**
22 **diary, fiduciary or other person acting in a similar capacity on behalf**
23 **of another in excess of the recipient’s commission, fee or other**
24 **remuneration; or**

25 “(C) **Amounts received from others and held in trust by the tax-**
26 **payer; or**

27 “(b) **Other exceptions designated by rule by the Department of**
28 **Revenue.**

29 “(8) ‘State’ means any state of the United States, the District of Columbia,
30 the Commonwealth of Puerto Rico, any territory or possession of the United

1 States, and any foreign country or political subdivision thereof.

2 **“SECTION 2.** ORS 314.665 is amended to read:

3 “314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the
4 numerator of which is the total sales of the taxpayer in this state during the
5 tax period, and the denominator of which is the total sales of the taxpayer
6 everywhere during the tax period.

7 “(2) Sales of tangible personal property are in this state if:

8 “(a) The property is delivered or shipped to a purchaser, other than the
9 United States Government, within this state regardless of the f.o.b. point or
10 other conditions of the sale; or

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

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

17 “(i) The taxpayer’s only activity in Oregon is the storage of the goods in
18 the public warehouse prior to shipment; or

19 “(ii) The taxpayer’s only activities in Oregon are the storage of the goods
20 in the public warehouse prior to shipment and the presence of employees
21 within this state solely for purposes of soliciting sales of the taxpayer’s
22 products; and

23 “(B) ‘Taxpayer’ means a taxpayer as defined in section 7701 of the Inter-
24 nal Revenue Code, an affiliate of the person storing goods in a public ware-
25 house or a person that is related under section 267 of the Internal Revenue
26 Code to the person storing goods in a public warehouse.

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

29 “(a) The sales are included in the numerator of a formula used to appor-
30 tion business income to another state of the United States, a foreign country

1 or the District of Columbia; and

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

4 “(4) Sales, other than sales of tangible personal property, are in this state
5 if (a) the income-producing activity is performed in this state; or (b) the
6 income-producing activity is performed both in and outside this state and a
7 greater proportion of the income-producing activity is performed in this state
8 than in any other state, based on costs of performance.

9 “(5) Where the sales apportionment factor is determined by administrative
10 rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department
11 of Revenue shall adopt rules that are consistent with the determination of
12 the sales factor under this section.

13 “[~~(6)~~ For purposes of this section, ‘sales’:]

14 “[~~(a)~~ Excludes gross receipts arising from the sale, exchange, redemption
15 or holding of intangible assets, including but not limited to securities, unless
16 those receipts are derived from the taxpayer’s primary business activity.]

17 “[~~(b)~~ Includes net gain from the sale, exchange or redemption of intangible
18 assets not derived from the primary business activity of the taxpayer but in-
19 cluded in the taxpayer’s business income.]

20 “[~~(c)~~ Excludes gross receipts arising from an incidental or occasional sale
21 of a fixed asset or assets used in the regular course of the taxpayer’s trade or
22 business if a substantial amount of the gross receipts of the taxpayer arise from
23 an incidental or occasional sale or sales of fixed assets used in the regular
24 course of the taxpayer’s trade or business. Insubstantial amounts of gross re-
25 cepts arising from incidental or occasional transactions or activities may be
26 excluded from the sales factor unless the exclusion would materially affect the
27 amount of income apportioned to this state.]

28 “[~~(7)~~ **(6)** The department may determine that a warehouse that meets the
29 definition of ‘public warehouse’ under this section may not be treated as a
30 public warehouse if the warehouse is being used primarily for tax avoidance

1 purposes or if transactions related to the use of the warehouse are primarily
2 for tax avoidance purposes.

3 “[8] (7) As used in this section, ‘public warehouse’:

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

6 “(b) Does not include a warehouse that is owned by a person that is re-
7 lated to the person that owns goods that are stored in the warehouse, as
8 determined under section 267 of the Internal Revenue Code, or an affiliate
9 of the person that owns goods that are stored in the warehouse.

10 **“SECTION 3. If House Bill 2275 becomes law, section 2 of this 2017**
11 **Act (amending ORS 314.665) is repealed and ORS 314.665, as amended**
12 **by section 5, chapter 43, Oregon Laws 2017 (Enrolled House Bill 2275),**
13 **is amended to read:**

14 “314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the
15 numerator of which is the total sales of the taxpayer in this state during the
16 tax period, and the denominator of which is the total sales of the taxpayer
17 everywhere during the tax period.

18 “(2) Sales of tangible personal property are in this state if:

19 “(a) The property is delivered or shipped to a purchaser, other than the
20 United States Government, within this state regardless of the f.o.b. point or
21 other conditions of the sale; or

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

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

28 “(i) The taxpayer’s only activity in Oregon is the storage of the goods in
29 the public warehouse prior to shipment; or

30 “(ii) The taxpayer’s only activities in Oregon are the storage of the goods

1 in the public warehouse prior to shipment and the presence of employees
2 within this state solely for purposes of soliciting sales of the taxpayer's
3 products; and

4 “(B) ‘Taxpayer’ means a taxpayer as defined in section 7701 of the Inter-
5 nal Revenue Code, an affiliate of the person storing goods in a public ware-
6 house or a person that is related under section 267 of the Internal Revenue
7 Code to the person storing goods in a public warehouse.

8 “(3) Subsection (2)(b) of this section does not apply to sales of tangible
9 personal property if:

10 “(a) The sales are included in the numerator of a formula used to appor-
11 tion income to another state of the United States, a foreign country or the
12 District of Columbia; and

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

15 “(4) Sales, other than sales of tangible personal property, are in this state
16 if (a) the income-producing activity is performed in this state; or (b) the
17 income-producing activity is performed both in and outside this state and a
18 greater proportion of the income-producing activity is performed in this state
19 than in any other state, based on costs of performance.

20 “(5) Where the sales apportionment factor is determined by administrative
21 rule pursuant to ORS 314.682, 314.684 or 317.660 or other law, the Department
22 of Revenue shall adopt rules that are consistent with the determination of
23 the sales factor under this section.

24 “[*(6) For purposes of this section, ‘sales’:*]

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

28 “[*(b) Includes net gain from the sale, exchange or redemption of intangible*
29 *assets not derived from the primary business activity of the taxpayer but in-*
30 *cluded in the taxpayer’s apportionable income.]*

1 “[c] *Excludes gross receipts arising from an incidental or occasional sale*
2 *of a fixed asset or assets used in the regular course of the taxpayer’s trade or*
3 *business if a substantial amount of the gross receipts of the taxpayer arise from*
4 *an incidental or occasional sale or sales of fixed assets used in the regular*
5 *course of the taxpayer’s trade or business. Insubstantial amounts of gross re-*
6 *ceipts arising from incidental or occasional transactions or activities may be*
7 *excluded from the sales factor unless the exclusion would materially affect the*
8 *amount of income apportioned to this state.]*

9 “[7] (6) The department may determine that a warehouse that meets the
10 definition of ‘public warehouse’ under this section may not be treated as a
11 public warehouse if the warehouse is being used primarily for tax avoidance
12 purposes or if transactions related to the use of the warehouse are primarily
13 for tax avoidance purposes.

14 “[8] (7) As used in this section, ‘public warehouse’:

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

17 “(b) Does not include a warehouse that is owned by a person that is re-
18 lated to the person that owns goods that are stored in the warehouse, as
19 determined under section 267 of the Internal Revenue Code, or an affiliate
20 of the person that owns goods that are stored in the warehouse.

21 **“SECTION 4. ORS 314.610 (7):**

22 **“(1) Does not apply to taxpayers that are required to allocate and**
23 **apportion income under ORS 314.280; and**

24 **“(2) Does not affect the power of the Department of Revenue to**
25 **adopt rules under ORS 314.280.**

26 **“SECTION 5. The amendments to ORS 314.610 and 314.665 by**
27 **sections 1 and 2 of this 2017 Act apply to tax years beginning on or**
28 **after January 1, 2018.**

29 **“SECTION 6. If House Bill 2275 becomes law, section 5 of this 2017 Act**
30 **is amended to read:**

1 **“Sec. 5.** The amendments to ORS 314.610 and 314.665 by sections 1 and
2 [2] **3** of this 2017 Act apply to tax years beginning on or after January 1,
3 2018.

4 **“SECTION 7. This 2017 Act takes effect on the 91st day after the**
5 **date on which the 2017 regular session of the Seventy-ninth Legislative**
6 **Assembly adjourns sine die.”**

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