

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO
SENATE BILL 28**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of
2 the line and insert “ORS 314.610, 314.635, 314.650, 314.665, 314.668, 314.669,
3 314.671, 314.684, 317.090, 317.122, 317.154, 317.267, 317.660 and 317.715; and”.

4 Delete lines 5 through 28 and delete page 2 and insert:

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

7 **“SECTION 2. (1) A taxpayer’s market for receipts is in this state:**

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

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

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

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

20 **“(3) A taxpayer’s market for receipts is in this state in the case of**
21 **intangible property that is sold, if and to the extent the property is**

1 used in this state. Under this subsection:

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

6 “(b) Receipts from intangible property sales that are contingent on
7 the productivity, use or disposition of the intangible property shall be
8 treated as receipts from the rental, lease or licensing of such intangi-
9 ble property under subsection (2) of this section.

10 “(4) Receipts from a sale of intangible property other than sales
11 described in subsection (3) of this section shall be excluded from the
12 receipts factor.

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

16 “(6) If the taxpayer is not taxable in a state to which a receipt is
17 assigned under subsections (1) to (5) of this section, or if the state of
18 assignment cannot be determined under subsections (1) to (4) of this
19 section or reasonably approximated under subsection (5) of this sec-
20 tion, the receipt shall be excluded from the receipts factor.

21 **“SECTION 3.** ORS 314.610 is amended to read:

22 “314.610. As used in ORS 314.605 to 314.675, unless the context otherwise
23 requires:

24 “(1) ‘Business income’ means income arising from transactions and activ-
25 ity in the regular course of the taxpayer’s trade or business and includes
26 income from tangible and intangible property if the acquisition, the man-
27 agement, use or rental, and the disposition of the property constitute integral
28 parts of the taxpayer’s regular trade or business operations.

29 “(2) ‘Commercial domicile’ means the principal place from which the trade
30 or business of the taxpayer is directed or managed.

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

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

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

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

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

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

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

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

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

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

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

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

27 “(k) An entity that is not otherwise described in this subsection, that is
28 not an insurer taxable under ORS 317.655 and that derives more than 50
29 percent of its gross income from activities that a person, corporation or en-
30 tity described in paragraph (c), (d), (e), (f), (g), (h), (i) or (L) of this sub-

1 section is authorized to conduct, not taking into account any income derived
2 from nonrecurring extraordinary sources.

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

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

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

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

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

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

21 “(7) [‘Sales’] **‘Receipts’** means all gross receipts of the taxpayer **that are**
22 **not allocated under ORS 314.615 to 314.645 and that are received from**
23 **transactions and activity occurring in the regular course of the**
24 **taxpayer’s trade or business, except receipts from hedging transactions**
25 **and from the maturity, redemption, sale, exchange, loan or other dis-**
26 **position of cash or securities.**

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

30 **“SECTION 4.** ORS 314.665 is amended to read:

1 “314.665. (1) As used in ORS 314.650 **and section 2 of this 2017 Act**, the
2 [sales] **receipts** factor is a fraction, the numerator of which is the total **re-**
3 **ceipts from** sales of the taxpayer in this state during the tax period, and the
4 denominator of which is the total **receipts from** sales of the taxpayer ev-
5 erywhere during the tax period.

6 “(2) **Receipts from** sales of tangible personal property are in this state
7 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] **Receipts**, other than **receipts from** sales of tangible personal
5 property, are in this state if [(a) *the income-producing activity is performed*
6 *in this state; or (b) the income-producing activity is performed both in and*
7 *outside this state and a greater proportion of the income-producing activity is*
8 *performed in this state than in any other state, based on costs of*
9 *performance.] **the taxpayer’s market for receipts is in this state, as de-**
10 **termined under section 2 of this 2017 Act.***

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

15 “[6] *For purposes of this section, ‘sales’:*]

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

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

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

30 “[7] (6) The department may determine that a warehouse that meets the

1 definition of ‘public warehouse’ under this section may not be treated as a
2 public warehouse if the warehouse is being used primarily for tax avoidance
3 purposes or if transactions related to the use of the warehouse are primarily
4 for tax avoidance purposes.

5 “[8] (7) As used in this section, ‘public warehouse’:

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

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

12 **“SECTION 5.** ORS 314.635 is amended to read:

13 “314.635. (1) Capital gains and losses from sales of real property located
14 in this state are allocable to this state.

15 “(2) Capital gains and losses from sales of tangible personal property are
16 allocable to this state if (a) the property had a situs in this state at the time
17 of the sale, or (b) the taxpayer’s commercial domicile is in this state and the
18 taxpayer is not taxable in the state in which the property had a situs.

19 “(3) Except in the case of the sale of a partnership interest, capital gains
20 and losses from sales of intangible personal property are allocable to this
21 state if the taxpayer’s commercial domicile is in this state.

22 “(4) Gain or loss from the sale of a partnership interest is allocable to
23 this state in the ratio of the original cost of partnership tangible property
24 in the state to the original cost of partnership tangible property everywhere,
25 determined at the time of the sale. In the event that more than 50 percent
26 of the value of a partnership’s assets consists of intangibles, gain or loss
27 from the sale of the partnership interest shall be allocated to this state in
28 accordance with the [*sales*] **receipts** factor of the partnership for its first full
29 tax year immediately preceding its tax year during which the partnership
30 interest was sold.

1 **“SECTION 6.** ORS 314.650 is amended to read:

2 “314.650. All business income shall be apportioned to this state by multi-
3 plying the income by the [*sales*] **receipts** factor.

4 **“SECTION 7.** ORS 314.668 is amended to read:

5 “314.668. As used in ORS 314.668 to 314.673:

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

13 “(2) ‘Capital project’ means a project within this state for the con-
14 struction, modification, replacement, repair, remodeling or renovation of a
15 structure or structures, addition to a structure or structures, or other capital
16 improvement, that qualifies as a qualifying investment, including but not
17 limited to:

18 “(a) Acquisition of a legal interest or right in land or property in con-
19 junction with the capital improvement, including but not limited to the
20 purchase, lease or occupancy of real property, including the buildings,
21 structures, infrastructure and leasehold improvements on the land or prop-
22 erty;

23 “(b) Acquisition of existing structures, or legal interests or rights in
24 structures, in conjunction with the capital improvement;

25 “(c) Acquisition and installation of machinery or equipment, furnishings,
26 fixtures or other personal property or materials, in conjunction with the
27 capital improvement; or

28 “(d) Services and activities performed in relation to the capital improve-
29 ment, including planning, design, authorizing, issuing, carrying or repaying
30 interim or permanent financing, research, study of land use and environ-

1 mental impacts, acquiring permits or licenses, or other services connected
2 with the capital improvement, and costs associated with the performance of
3 these services and activities.

4 “(3) ‘Debt service’ includes debt service payments or payments into re-
5 serve accounts for debt service and payment of amounts necessary to meet
6 debt service coverage requirements.

7 “(4) ‘Qualifying investment’ means expenditures made by the taxpayer
8 relating to a capital project:

9 “(a) The actual cost of which exceeds \$150 million within a five-year pe-
10 riod measured from the commencement of the term of the qualifying invest-
11 ment contract; and

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

15 “(5) ‘Qualifying investment contract’ means a contract between the State
16 of Oregon and a taxpayer that meets the requirements of ORS 314.671.

17 “(6) ‘[*Single sales*] **Receipts** factor method’ means the method of business
18 income apportionment required under ORS 314.650 and 314.665 and the rules
19 adopted thereunder, as in effect on the date a qualifying investment contract
20 is executed.

21 “(7) ‘Term of the qualifying investment contract’ means the duration of
22 the parties’ obligations under a qualifying investment contract.

23 **“SECTION 8.** ORS 314.669 is amended to read:

24 “314.669. (1) The Legislative Assembly finds that:

25 “(a) The State of Oregon has a compelling interest in promoting and
26 stimulating economic development within this state to better provide for the
27 welfare of its residents, in encouraging businesses to make significant capital
28 investments within this state and in creating certainty in the apportionment
29 of business income for purposes of income and corporate excise taxation that
30 achieves these ends;

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

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

9 “(d) It is in the interest of the State of Oregon to authorize the Governor,
10 in consultation with the Director of the Oregon Business Development De-
11 partment and the Director of the Department of Revenue, to enter into
12 qualifying investment contracts for purposes of stimulating economic devel-
13 opment through qualifying investments;

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

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

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

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

30 “(a) To promote and stimulate economic development by creating an in-

1 centive for qualifying investments;

2 “(b) To authorize the Governor, in consultation with the Director of the
3 Oregon Business Development Department and the Director of the Depart-
4 ment of Revenue, to enter into qualifying investment contracts on behalf of
5 this state; and

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

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

14 “**SECTION 9.** ORS 314.671 is amended to read:

15 “314.671. (1) The Governor, in consultation with the Director of the
16 Oregon Business Development Department and the Director of the Depart-
17 ment of Revenue, may enter into, on behalf of the State of Oregon, a quali-
18 fying investment contract with any taxpayer according to the provisions of
19 ORS 314.668 to 314.673.

20 “(2) Any contract executed pursuant to subsection (1) of this section on
21 or after December 14, 2012, and before March 15, 2013, that meets the re-
22 quirements of a qualifying investment contract is ratified by ORS 314.668 to
23 314.673.

24 “(3) A taxpayer may not satisfy the requirement that a qualifying invest-
25 ment result in an increase in the number of employees of the taxpayer by
26 gain of another entity’s existing Oregon employees through a merger or ac-
27 quisition of any portion of that entity.

28 “(4) A qualifying investment contract executed under ORS 314.668 to
29 314.673 may not be less than five years’ duration and may not exceed 30
30 years’ duration.

1 “(5) The obligations of the State of Oregon under a qualifying investment
2 contract:

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

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

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

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

20 “(8) The sole and exclusive remedies for the State of Oregon in an action
21 for breach of a qualifying investment contract brought by the state shall be:

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

23 “(b) A judgment awarding an amount equal to the difference, if any, be-
24 tween:

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

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

30 “(i) Under the tax laws that would have applied to the taxpayer but for

1 the qualifying investment contract; or

2 “(ii) Identified in the judgment as fairly representing the extent of the
3 taxpayer’s business activity in this state.

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

6 “314.684. (1) The [*sales*] **receipts** factor for an interstate broadcaster shall
7 be determined as provided in this section.

8 “(2) The denominator of the [*sales*] **receipts** factor shall include the total
9 gross receipts derived by the interstate broadcaster from transactions and
10 activities in the regular course of its trade or business, except receipts ex-
11 cluded under rules of the Department of Revenue.

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

15 “(4) Gross receipts from broadcasting of an interstate broadcaster that
16 engages in income-producing activity in this state shall be included in the
17 numerator of the [*sales*] **receipts** factor in the ratio that the interstate
18 broadcaster’s audience or subscribers located in this state bears to its total
19 audience and subscribers located both within and without this state.

20 “**SECTION 11.** ORS 317.090 is amended to read:

21 “317.090. (1) As used in this section:

22 “(a) ‘Oregon [*sales*] **receipts**’ means:

23 “(A) If the corporation apportions business income under ORS 314.650 to
24 314.665 for Oregon tax purposes, the total [*sales*] **receipts** of the taxpayer in
25 this state during the tax year, as determined for purposes of ORS 314.665;

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

30 “(C) If the corporation apportions business income using a method dif-

1 ferent from the method prescribed by ORS 314.650 to 314.665, Oregon [*sales*]
2 **receipts** as defined by the Department of Revenue by rule.

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

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

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

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

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

13 “(C) \$1 million or more, but less than \$2 million, the minimum tax is
14 \$1,000.

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

17 “(E) \$3 million or more, but less than \$5 million, the minimum tax is
18 \$2,000.

19 “(F) \$5 million or more, but less than \$7 million, the minimum tax is
20 \$4,000.

21 “(G) \$7 million or more, but less than \$10 million, the minimum tax is
22 \$7,500.

23 “(H) \$10 million or more, but less than \$25 million, the minimum tax is
24 \$15,000.

25 “(I) \$25 million or more, but less than \$50 million, the minimum tax is
26 \$30,000.

27 “(J) \$50 million or more, but less than \$75 million, the minimum tax is
28 \$50,000.

29 “(K) \$75 million or more, but less than \$100 million, the minimum tax is
30 \$75,000.

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

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

3 “(3) The minimum tax is not apportionable (except in the case of a change
4 of accounting periods), is payable in full for any part of the year during
5 which a corporation is subject to tax, and may not be reduced, paid or oth-
6 erwise satisfied through the use of any tax credit.

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

9 “317.090. (1) As used in this section:

10 “(a) ‘Oregon [*sales*] **receipts**’ means:

11 “(A) If the corporation apportions business income under ORS 314.650 to
12 314.665 for Oregon tax purposes, the total [*sales*] **receipts** of the taxpayer in
13 this state during the tax year, as determined for purposes of ORS 314.665;

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

18 “(C) If the corporation apportions business income using a method dif-
19 ferent from the method prescribed by ORS 314.650 to 314.665, Oregon [*sales*]
20 **receipts** as defined by the Department of Revenue by rule.

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

25 “(2) Each corporation or affiliated group of corporations filing a return
26 under ORS 317.710 shall pay annually to the state, for the privilege of car-
27 rying on or doing business by it within this state, a minimum tax as follows:

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

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

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

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

3 “(D) \$2 million or more, but less than \$3 million, the minimum tax is
4 \$1,500.

5 “(E) \$3 million or more, but less than \$5 million, the minimum tax is
6 \$2,000.

7 “(F) \$5 million or more, but less than \$7 million, the minimum tax is
8 \$4,000.

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

11 “(H) \$10 million or more, but less than \$25 million, the minimum tax is
12 \$15,000.

13 “(I) \$25 million or more, but less than \$50 million, the minimum tax is
14 \$30,000.

15 “(J) \$50 million or more, but less than \$75 million, the minimum tax is
16 \$50,000.

17 “(K) \$75 million or more, but less than \$100 million, the minimum tax is
18 \$75,000.

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

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

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

24 **“SECTION 13.** ORS 317.122 is amended to read:

25 “317.122. (1) A credit against taxes imposed by this chapter shall be al-
26 lowed insurers for the gross premium tax paid on fire insurance premiums
27 in accordance with ORS 731.820.

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

30 “(a) The amount of any assessments paid by the insurer during the tax

1 year pursuant to ORS 656.612; or

2 “(b) The total profit attributable to the workers’ compensation line of
3 business, net of reinsurance and including all investment gain attributable
4 to the workers’ compensation line of business, determined in the manner
5 prescribed under ORS 731.574 by the Director of the Department of Consumer
6 and Business Services, with the modifications under ORS 317.655 attributable
7 to the workers’ compensation line of business, and then apportioned in ac-
8 cordance with ORS 317.660 and multiplied by the corporate tax rate set forth
9 in ORS 317.061. In making the apportionment under ORS 317.660 for purposes
10 of this paragraph, the insurance [*sales*] **receipts** factor shall be determined
11 using only items attributable to the workers’ compensation line of business.

12 **“SECTION 14.** ORS 317.154 is amended to read:

13 “317.154. (1) A credit against taxes otherwise due under this chapter shall
14 be allowed for qualified research expenses that exceed 10 percent of Oregon
15 [*sales*] **receipts**.

16 “(2) For purposes of this section:

17 “(a) ‘Oregon [*sales*] **receipts**’ shall be computed using the laws and ad-
18 ministrative rules for calculating the numerator of the Oregon [*sales*] **re-**
19 **ceipts** factor under ORS 314.665.

20 “(b) ‘Qualified research’ has the meaning given the term under section
21 41(d) of the Internal Revenue Code and shall consist only of research con-
22 ducted in Oregon.

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

26 “(4) The credit under this section shall not exceed \$10,000 times the
27 number of percentage points by which the qualifying research expenses ex-
28 ceed 10 percent of Oregon [*sales*] **receipts**.

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

30 “(6) A deduction may not be taken for the portion of expenses or pay-

1 ments, otherwise allowable as a deduction, that is equal to the amount of the
2 credit claimed under this section.

3 “(7) Any tax credit that is otherwise allowable under this section and that
4 is not used by the taxpayer in that year may be carried forward and offset
5 against the taxpayer’s tax liability for the next succeeding tax year. Any
6 credit remaining unused in such next succeeding tax year may be carried
7 forward and used in the second succeeding tax year, and likewise any credit
8 not used in that second succeeding tax year may be carried forward and used
9 in the third succeeding tax year, and any credit not used in that third suc-
10 ceeding tax year may be carried forward and used in the fourth succeeding
11 tax year, and any credit not used in that fourth succeeding tax year may be
12 carried forward and used in the fifth succeeding tax year, but may not be
13 carried forward for any tax year thereafter.

14 **“SECTION 15.** ORS 317.267 is amended to read:

15 “317.267. (1) To derive Oregon taxable income, there shall be added to
16 federal taxable income amounts received as dividends from corporations de-
17 ducted for federal purposes pursuant to section 243 or 245 of the Internal
18 Revenue Code, except section 245(c) of the Internal Revenue Code, amounts
19 paid as dividends by a public utility or telecommunications utility and de-
20 ducted for federal purposes pursuant to section 247 of the Internal Revenue
21 Code or dividends eliminated under Treasury Regulations adopted under
22 section 1502 of the Internal Revenue Code that are paid by members of an
23 affiliated group that are eliminated from a consolidated federal return pur-
24 suant to ORS 317.715 (2).

25 “(2) To derive Oregon taxable income, after the modification prescribed
26 under subsection (1) of this section, there shall be subtracted from federal
27 taxable income an amount equal to 70 percent of dividends (determined
28 without regard to section 78 of the Internal Revenue Code) received or
29 deemed received from corporations if such dividends are included in federal
30 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 “(3) There shall be excluded from the [*sales*] **receipts** factor of any ap-
18 portionment formula employed to attribute income to this state any amount
19 subtracted from federal taxable income under subsection (2) of this section.

20 “**SECTION 16.** ORS 317.660 is amended to read:

21 “317.660. (1)(a) If the income of an insurer is derived from business done
22 both within and without this state, the determination of Oregon taxable in-
23 come shall be arrived at by multiplying the insurer’s net income by the in-
24 surance [*sales*] **receipts** factor.

25 “(b) The insurance [*sales*] **receipts** factor shall consist of a fraction, the
26 numerator of which is the amount of direct premiums (excluding reinsurance
27 accepted and without deduction of reinsurance ceded) received or earned by
28 the insurer during the tax year on policies and contracts that are allocated
29 to this state and to other jurisdictions in which the insurer is not authorized
30 to do business, and the denominator of which is the total of such premiums

1 received or earned by the insurer during the tax year on policies and con-
2 tracts that had been sold within and without this state.

3 “(2) For purposes of this section:

4 “(a) ‘Net income’ means net income properly recorded in the statement
5 of income reported in the annual statement filed by the insurer with the
6 Director of the Department of Consumer and Business Services.

7 “(b) ‘Premiums’ means sums properly included in those schedules of the
8 annual statement filed by the insurer with the Director of the Department
9 of Consumer and Business Services that appropriately allocate premiums by
10 jurisdiction. If the exclusion of reinsurance premiums results in an insurance
11 [sales] **receipts** factor that does not fairly represent the extent of the
12 taxpayer’s activity in this state, the taxpayer may petition for and the De-
13 partment of Revenue may permit, or the Department of Revenue may require,
14 the inclusion of reinsurance premiums in the insurance [sales] **receipts** fac-
15 tor. If the annual statement of the insurer does not report received premiums
16 then the insurance [sales] **receipts** factor shall be determined based on
17 earned premiums.

18 “(3) If application of the apportionment formula described in subsection
19 (1) of this section results in an apportionment that does not fairly and
20 equitably represent the taxpayer’s insurance business activity in this state,
21 the taxpayer may petition the Department of Revenue for and the department
22 may permit, or the department may require, to achieve an apportionment
23 that fairly and equitably represents the taxpayer’s insurance business activ-
24 ity:

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

26 “(B) The inclusion of one or more additional factors that will fairly and
27 equitably represent the taxpayer’s business activity in this state;

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

1 “(c) The employment of any other method to achieve a fair and equitable
2 apportionment of the taxpayer’s income.

3 **“SECTION 17.** ORS 317.715 is amended to read:

4 “317.715. (1) If a corporation required to make a return under this chapter
5 is a member of an affiliated group of corporations making a consolidated
6 federal return under sections 1501 to 1505 of the Internal Revenue Code, the
7 corporation’s Oregon taxable income shall be determined beginning with
8 federal consolidated taxable income of the affiliated group as provided in this
9 section.

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

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

1 if necessary.

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

14 **“SECTION 18. Section 2 of this 2017 Act and the amendments to**
15 **ORS 314.610, 314.635, 314.650, 314.665, 314.668, 314.669, 314.671, 314.684,**
16 **317.090, 317.122, 317.154, 317.267, 317.660 and 317.715 by sections 3 to 17**
17 **of this 2017 Act apply to tax years beginning on or after January 1,**
18 **2018.**

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

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