

# Senate Bill 1527

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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**.

Extends sunset for modified method of apportionment of business income of interstate broadcaster for purposes of corporate excise taxation. Continues use of gross receipts from customers with in-state commercial domicile in numerator of apportionment percentage calculation. Requires gross receipts of broadcaster to be included in numerator if member of affiliated group filing consolidated state return, regardless of whether interstate broadcaster has taxable presence in state.

First applies to tax years beginning on or after January 1, 2017.

Limits amount of income for which optional reduced rate of personal income tax on nonpassive income attributable to partnership or S corporation may be claimed.

Eliminates general rule that sale made to state where taxpayer is not taxable is considered sale in Oregon for apportionment of business income for corporate excise tax purposes.

Applies to tax years beginning on or after January 1, 2019.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to business taxation; creating new provisions; amending ORS 314.665, 314.682, 314.684 and  
3 316.043 and section 5, chapter 103, Oregon Laws 2014; repealing ORS 316.044; and prescribing  
4 an effective date.

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

6 **SECTION 1.** Section 5, chapter 103, Oregon Laws 2014, is amended to read:

7 **Sec. 5.** (1) The amendments to ORS 314.680 [*and 314.684 by sections 1 and 2 of this 2014 Act*]  
8 **by section 1, chapter 103, Oregon Laws 2014, and the amendments to ORS 314.684 by section**  
9 **4, chapter 103, Oregon Laws 2014, and section 2 of this 2018 Act** apply to tax years beginning  
10 on or after January 1, 2014, and before January 1, [2017] **2021**.

11 (2) The amendments to ORS 314.680 [*and 314.684 by sections 3 and 4 of this 2014 Act*] **by section**  
12 **3, chapter 103, Oregon Laws 2014, and the amendments to ORS 314.684 by section 3 of this**  
13 **2018 Act** apply to tax years beginning on or after January 1, [2017] **2021**.

14 **SECTION 2.** ORS 314.684, as amended by section 4, chapter 103, Oregon Laws 2014, is amended  
15 to read:

16 314.684. (1) The sales factor for an interstate broadcaster shall be determined as provided in this  
17 section.

18 (2) The denominator of the sales factor shall include the total gross receipts derived by the  
19 interstate broadcaster from transactions and activities in the regular course of its trade or business,  
20 except receipts excluded under rules of the Department of Revenue.

21 (3) The numerator of the sales factor shall include all gross receipts attributable to this state,  
22 with gross receipts from broadcasting to be included as specified in subsection (4) of this section.

23 (4) Gross receipts from broadcasting of an interstate broadcaster that engages in income-  
24 producing activity in this state shall be included in the numerator of the sales factor [*in the ratio*]

**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 *that the interstate broadcaster's audience or subscribers located in this state bears to its total audience*  
 2 *and subscribers located both within and without this state.] if:*

3 **(a) The customer is a resident of this state, in the case of an individual;**

4 **(b) The customer has physical presence in this state, in the case of a local television**  
 5 **station or a local cable provider; or**

6 **(c) The commercial domicile of the customer is in this state, in all other cases.**

7 **SECTION 3.** ORS 314.684, as amended by section 4, chapter 103, Oregon Laws 2014, and section  
 8 2 of this 2018 Act, is amended to read:

9 314.684. (1) The sales factor for an interstate broadcaster shall be determined as provided in this  
 10 section.

11 (2) The denominator of the sales factor shall include the total gross receipts derived by the  
 12 interstate broadcaster from transactions and activities in the regular course of its trade or business,  
 13 except receipts excluded under rules of the Department of Revenue.

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

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

20 [*(a) The customer is a resident of this state, in the case of an individual;*]

21 [*(b) The customer has physical presence in this state, in the case of a local television station or a*  
 22 *local cable provider; or]*

23 [*(c) The commercial domicile of the customer is in this state, in all other cases.*]

24 **SECTION 4. Sections 5 and 6 of this 2018 Act are added to and made a part of ORS 314.680**  
 25 **to 314.690.**

26 **SECTION 5.** (1) As used in this section, "cable television system" does not include  
 27 Internet protocol television service or direct broadcast satellite television service.

28 (2) Notwithstanding ORS 314.684, if an interstate broadcaster engages in income-  
 29 producing activity in this state, broadcasts to subscribers or to an audience located both  
 30 within and without this state and derives receipts from the ownership and operation of cable  
 31 television systems:

32 (a) Gross receipts from broadcasting of the interstate broadcaster shall be included in  
 33 the numerator of the sales factor in the ratio that the interstate broadcaster's audience or  
 34 subscribers located in this state bears to its total audience and subscribers located both  
 35 within and without this state.

36 (b) The audience or subscribers ratio shall be determined by rule of the Department of  
 37 Revenue.

38 **SECTION 6.** In determining the sales factor for any interstate broadcaster that is a  
 39 member of a unitary group filing a consolidated state return, the numerator of the sales  
 40 factor shall include gross receipts determined under ORS 314.684 (4), without regard to  
 41 whether the interstate broadcaster has a taxable presence in this state.

42 **SECTION 7.** ORS 314.682 is amended to read:

43 314.682. (1) Notwithstanding any provisions of ORS 314.605 to 314.675 to the contrary, ORS  
 44 314.680, 314.684 and 314.686 **and sections 5 and 6 of this 2018 Act** shall apply to the apportionment  
 45 of the income of an interstate broadcaster.

1 (2) Except as provided in subsection (1) of this section, all other provisions of ORS 314.605 to  
2 314.675 shall apply to the apportionment of the income of an interstate broadcaster.

3 **SECTION 8.** ORS 314.682, as amended by section 7 of this 2018 Act, is amended to read:

4 314.682. (1) Notwithstanding any provisions of ORS 314.605 to 314.675 to the contrary, ORS  
5 314.680, 314.684 and 314.686 and [sections 5 and] **section 6** of this 2018 Act shall apply to the ap-  
6 portionment of the income of an interstate broadcaster.

7 (2) Except as provided in subsection (1) of this section, all other provisions of ORS 314.605 to  
8 314.675 shall apply to the apportionment of the income of an interstate broadcaster.

9 **SECTION 9.** (1) **Section 5 of this 2018 Act and the amendments to ORS 314.682 by section**  
10 **7 of this 2018 Act apply to tax years beginning on or after January 1, 2017, and before Janu-**  
11 **ary 1, 2021.**

12 (2) **Section 6 of this 2018 Act applies to tax years beginning on or after January 1, 2017.**

13 (3) **The amendments to ORS 314.682 by section 8 of this 2018 Act apply to tax years be-**  
14 **ginning on or after January 1, 2021.**

15 **SECTION 10.** ORS 316.043 is amended to read:

16 316.043. (1) As used in this section:

17 (a) "Material participation" has the meaning given that term in section 469 of the Internal Re-  
18 venue Code.

19 (b) "Nonpassive income" means income other than income from passive activity as determined  
20 under section 469 of the Internal Revenue Code. "Nonpassive income" does not include wages, in-  
21 terest, dividends or capital gains.

22 (c) "Nonpassive loss" means loss other than loss from passive activity as determined under  
23 section 469 of the Internal Revenue Code.

24 (2) If a taxpayer that meets the conditions of subsection [(6)] (5) of this section has nonpassive  
25 income attributable to any partnership or S corporation after reduction for nonpassive losses, that  
26 portion of the taxpayer's income, **not to exceed \$250,000**, that meets the conditions of subsection  
27 [(6)] (5) of this section shall be taxed at:

28 (a) The rate applicable under ORS 316.037; or

29 (b) At the election of the taxpayer, a rate of[.]

30 [(A)] seven percent of the first \$250,000 of taxable income, or fraction thereof[.];

31 [(B)] *Seven and two-tenths percent of taxable income exceeding \$250,000 but not exceeding*  
32 *\$500,000;*

33 [(C)] *Seven and six-tenths percent of taxable income exceeding \$500,000 but not exceeding \$1*  
34 *million;*

35 [(D)] *Eight percent of taxable income exceeding \$1 million but not exceeding \$2.5 million;*

36 [(E)] *Nine percent of taxable income exceeding \$2.5 million but not exceeding \$5 million; and]*

37 [(F)] *Nine and nine-tenths percent of taxable income exceeding \$5 million.]*

38 [(3)] *The reduced rates allowed under subsection (2)(b) of this section may be adjusted as provided*  
39 *in ORS 316.044.]*

40 [(4)] (3) A taxpayer shall use the subtractions, deductions or additions otherwise allowed under  
41 this chapter in the calculation of income that is taxed at the rates otherwise applicable under ORS  
42 316.037. The only addition or subtraction allowed in the calculation of nonpassive income for which  
43 the taxpayer uses the reduced [rates] **rate** allowed under subsection (2)(b) of this section shall be  
44 any depreciation adjustment directly related to the partnership or S corporation.

45 [(5)] (4) The election under subsection (2)(b) of this section shall be irrevocable and shall be

1 made on the taxpayer's original return. If the taxpayer uses the reduced [*rates*] **rate** allowed under  
 2 subsection (2)(b) of this section, the calculation of income shall be substantiated on a form pre-  
 3 scribed by the Department of Revenue and filed with the taxpayer's tax return for the tax year or  
 4 at such other time and manner as the department may prescribe by rule. A taxpayer who uses the  
 5 reduced [*rates*] **rate** available under subsection (2)(b) of this section may not join in the filing of a  
 6 composite return under ORS 314.778.

7 [(6)] (5) The [*rates listed in*] **rate allowed under** subsection (2)(b) of this section [*apply*] **applies**  
 8 to nonpassive income attributable to a partnership or S corporation only if:

9 (a) The taxpayer materially participates in the trade or business;

10 (b) The partnership or S corporation employs at least one person who is not an owner, member  
 11 or limited partner of the partnership or S corporation; and

12 (c) At least 1,200 aggregate hours of work in Oregon are performed, by the close of the tax year  
 13 for which the reduced rate is allowed, by employees who meet the requirements of paragraph (b) of  
 14 this subsection and who are employed by the partnership or S corporation. In determining whether  
 15 this requirement is met, only hours worked in a week in which a worker works at least 30 hours  
 16 may be considered.

17 [(7)(a)] (6)(a) A nonresident may apply the reduced [*rates*] **rate** allowed under subsection (2)(b)  
 18 of this section only to income earned in Oregon.

19 (b) A part-year resident shall calculate the tax due using the reduced [*rates*] **rate** allowed under  
 20 subsection (2)(b) of this section by first applying [*those rates*] **the rate** to the taxpayer's nonpassive  
 21 income that meets the requirements of subsection [(6)] (5) of this section, and then multiplying that  
 22 amount by the ratio of the taxpayer's nonpassive income in Oregon divided by nonpassive income  
 23 from all sources.

24 **SECTION 11.** ORS 314.665 is amended to read:

25 314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the  
 26 total sales of the taxpayer in this state during the tax period, and the denominator of which is the  
 27 total sales of the taxpayer everywhere during the tax period.

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

29 (a) The property is delivered or shipped to a purchaser, other than the United States Govern-  
 30 ment, within this state regardless of the f.o.b. point or other conditions of the sale; or

31 (b) The property is shipped from an office, store, warehouse, factory, or other place of storage  
 32 in this state and the purchaser is the United States Government [*or the taxpayer is not taxable in*  
 33 *the state of the purchaser*]. For purposes of this paragraph:

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

36 (i) The taxpayer's only activity in Oregon is the storage of the goods in the public warehouse  
 37 prior to shipment; or

38 (ii) The taxpayer's only activities in Oregon are the storage of the goods in the public ware-  
 39 house prior to shipment and the presence of employees within this state solely for purposes of so-  
 40 liciting sales of the taxpayer's products; and

41 (B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an  
 42 affiliate of the person storing goods in a public warehouse or a person that is related under section  
 43 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

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

45 (a) The sales are included in the numerator of a formula used to apportion income to another

1 state of the United States, a foreign country or the District of Columbia; and

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

4 (4) Sales, other than sales of tangible personal property, are in this state if the taxpayer’s mar-  
 5 ket for sales is in this state, as determined under ORS 314.666.

6 (5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS  
 7 314.682, 314.684 or 317.660 or other law, the Department of Revenue shall adopt rules that are con-  
 8 sistent with the determination of the sales factor under this section.

9 (6) The department may determine that a warehouse that meets the definition of “public ware-  
 10 house” under this section may not be treated as a public warehouse if the warehouse is being used  
 11 primarily for tax avoidance purposes or if transactions related to the use of the warehouse are pri-  
 12 marily for tax avoidance purposes.

13 (7) As used in this section, “public warehouse”:

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

16 (b) Does not include a warehouse that is owned by a person that is related to the person that  
 17 owns goods that are stored in the warehouse, as determined under section 267 of the Internal Re-  
 18 venue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

19 **SECTION 12. The amendments to ORS 314.665 and 316.043 by sections 10 and 11 of this**  
 20 **2018 Act apply to tax years beginning on or after January 1, 2019.**

21 **SECTION 13. The Department of Revenue shall waive any interest that would otherwise**  
 22 **apply to taxes due if the interest is based on underpayment or underreporting that results**  
 23 **solely from the amendments to ORS 316.043 by section 10 of this 2018 Act.**

24 **SECTION 14. Section 13 of this 2018 Act applies to tax years beginning on or after Jan-**  
 25 **uary 1, 2019, and before January 1, 2020.**

26 **SECTION 15. ORS 316.044 is repealed.**

27 **SECTION 16. This 2018 Act takes effect on the 91st day after the date on which the 2018**  
 28 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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