

D R A F T

SUMMARY

Requires use of taxpayer's audience or subscribers in determining numerator of apportionment factor for broadcasting sales, for purposes of corporate excise taxation. Establishes requirements for calculating audience- or subscriber-based numerator. Provides percentage-based apportionment formula for receipts related to subscription services. Allows election to use methodology based on audience or subscribers for total gross receipts of taxpayer engaged in broadcasting. Repeals special apportionment statutes applicable to income of interstate broadcasters, for purposes of corporate excise taxation.

Applies to tax years beginning on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax treatment of broadcasters; creating new provisions; amending ORS 314.665; repealing ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 314.605 to 314.675.

SECTION 2. (1) As used in this section:

(a) "Broadcasting" means the activity of transmitting programming through any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

(b) "Total gross receipts" means all gross receipts of a person engaged in broadcasting from transactions and activities in the regular course of the person's trade or business, except receipts from sales of

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 **real or tangible personal property.**

2 **(2)(a) In the case of broadcasting sales, a taxpayer's market for**
 3 **sales for purposes of ORS 314.665 is in this state if the taxpayer's au-**
 4 **dience or subscribers are in this state. The numerator of the sales**
 5 **factor based on audience or subscribers shall be determined using**
 6 **third-party ratings information where available and a taxpayer with**
 7 **sales from broadcasting shall make actual information from the**
 8 **taxpayer's books, papers, records or memoranda available to the De-**
 9 **partment of Revenue to determine the taxpayer's audience or sub-**
 10 **scribers.**

11 **(b) If information sufficient for the taxpayer to determine audience**
 12 **or subscribers is not available, the ratio of population in Oregon to**
 13 **population in the United States shall be used to apportion income.**

14 **(3) For broadcasting sales receipts that derive from licensing to**
 15 **subscription services or advertising on subscription services, if infor-**
 16 **mation sufficient for the taxpayer to determine audience or subscrib-**
 17 **ers is not available, the taxpayer shall use 0.6 percent multiplied by**
 18 **the taxpayer's receipts from licensing to subscription services and**
 19 **from advertising on subscription services as the numerator of the sales**
 20 **factor.**

21 **(4) A taxpayer engaged in broadcasting may elect to use subsection**
 22 **(2) of this section in apportioning the taxpayer's total gross receipts.**

23 **SECTION 3. ORS 314.665 is amended to read:**

24 **314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the**
 25 **numerator of which is the total sales of the taxpayer in this state during the**
 26 **tax period, and the denominator of which is the total sales of the taxpayer**
 27 **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**
 30 **United States Government, within this state regardless of the f.o.b. point or**
 31 **other conditions of the sale; or**

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

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

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

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

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

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

(a) The sales are included in the numerator of a formula used to apportion income to another state of the United States, a foreign country or the District of Columbia; and

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

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

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

(6) The department may determine that a warehouse that meets the defi-

1 nition 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 (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 related
9 to the person that owns goods that are stored in the warehouse, as deter-
10 mined under section 267 of the Internal Revenue Code, or an affiliate of the
11 person that owns goods that are stored in the warehouse.

12 **SECTION 4. ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690**
13 **are repealed.**

14 **SECTION 5. Section 2 of this 2021 Act, the amendments to ORS**
15 **314.665 by section 3 of this 2021 Act and the repeal of ORS 314.680,**
16 **314.682, 314.684, 314.686, 314.688 and 314.690 by section 4 of this 2021 Act**
17 **apply to tax years beginning on or after January 1, 2020.**

18 **SECTION 6. This 2021 Act takes effect on the 91st day after the date**
19 **on which the 2021 regular session of the Eighty-first Legislative As-**
20 **sembly adjourns sine die.**