

HB 2101-1
(LC 570)
3/8/19 (CMT/ps)

Requested by HOUSE COMMITTEE ON REVENUE (at the request of Department of Revenue)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2101**

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “305.242,”.
2 Delete lines 5 through 27 and delete pages 2 through 7 and insert:
3 **“SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made**
4 **a part of ORS chapter 314.**
- 5 **“SECTION 2. As used in sections 2 to 5 of this 2019 Act:**
6 **“(1) ‘Adjustment’ means a partnership adjustment, as defined in**
7 **section 6241 of the Internal Revenue Code, whether that adjustment**
8 **arises from action by the Internal Revenue Service or from the**
9 **taxpayer’s filing of an amended federal return, a federal refund claim**
10 **or similar report, including any report made under section 6225(c) of**
11 **the Internal Revenue Code, or an administrative adjustment request.**
- 12 **“(2) ‘Adjustments report’ means a report used by a taxpayer to**
13 **state adjustments to any partnership-related items.**
- 14 **“(3) ‘Administrative adjustment request’ means a request filed by**
15 **a partnership under section 6227 of the Internal Revenue Code.**
- 16 **“(4) ‘Audited partnership’ means a partnership subject to a**
17 **partnership-level audit from which an adjustment arises.**
- 18 **“(5) ‘Corporate partner’ means a partner that is subject to the tax**
19 **imposed under ORS chapter 317 or 318.**
- 20 **“(6) ‘Direct partner’ means a partner that holds an interest directly**
21 **in a partnership or pass-through entity.**

1 “(7) ‘Federal partnership representative’ means the person that a
2 partnership designates for the tax year as the partnership’s represen-
3 tative, or the person the Internal Revenue Service has appointed to
4 act as the federal partnership representative, pursuant to section
5 6223(a) of the Internal Revenue Code.

6 “(8) ‘Indirect partner’ means a partner in a partnership or pass-
7 through entity that holds an interest directly, or through another in-
8 direct partner, in a partnership or pass-through entity.

9 “(9) ‘Nonresident partner’ means a partner that is not a resident
10 partner and is an individual, a trust or an estate.

11 “(10) ‘Partnership-level audit’ means an examination by the Inter-
12 nal Revenue Service at the partnership level pursuant to sections 6221
13 to 6241 of the Internal Revenue Code from which an adjustment arises.

14 “(11) ‘Resident partner’ means a partner that is an individual who
15 is a resident of this state as defined in ORS 316.027 for the tax year
16 or is a resident trust or a resident estate as defined in ORS 316.282.

17 “(12) ‘Reviewed year’ means the tax year of a partnership that is
18 required to be or elects to be subject to a partnership-level audit from
19 which adjustments arise.

20 “(13) ‘Taxpayer’ means:

21 “(a) A partner that is subject to the tax imposed under ORS chapter
22 316, 317 or 318;

23 “(b) A partnership that is subject to a partnership-level audit or
24 that has made an administrative adjustment request; or

25 “(c) A tiered partner of a partnership.

26 “(14) ‘Tiered partner’ means a partner that is a partnership or
27 pass-through entity.

28 “SECTION 3. (1) Notwithstanding ORS 314.380, and except for ad-
29 justments required to be reported for federal purposes pursuant to
30 section 6225(a)(2) of the Internal Revenue Code, partnerships and

1 partners shall report the adjustments arising from a partnership-level
2 audit or an administrative adjustment request and make payments as
3 required under this section.

4 “(2)(a) A partnership’s federal partnership representative shall act
5 as the partnership’s Oregon partnership representative for the re-
6 viewed year, unless the partnership designates, in the time and man-
7 ner prescribed by the Department of Revenue by rule or through forms
8 and instructions, another Oregon partnership representative. If the
9 partnership representative is an entity, the entity representative shall
10 act through a designated individual in the manner provided by the
11 department by rule or through forms and instructions.

12 “(b) The Oregon partnership representative for the reviewed year
13 is responsible for any action required or permitted to be taken under
14 this section, including providing the adjustments report to the De-
15 partment of Revenue and making any election outlined under this
16 section. With respect to an action required or permitted to be taken
17 by the partnership under this section, the Oregon partnership repre-
18 sentative for the reviewed year has the sole authority to act on behalf
19 of the partnership, and the direct partners and indirect partners of the
20 partnership are bound by those actions.

21 “(c) With respect to representation in any conference before the
22 department or before the Oregon Tax Court, if the designated part-
23 nership representative qualifies as a tax matters partner under ORS
24 305.242 (2), the partnership representative shall serve as the tax mat-
25 ters partner, unless the partnership representative designates another
26 person who qualifies as a tax matters partner under ORS 305.242 (2).
27 If the designated partnership representative does not qualify to be the
28 tax matters partner under ORS 305.242 (2), the partnership represen-
29 tative shall designate a person that qualifies to be a tax matters
30 partner under ORS 305.242 (2). For purposes of any conference before

1 the department or proceeding before the tax court, the partnership
2 and all partners of the partnership shall be bound by the actions of the
3 designated partnership representative or other person designated to
4 act as the tax matters partner under this paragraph.

5 “(3) Adjustments subject to the requirements of this section, except
6 for those subject to an election under subsection (4) of this section,
7 shall be reported as follows:

8 “(a) Not later than 180 days after the date of the federal notice of
9 final partnership adjustment or 90 days after the date on which the
10 amended federal return, federal refund claim or other similar report,
11 including any report made under section 6225(c) of the Internal Reve-
12 nue Code, or administrative adjustment request was filed, whichever
13 is later, the partnership shall:

14 “(A) File with the department a completed adjustments report in
15 the form and manner prescribed by the department that is sufficiently
16 detailed to allow computation of the tax change resulting from the
17 adjustment;

18 “(B) Concede the accuracy of the determination of the Internal
19 Revenue Service or state wherein the taxpayer believes the determi-
20 nation to be erroneous;

21 “(C) Submit with the adjustments report any other information re-
22 quired by the department;

23 “(D) Notify the partnership’s direct partners of their distributive
24 share of adjustments, including information as required by the de-
25 partment;

26 “(E) File an amended composite return for direct partners that are
27 nonresident partners as required under ORS 314.778; and

28 “(F) Pay any additional personal income tax and corporate income
29 or excise tax that would have been due had the adjustments been re-
30 ported properly as required on the composite return.

1 “(b) Not later than 270 days after the date of the federal notice of
2 final partnership adjustment or 180 days after the date on which the
3 amended federal return, federal refund claim or other similar report,
4 including any report made under section 6225(c) of the Internal Reve-
5 nue Code, or administrative adjustment request was filed, whichever
6 is later, each direct partner that is subject to the tax imposed under
7 ORS chapter 316, 317 or 318 shall:

8 “(A) File with the department an adjustments report or an original
9 or amended Oregon tax return reporting the direct partner’s distribu-
10 tive share of the adjustments reported to them under this subsection;
11 and

12 “(B) Pay any additional amount of tax that would have been due
13 had the adjustments been reported properly, plus any interest and
14 penalty due under ORS 305.220 or 314.400.

15 “(4) An audited partnership may make an election to pay at the
16 partnership level. Subject to the limitations in subsection (5) of this
17 section, an audited partnership making an election under this sub-
18 section shall:

19 “(a) Not later than 180 days after the date of the federal notice of
20 final partnership adjustment, file with the department a completed
21 adjustments report, including partner information and any other in-
22 formation required by the department, and notify the department that
23 it is making the election under this subsection; and

24 “(b) Not later than 270 days after the date of the federal notice of
25 final partnership adjustment, pay an amount, in lieu of taxes owed by
26 the direct and indirect partners of the partnership, to be determined
27 as follows:

28 “(A) For the total distributive shares of adjustments made to direct
29 partners that are corporate partners, apportion and allocate any ad-
30 justments as provided under this chapter and multiply the resulting

1 amount by the highest marginal tax rate applicable to taxpayers sub-
2 ject to the tax imposed under ORS chapter 317 or 318 for the reviewed
3 year;

4 “(B) For the total distributive shares of adjustments made to direct
5 partners that are nonresident partners subject to tax under ORS
6 chapter 316, determine the amount of any adjustment that is income
7 from Oregon sources under ORS chapter 316 and multiply the resulting
8 amount by the highest marginal tax rate applicable to taxpayers for
9 the tax year under ORS chapter 316;

10 “(C) For the total distributive shares of adjustments made to tiered
11 partners:

12 “(i) Determine the amount of any adjustment that is of a type that
13 would be subject to sourcing to Oregon by a nonresident partner under
14 ORS chapter 316 and determine the portion of this amount that would
15 be sourced to Oregon;

16 “(ii) Determine the amount of any adjustment that is of a type that
17 would not be subject to sourcing to Oregon by a nonresident partner
18 under ORS chapter 316;

19 “(iii) Determine the portion of the amount in sub-subparagraph (ii)
20 of this subparagraph that can be established, as prescribed by the de-
21 partment by rule, to be properly allocable to indirect partners that are
22 nonresident partners or other partners not subject to tax on the ad-
23 justments; and

24 “(iv) Multiply the total of the amounts in sub-subparagraphs (i) and
25 (ii) of this subparagraph, reduced by the amount determined in sub-
26 subparagraph (iii) of this subparagraph, by the highest marginal tax
27 rate under ORS chapter 316;

28 “(D) For the total distributive shares of adjustments made to direct
29 partners that are resident partners, multiply the amount of the ad-
30 justments by the highest marginal tax rate under ORS chapter 316;

1 and

2 “(E) Add the amounts determined in subparagraphs (A) to (D) of
3 this paragraph and any interest and penalty as provided in ORS 305.220
4 or 314.400.

5 “(5) Adjustments subject to the election in subsection (4) of this
6 section do not include:

7 “(a) The distributive share of adjustments that under this chapter
8 or ORS chapter 317 or 318 must be included in the apportionable in-
9 come of any direct partner that is a corporate partner unless the cor-
10 porate partner states in writing to the partnership representative that
11 its distributive share of the adjustments is not required to be included
12 in its apportionable income;

13 “(b) The distributive share of adjustments that under this chapter
14 or ORS chapter 317 or 318 must be included in the apportionable in-
15 come of any indirect partner that is a corporate partner, provided that
16 the audited partnership can reasonably determine this;

17 “(c) The distributive share of adjustments made to a direct partner
18 that is exempt from tax under ORS 316.277 or 317.080, other than any
19 distributive share that is unrelated business taxable income of the
20 partner; or

21 “(d) Any adjustments arising from an administrative adjustment
22 request.

23 “(6) For purposes of subsection (5) of this section, a corporate
24 partner’s distributive share is presumed to be included in the partner’s
25 own apportionable income unless the partner provides the statement
26 described in subsection (5)(a) of this section to the partnership repre-
27 sentative.

28 “(7)(a) An audited partnership that makes an election under sub-
29 section (4) of this section consents to be subject to the administrative
30 provisions of this chapter and ORS chapter 305.

1 **“(b) The department may adopt rules to prevent double taxation or**
2 **double deduction of any amount included in the computation of in-**
3 **come under this section.**

4 **“(8) The direct and indirect partners of an audited partnership that**
5 **are tiered partners and all partners of those tiered partners that are**
6 **subject to tax imposed under ORS chapter 316, 317 or 318 are subject**
7 **to the reporting and payment requirements of subsection (3) of this**
8 **section. The tiered partners are entitled to make the elections provided**
9 **in subsection (4) of this section. The tiered partners or their partners**
10 **shall make the required reports and payments not later than 90 days**
11 **after the time for filing and furnishing statements to tiered partners**
12 **and their partners as established under section 6226 of the Internal**
13 **Revenue Code and the regulations thereunder. The department may**
14 **adopt rules to establish procedures and interim time periods for the**
15 **reports and payments required by tiered partners and their partners**
16 **and for making the elections under subsection (4) of this section.**

17 **“(9)(a) The department may adopt rules allowing an extension of**
18 **time for an audited partnership and its tiered partners or direct part-**
19 **ners to file reports of adjustments required under this section.**

20 **“(b) Notwithstanding paragraph (a) of this subsection, the tax shall**
21 **be paid to the department on the date fixed by this section without**
22 **regard to extensions.**

23 **“(c) Any extension granted under this section extends the final date**
24 **prescribed by law for assessing any additional tax arising from the**
25 **adjustments.**

26 **“(10)(a) An election made pursuant to subsection (4) of this section**
27 **is irrevocable.**

28 **“(b) If reported properly and paid by the audited partnership or**
29 **tiered partner, the amount determined in subsection (4)(b) of this**
30 **section shall be treated as paid in lieu of taxes owed by its direct and**

1 indirect partners, to the extent applicable, on the same adjustments.
2 Direct partners or indirect partners may not take any deduction or
3 credit for the amount or claim a refund of the amount.

4 “(c) Nothing in this subsection precludes a direct partner that is a
5 resident partner or nonresident partner from claiming a credit for any
6 amounts paid by the audited partnership or tiered partner on the di-
7 rect partner’s behalf to another state or local tax jurisdiction in ac-
8 cordance with the provisions of ORS 316.082 or 316.131.

9 “(11) Nothing in this section prevents the department from assess-
10 ing direct partners or indirect partners for taxes owed, using the best
11 information available, in the event that a partnership or tiered partner
12 fails to timely make any report or payment required by this section
13 for any reason, or from collecting from direct partners or indirect
14 partners.

15 “SECTION 4. The Department of Revenue shall assess additional
16 tax, interest and penalties for adjustments arising from an audit by
17 the Internal Revenue Service, including a partnership-level audit, or
18 reported by the taxpayer on an amended federal return, federal refund
19 claim or other similar report, including a report required under sec-
20 tion 6225(c) of the Internal Revenue Code, or as part of an adminis-
21 trative adjustment request, by the following dates:

22 “(1) If a taxpayer files with the department an adjustments report
23 or an amended Oregon tax return as required within the period speci-
24 fied in section 3 of this 2019 Act, the department may assess any
25 amounts, including in-lieu-of amounts, taxes, interest or penalties
26 arising from the adjustments. The department shall issue a notice of
27 deficiency to the taxpayer on or before the later of:

28 “(a) The expiration of the applicable limitations period specified in
29 ORS 314.410; or

30 “(b) Two years following the earlier of the date the department is

1 notified by the Internal Revenue Service or the date the taxpayer files
2 the adjustments report or amended Oregon tax return with the de-
3 partment.

4 “(2) If the taxpayer fails to file an adjustments report within the
5 period specified in section 3 of this 2019 Act or if the adjustments re-
6 port filed by the taxpayer omits adjustments or understates the cor-
7 rect amount of tax owed, the department may assess any amounts,
8 including in-lieu-of amounts, taxes, interest or penalties arising from
9 the adjustments. The department shall issue a notice of deficiency to
10 the taxpayer on or before the later of:

11 “(a) The expiration of the applicable limitations period specified in
12 ORS 314.410; or

13 “(b) Two years following the earlier of the date the department is
14 notified by the Internal Revenue Service or the date the taxpayer files
15 the adjustments report with the department.

16 “SECTION 5. Except for adjustments required to be reported for
17 federal purposes under section 6225(a)(2) of the Internal Revenue Code,
18 a taxpayer shall file a claim for refund or credit of tax arising from
19 adjustments made by the Internal Revenue Service on or before the
20 later of:

21 “(1) The expiration of the last date for filing a claim for refund
22 pursuant to ORS 314.415; or

23 “(2) Two years following the date of the federal notice of final
24 partnership adjustment.

25 “SECTION 6. ORS 305.242 is amended to read:

26 “305.242. (1)(a) When the treatment of partnership items on a partner’s
27 return is consistent with the treatment of that item on the partnership re-
28 turn and results in a notice of deficiency, the partners may designate a tax
29 matters partner to represent each of them before the Department of Revenue
30 in any conference or before a tax court magistrate in any proceeding with

1 respect to the administration of any tax on or measured by net income.

2 **“(b) Notwithstanding paragraph (a) of this subsection, a tax matters**
3 **partner shall be designated as provided in section 3 (2) of this 2019 Act,**
4 **in the case of a partnership subject to sections 2 to 5 of this 2019 Act.**

5 “(2) The designation of a tax matters partner shall be made in writing and
6 filed with the department or magistrate within 30 days after the date of the
7 notice of deficiency. The tax matters partner must be:

8 “(a) A general partner in the partnership at some time during the taxable
9 year; or

10 “(b) A general partner in the partnership at the time the designation is
11 made.

12 “(3) If a notice explaining the partnership adjustments is mailed by the
13 department to the tax matters partner with respect to any partnership taxa-
14 ble year, the tax matters partner shall supply the department or, if applica-
15 ble, the magistrate with the name, address, profits interest and taxpayer
16 identification number of each person who was a partner in the partnership
17 at any time during the taxable year, unless that information was provided
18 in the partnership return for that year.

19 “(4) A timely request for a conference filed with the department or appeal
20 filed with the tax court by the tax matters partner shall be considered as a
21 request or an appeal by all of the partners represented by the tax matters
22 partner, and all issues regarding treatment of partnership items shall be re-
23 solved in a single conference.

24 “(5) A partner who elects to be represented by a tax matters partner, **or**
25 **any partner in a partnership subject to sections 2 to 5 of this 2019 Act,**
26 shall be bound by all things done by the tax matters partner and may not
27 thereafter claim that any act or proceeding was legally defective because the
28 partner was not represented by an attorney.

29 **“SECTION 7.** ORS 314.712 is amended to read:

30 “314.712. (1) Except as provided in ORS 314.722 or [314.723] **sections 2 to**

1 **5 of this 2019 Act**, a partnership as such is not subject to the tax imposed
2 by ORS chapter 316, 317 or 318. Partnership income shall be computed pur-
3 suant to section 703 of the Internal Revenue Code, with the modifications,
4 additions and subtractions provided in this chapter and ORS chapter 316.
5 Persons carrying on business as partners are liable for the tax imposed by
6 ORS chapter 316, 317 or 318 on their distributive shares of partnership in-
7 come only in their separate or individual capacities.

8 “(2) If a partner engages in a transaction with a partnership other than
9 in the partner’s capacity as a member of the partnership, the transaction
10 shall be treated in the manner described in section 707 of the Internal Rev-
11 enue Code.

12 “[*(3) If a partnership is an electing large partnership under section 775 of*
13 *the Internal Revenue Code, the modifications of law applicable to an electing*
14 *large partnership for federal tax purposes are applicable to the electing large*
15 *partnership for purposes of the tax imposed by this chapter or ORS chapter*
16 *316, 317 or 318.*”]

17 **“SECTION 8.** ORS 314.714 is amended to read:

18 “314.714. (1) Each item of partnership income, gain, loss or deduction has
19 the same character for a partner as it has for federal income tax purposes.
20 If an item is not characterized for federal income tax purposes, it has the
21 same character for a partner as if realized directly from the source from
22 which realized by the partnership or incurred in the same manner as in-
23 curred by the partnership.

24 “(2) A partner’s distributive share of an item of partnership income, gain,
25 loss or deduction (or item thereof) shall be that partner’s distributive share
26 of partnership income, gain, loss or deduction (or item thereof) for federal
27 income tax purposes as determined under section 704 of the Internal Revenue
28 Code and adjusted for the modifications, additions and subtractions provided
29 in this chapter and ORS chapters 316, 317 and 318.

30 “(3) A partner shall, on the partner’s return, treat a partnership item in

1 a manner that is consistent with the treatment of the partnership item on
2 the partnership return, unless the partner notifies the Department of Reve-
3 nue of the inconsistency. The department shall prescribe by rule the method
4 for notification of an inconsistency. [*A partner of an electing large partner-*
5 *ship under section 775 of the Internal Revenue Code must treat a partnership*
6 *item in a manner that is consistent with the treatment of the partnership item*
7 *on the partnership return.*]

8 **“SECTION 9.** ORS 314.778 is amended to read:

9 “314.778. (1)(a) A pass-through entity having distributive income attrib-
10 utable to Oregon sources shall file a composite return of personal income
11 and corporate income and excise tax on behalf of owners that elect to be
12 included in the composite return filed by the entity. **Distributive income**
13 **subject to this election does not include the distributive share that**
14 **under this chapter or ORS chapter 317 or 318 must be included in the**
15 **apportionable income of any direct partner that is a corporate partner,**
16 **as defined in section 2 of this 2019 Act, unless the corporate partner**
17 **states in writing to the partnership that its distributive share of the**
18 **partnership’s income and expenses is not required to be included in the**
19 **corporate partner’s apportionable income. For purposes of this para-**
20 **graph, a corporate partner’s distributive share is presumed to be in-**
21 **cluded in the partner’s own apportionable income unless the partner**
22 **provides the statement to the partnership representative.**

23 **“(b) Distributive income subject to this election does not include**
24 **the distributive share that under this chapter or ORS chapter 317 or**
25 **318 must be included in the apportionable income of an indirect part-**
26 **ner that is a corporate partner, as defined in section 2 of this 2019 Act,**
27 **provided that the partnership can reasonably determine this.**

28 “(2) A pass-through entity shall file a composite return under this section
29 only if one or more owners that are nonresidents make an election under this
30 section.

1 “(3) The election is **irrevocable and** shall be made by owners in the time,
2 form and manner prescribed by the Department of Revenue.

3 “(4) The composite return shall report the share of distributive income
4 of each electing owner, the share of distributive income from Oregon sources
5 of each electing owner[, *the amount of tax withheld under ORS 314.781 on*
6 *behalf of each electing owner*] and any other information required by the de-
7 partment. The composite return shall be filed with the department in the
8 time, form and manner prescribed by the department. **The pass-through**
9 **entity shall file an amended composite return to report adjustments**
10 **arising from an audit or other action by the Internal Revenue Service**
11 **or to correct any item reported on the original composite return.**

12 “(5)(a) An electing owner may file a nonresident personal income tax re-
13 turn or a corporate excise or income tax return for the tax year of the
14 electing owner in which the electing owner’s share of distributive income
15 reported on the composite return is properly reportable.

16 “(b) An electing owner that files a return under this subsection shall
17 [*receive credit for any tax paid on behalf of the owner by the pass-through*
18 *entity*] **be allowed a subtraction under ORS chapter 316, 317 or 318 for**
19 **its share of distributive income reported on the composite return.**

20 “(6)(a) **A pass-through entity that files a composite return under**
21 **this section is subject to the administrative provisions of this chapter**
22 **and ORS chapter 305.**

23 “(b) **The department may adopt rules to prevent double taxation or**
24 **double deduction of any amount included in the computation of in-**
25 **come under this section.**

26 “**SECTION 10. Nothing in sections 2 to 5 of this 2019 Act or the**
27 **amendments to ORS 305.242, 314.712, 314.714 or 314.778 by sections 6 to**
28 **9 of this 2019 Act is intended to affect the obligation or right of a**
29 **partner subject to the tax imposed under ORS chapter 316, 317 or 318**
30 **to report changes in the partner’s taxable income subject to taxation**

1 by this state or changes in a taxpayer's tax liability paid to or owing
2 to this state because of changes or corrections by, or as a result of
3 original or amended returns accepted by:

4 “(1) The Internal Revenue Service, in the case of a partner in a
5 partnership that elects the application of section 6221(b) of the Inter-
6 nal Revenue Code; or

7 “(2) The taxing authority of another state, in the case of any part-
8 ner or partnership.

9 “SECTION 11. ORS 314.723 is repealed.

10 “SECTION 12. (1) Sections 2 to 5 of this 2019 Act, the amendments
11 to ORS 305.242, 314.712 and 314.714 by sections 6 to 8 of this 2019 Act
12 and the repeal of ORS 314.723 by section 11 of this 2019 Act apply to
13 partnership adjustments for partnership tax years beginning on or af-
14 ter January 1, 2018.

15 “(2) The amendments to ORS 314.778 by section 9 of this 2019 Act
16 apply to tax years beginning on or after January 1, 2019.

17 “SECTION 13. This 2019 Act takes effect on the 91st day after the
18 date on which the 2019 regular session of the Eightieth Legislative
19 Assembly adjourns sine die.”.

20