

# House Bill 2148

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Requires corporation with Oregon sales in excess of \$100,000 to file corporate excise tax or corporate income tax return.

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

1  
2 Relating to taxes imposed upon corporations; creating new provisions; amending ORS 317.010,  
3 317.267, 317.710 and 317.715; and prescribing an effective date.

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

5 **SECTION 1.** ORS 317.710 is amended to read:

6 317.710. (1) A corporation shall make a return with respect to the tax imposed by this chapter  
7 as provided in this section.

8 (2) If the corporation is a member of an affiliated group of corporations making a consolidated  
9 federal return, it shall file a return and determine its Oregon taxable income as provided in ORS  
10 317.715. The corporation's tax liability shall be joint and several with any other corporation that is  
11 included in a consolidated state return with the corporation under subsection [(5)] **(6)** of this section.

12 (3) If the corporation makes a separate return for federal income tax purposes, it shall file a  
13 separate return under this chapter. The corporation shall determine its Oregon taxable income and  
14 tax liability separately from any other corporation.

15 **(4) If the corporation has Oregon sales, as defined in ORS 317.090, of at least \$100,000 for**  
16 **the tax year, the corporation shall file a return under this chapter or ORS chapter 318.**

17 [(4)] **(5)** For purposes of subsection (3) of this section, if the corporation is not subject to taxa-  
18 tion under the Internal Revenue Code a return for federal income tax purposes includes any form  
19 of return required to be made in lieu of an income tax return under the Internal Revenue Code or  
20 regulations thereunder.

21 [(5)(a)] **(6)(a)** Except as otherwise provided in this section, if two or more corporations subject  
22 to taxation under this chapter are members of the same affiliated group making a consolidated fed-  
23 eral return and are members of the same unitary group, they shall file a consolidated state return.

24 (b) If any corporation that is a member of an affiliated group is permitted or required to deter-  
25 mine its Oregon taxable income on a separate basis under ORS 314.667, or if any corporation is  
26 permitted or required by statute or rule to use different apportionment factors than a corporation  
27 with which it is affiliated, the corporation may not be included in a consolidated state return under  
28 paragraph (a) of this subsection.

29 (c) Whenever two or more corporations are required to file a consolidated state return under  
30 paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of de-

**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 riving Oregon taxable income shall be treated as a reference to all corporations that are included  
 2 in the consolidated state return.

3 (d) A corporation that would not be a member of an affiliated group filing a consolidated state  
 4 return based solely on the application of section 1504(b)(6) of the Internal Revenue Code must be  
 5 included in the consolidated state return filed by the affiliated group.

6 [(6)] (7) If so directed by the department, by rule or instructions on the state tax return form,  
 7 every corporation required to make a return under this chapter shall also file with the return a true  
 8 copy of the corporation's federal income tax return for the same taxable year. For purposes of this  
 9 subsection, the corporation's federal income tax return includes a consolidated federal return for  
 10 an affiliated group of which the corporation is a member. The department may, by rule or in-  
 11 structions, permit a corporation to submit specified excerpts from its federal return in lieu of sub-  
 12 mitting a copy of the entire federal return. The federal return or any part thereof required to be  
 13 filed with the state return is incorporated in and shall be a part of the state return.

14 [(7)(a)] (8)(a) Each foreign or alien insurer and each domestic insurer owned and controlled,  
 15 directly or indirectly, by one or more foreign insurers:

16 (A) Shall determine its Oregon taxable income under ORS 317.650 to 317.665;

17 (B) Shall make a return of the tax imposed by this chapter on a separate basis; and

18 (C) May not be included in a consolidated state return.

19 (b) An interinsurance and reciprocal exchange and its attorney in fact with respect to its at-  
 20 torney in fact net income as a corporate attorney in fact acting as attorney in compliance with ORS  
 21 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange may file a con-  
 22 solidated return under the circumstances in the manner and subject to the rules adopted by the  
 23 department.

24 [(8)] (9) The Department of Revenue may prescribe by rule the method by which a consolidated  
 25 state return shall be filed under this section.

26 **SECTION 2.** ORS 317.010, as amended by section 23, chapter 101, Oregon Laws 2018, is  
 27 amended to read:

28 317.010. As used in this chapter, unless the context requires otherwise:

29 (1) "Centrally assessed corporation" means every corporation the property of which is assessed  
 30 by the Department of Revenue under ORS 308.505 to 308.681.

31 (2) "Department" means the Department of Revenue.

32 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a  
 33 group of affiliated corporations under section 1501 of the Internal Revenue Code.

34 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 [(5)]  
 35 (6).

36 (4) "Doing business" means any transaction or transactions in the course of its activities con-  
 37 ducted within the state by a national banking association, or any other corporation; provided, how-  
 38 ever, that a foreign corporation whose activities in this state are confined to purchases of personal  
 39 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be  
 40 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-  
 41 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-  
 42 termined as provided in section 1504 of the Internal Revenue Code.

43 (5) "Excise tax" means a tax measured by or according to net income imposed upon national  
 44 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing  
 45 and business corporations for the privilege of carrying on or doing business in this state.

1 (6) "Financial institution" has the meaning given that term in ORS 314.610 except that it does  
2 not include a credit union as defined in ORS 723.006, an interstate credit union as defined in ORS  
3 723.001 or a federal credit union.

4 (7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise,  
5 refers to the laws of the United States or to the Internal Revenue Code as they are amended and  
6 in effect:

7 (a) On December 31, 2017; or

8 (b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

9 (8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS  
10 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and  
11 ORS 317.650 to 317.665.

12 (9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers  
13 in subsection (11) of this section and ORS 317.650 to 317.665.

14 (10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a  
15 corporation for which no federal taxable income or loss is determined, as would be determined, un-  
16 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States  
17 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,  
18 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-  
19 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or  
20 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a  
21 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of  
22 income from transactions or activities carried on both within and without the state) applies, to  
23 derive taxable income or loss, the following shall occur:

24 (a) From the amount otherwise determined under this subsection, subtract nonapportionable in-  
25 come, or add nonapportionable loss, whichever is applicable.

26 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-  
27 portionment percentage defined under ORS 314.280, 314.650 or 314.667, whichever is applicable. The  
28 resulting product shall be Oregon apportioned income or loss.

29 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this  
30 subsection, add nonapportionable income allocable entirely to Oregon under ORS 314.280 or 314.625  
31 to 314.645, or subtract nonapportionable loss allocable entirely to Oregon under ORS 314.280 or  
32 314.625 to 314.645. The resulting figure is "taxable income or loss" for those corporations carrying  
33 on taxable transactions or activities both within and without Oregon.

34 (11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or  
35 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-  
36 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting  
37 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or  
38 interinsurance exchange. However, "insurer" does not include title insurers or health care service  
39 contractors operating pursuant to ORS 750.005 to 750.095.

40 **SECTION 3.** ORS 317.267, as amended by section 28, chapter 101, Oregon Laws 2018, is  
41 amended to read:

42 317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income  
43 amounts received as dividends from corporations deducted for federal purposes pursuant to section  
44 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code,  
45 amounts deducted for income repatriated, deemed or otherwise, under An Act to Provide for Re-

1 conciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year  
 2 2018 (P.L. 115-97), amounts paid as dividends by a public utility or telecommunications utility and  
 3 deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends  
 4 eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code  
 5 that are paid by members of an affiliated group that are eliminated from a consolidated federal re-  
 6 turn pursuant to ORS 317.715 (2).

7 (2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of  
 8 this section, there shall be subtracted from federal taxable income an amount equal to 70 percent  
 9 of dividends (determined without regard to section 78 of the Internal Revenue Code) received or  
 10 deemed received from corporations if such dividends are included in federal taxable income. How-  
 11 ever:

12 (a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of  
 13 the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the  
 14 same conditions and in same amount as the dividends received deduction otherwise allowable for  
 15 federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

16 (b) In the case of any dividend received from a 20 percent owned corporation, as defined in  
 17 section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting “80  
 18 percent” for “70 percent.”

19 (c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal  
 20 Revenue Code may not be treated as a dividend for purposes of this subsection.

21 (d) If a dividends received deduction is not allowed for federal tax purposes because of section  
 22 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for  
 23 received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

24 (e) In the case of any dividend received from an alien, domestic or foreign insurer, as defined  
 25 in ORS 731.082, that would be included in the taxpayer’s consolidated Oregon return but for the  
 26 application of ORS 317.710 [(5) or (7)] **(6) or (8)**, this subsection shall be applied by substituting “100  
 27 percent” for “70 percent.”

28 (3) There shall be excluded from the sales factor of any apportionment formula employed to at-  
 29 tribute income to this state any amount subtracted from federal taxable income under subsection (2)  
 30 of this section.

31 **SECTION 4.** ORS 317.715 is amended to read:

32 317.715. (1) If a corporation required to make a return under this chapter is a member of an  
 33 affiliated group of corporations making a consolidated federal return under sections 1501 to 1505  
 34 of the Internal Revenue Code, the corporation’s Oregon taxable income shall be determined begin-  
 35 ning with federal consolidated taxable income of the affiliated group as provided in this section.

36 (2) If the affiliated group, of which the corporation subject to taxation under this chapter is a  
 37 member, consists of more than one unitary group or includes any alien, domestic or foreign insurer,  
 38 as defined in ORS 731.082, that is excluded from the consolidated state return under ORS 317.710  
 39 [(5) or (7)] **(6) or (8)**, before the additions, subtractions, adjustments and modifications to federal  
 40 taxable income provided for in this chapter are made, and before allocation and apportionment as  
 41 provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed.  
 42 Modified federal consolidated taxable income shall be determined by eliminating from the federal  
 43 consolidated taxable income of the affiliated group the separate taxable income, as determined under  
 44 Treasury Regulations adopted under section 1502 of the Internal Revenue Code, and any deductions  
 45 or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed

1 under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, attributable  
 2 to the member or members of any unitary group of which the corporation is not a member or to  
 3 insurers excluded from the consolidated state return under ORS 317.710 [(5) or (7)] **(6) or (8)**.

4 (3)(a) After modified federal consolidated taxable income is determined under subsection (2) of  
 5 this section, the additions, subtractions, adjustments and modifications prescribed by this chapter  
 6 shall be made to the modified federal consolidated taxable income of the remaining members of the  
 7 affiliated group, where applicable, as if all such members were subject to taxation under this chap-  
 8 ter. After those modifications are made, Oregon taxable income or loss shall be determined as pro-  
 9 vided in ORS 317.010 (10)(a) to (c), if necessary.

10 (b) In the computation of the Oregon apportionment percentage for a corporation that is a  
 11 member of an affiliated group filing a consolidated federal return, there shall be taken into consid-  
 12 eration only the property, payroll, sales or other factors of those members of the affiliated group  
 13 whose items of income, expense, gain or loss remain in modified federal consolidated taxable income  
 14 after the eliminations required under subsection (2) of this section. Those members of an affiliated  
 15 group making a consolidated federal return or a consolidated state return may not be treated as one  
 16 taxpayer for purposes of determining whether any member of the group is taxable in this state or  
 17 any other state with respect to questions of jurisdiction to tax or the composition of the apporportion-  
 18 ment factors used to attribute income to this state under ORS 314.280 or 314.605 to 314.675.

19 **SECTION 5. The amendments to ORS 317.010, 317.267, 317.710 and 317.715 by sections 1**  
 20 **to 4 of this 2019 Act apply to tax years beginning on or after January 1, 2020.**

21 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
 22 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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