

D R A F T

SUMMARY

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;
3 amending ORS 317.010, 317.267, 317.710 and 317.715; and prescribing an
4 effective date.

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

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

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

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

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

19 **(4) If the corporation has Oregon sales, as defined in ORS 317.090,**
20 **of at least \$100,000 for the tax year, the corporation shall file a return**

1 **under this chapter or ORS chapter 318.**

2 [(4)] (5) For purposes of subsection (3) of this section, if the corporation
3 is not subject to taxation under the Internal Revenue Code a return for
4 federal income tax purposes includes any form of return required to be made
5 in lieu of an income tax return under the Internal Revenue Code or regu-
6 lations thereunder.

7 [(5)(a)] (6)(a) Except as otherwise provided in this section, if two or more
8 corporations subject to taxation under this chapter are members of the same
9 affiliated group making a consolidated federal return and are members of the
10 same unitary group, they shall file a consolidated state return.

11 (b) If any corporation that is a member of an affiliated group is permitted
12 or required to determine its Oregon taxable income on a separate basis under
13 ORS 314.667, or if any corporation is permitted or required by statute or rule
14 to use different apportionment factors than a corporation with which it is
15 affiliated, the corporation may not be included in a consolidated state return
16 under paragraph (a) of this subsection.

17 (c) Whenever two or more corporations are required to file a consolidated
18 state return under paragraph (a) of this subsection, any reference in this
19 chapter to a corporation for purposes of deriving Oregon taxable income
20 shall be treated as a reference to all corporations that are included in the
21 consolidated state return.

22 (d) A corporation that would not be a member of an affiliated group filing
23 a consolidated state return based solely on the application of section
24 1504(b)(6) of the Internal Revenue Code must be included in the consolidated
25 state return filed by the affiliated group.

26 [(6)] (7) If so directed by the department, by rule or instructions on the
27 state tax return form, every corporation required to make a return under this
28 chapter shall also file with the return a true copy of the corporation's federal
29 income tax return for the same taxable year. For purposes of this subsection,
30 the corporation's federal income tax return includes a consolidated federal
31 return for an affiliated group of which the corporation is a member. The

1 department may, by rule or instructions, permit a corporation to submit
2 specified excerpts from its federal return in lieu of submitting a copy of the
3 entire federal return. The federal return or any part thereof required to be
4 filed with the state return is incorporated in and shall be a part of the state
5 return.

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

8 (A) Shall determine its Oregon taxable income under ORS 317.650 to
9 317.665;

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

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

13 (b) An interinsurance and reciprocal exchange and its attorney in fact
14 with respect to its attorney in fact net income as a corporate attorney in fact
15 acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and
16 731.470 for the reciprocal or interinsurance exchange may file a consolidated
17 return under the circumstances in the manner and subject to the rules
18 adopted by the department.

19 [(8)] **(9)** The Department of Revenue may prescribe by rule the method by
20 which a consolidated state return shall be filed under this section.

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

23 317.010. As used in this chapter, unless the context requires otherwise:

24 (1) “Centrally assessed corporation” means every corporation the property
25 of which is assessed by the Department of Revenue under ORS 308.505 to
26 308.681.

27 (2) “Department” means the Department of Revenue.

28 (3)(a) “Consolidated federal return” means the return permitted or re-
29 quired to be filed by a group of affiliated corporations under section 1501 of
30 the Internal Revenue Code.

31 (b) “Consolidated state return” means the return required to be filed un-

1 der ORS 317.710 [(5)] (6).

2 (4) "Doing business" means any transaction or transactions in the course
3 of its activities conducted within the state by a national banking association,
4 or any other corporation; provided, however, that a foreign corporation
5 whose activities in this state are confined to purchases of personal property,
6 and the storage thereof incident to shipment outside the state, shall not be
7 deemed to be doing business unless such foreign corporation is an affiliate
8 of another foreign or domestic corporation which is doing business in
9 Oregon. Whether or not corporations are affiliated shall be determined as
10 provided in section 1504 of the Internal Revenue Code.

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

15 (6) "Financial institution" has the meaning given that term in ORS
16 314.610 except that it does not include a credit union as defined in ORS
17 723.006, an interstate credit union as defined in ORS 723.001 or a federal
18 credit union.

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

22 (a) On December 31, 2017; or

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

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

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

31 (10) "Taxable income or loss" means the taxable income or loss deter-

1 mined, or in the case of a corporation for which no federal taxable income
2 or loss is determined, as would be determined, under chapter 1, Subtitle A
3 of the Internal Revenue Code and any other laws of the United States re-
4 lating to the determination of taxable income or loss of corporate taxpayers,
5 with the additions, subtractions, adjustments and other modifications as are
6 specifically prescribed by this chapter except that in determining taxable
7 income or loss for any year, no deduction under ORS 317.476 or 317.478 and
8 section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corpo-
9 ration is a corporation to which ORS 314.280 or 314.605 to 314.675 (requiring
10 or permitting apportionment of income from transactions or activities carried
11 on both within and without the state) applies, to derive taxable income or
12 loss, the following shall occur:

13 (a) From the amount otherwise determined under this subsection, subtract
14 nonapportionable income, or add nonapportionable loss, whichever is appli-
15 cable.

16 (b) Multiply the amount determined under paragraph (a) of this sub-
17 section by the Oregon apportionment percentage defined under ORS 314.280,
18 314.650 or 314.667, whichever is applicable. The resulting product shall be
19 Oregon apportioned income or loss.

20 (c) To the amount determined as Oregon apportioned income or loss under
21 paragraph (b) of this subsection, add nonapportionable income allocable en-
22 tirely to Oregon under ORS 314.280 or 314.625 to 314.645, or subtract
23 nonapportionable loss allocable entirely to Oregon under ORS 314.280 or
24 314.625 to 314.645. The resulting figure is “taxable income or loss” for those
25 corporations carrying on taxable transactions or activities both within and
26 without Oregon.

27 (11) As used in ORS 317.122 and 317.650 to 317.665, “insurer” means any
28 domestic, foreign or alien insurer as defined in ORS 731.082 and any inter-
29 insurance and reciprocal exchange and its attorney in fact with respect to
30 its attorney in fact net income as a corporate attorney in fact acting as at-
31 torney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the

1 reciprocal or interinsurance exchange. However, “insurer” does not include
2 title insurers or health care service contractors operating pursuant to ORS
3 750.005 to 750.095.

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

6 317.267. (1) To derive Oregon taxable income, there shall be added to
7 federal taxable income amounts received as dividends from corporations de-
8 ducted for federal purposes pursuant to section 243 or 245 of the Internal
9 Revenue Code, except section 245(c) of the Internal Revenue Code, amounts
10 deducted for income repatriated, deemed or otherwise, under An Act to Pro-
11 vide for Reconciliation Pursuant to Titles II and V of the Concurrent Re-
12 solution on the Budget for Fiscal Year 2018 (P.L. 115-97), amounts paid as
13 dividends by a public utility or telecommunications utility and deducted for
14 federal purposes pursuant to section 247 of the Internal Revenue Code or
15 dividends eliminated under Treasury Regulations adopted under section 1502
16 of the Internal Revenue Code that are paid by members of an affiliated group
17 that are eliminated from a consolidated federal return pursuant to ORS
18 317.715 (2).

19 (2) To derive Oregon taxable income, after the modification prescribed
20 under subsection (1) of this section, there shall be subtracted from federal
21 taxable income an amount equal to 70 percent of dividends (determined
22 without regard to section 78 of the Internal Revenue Code) received or
23 deemed received from corporations if such dividends are included in federal
24 taxable income. However:

25 (a) In the case of any dividend on debt-financed portfolio stock as de-
26 scribed in section 246A of the Internal Revenue Code, the subtraction al-
27 lowed under this subsection shall be reduced under the same conditions and
28 in same amount as the dividends received deduction otherwise allowable for
29 federal income tax purposes is reduced under section 246A of the Internal
30 Revenue Code.

31 (b) In the case of any dividend received from a 20 percent owned corpo-

1 ration, as defined in section 243(c) of the Internal Revenue Code, this sub-
2 section shall be applied by substituting “80 percent” for “70 percent.”

3 (c) A dividend that is not treated as a dividend under section 243(d) or
4 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for
5 purposes of this subsection.

6 (d) If a dividends received deduction is not allowed for federal tax pur-
7 poses because of section 246(a) or (c) of the Internal Revenue Code, a sub-
8 traction may not be made under this subsection for received dividends that
9 are described in section 246(a) or (c) of the Internal Revenue Code.

10 (e) In the case of any dividend received from an alien, domestic or foreign
11 insurer, as defined in ORS 731.082, that would be included in the taxpayer’s
12 consolidated Oregon return but for the application of ORS 317.710 [(5) or
13 (7)] **(6) or (8)**, this subsection shall be applied by substituting “100 percent”
14 for “70 percent.”

15 (3) There shall be excluded from the sales factor of any apportionment
16 formula employed to attribute income to this state any amount subtracted
17 from federal taxable income under subsection (2) of this section.

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

19 317.715. (1) If a corporation required to make a return under this chapter
20 is a member of an affiliated group of corporations making a consolidated
21 federal return under sections 1501 to 1505 of the Internal Revenue Code, the
22 corporation’s Oregon taxable income shall be determined beginning with
23 federal consolidated taxable income of the affiliated group as provided in this
24 section.

25 (2) If the affiliated group, of which the corporation subject to taxation
26 under this chapter is a member, consists of more than one unitary group or
27 includes any alien, domestic or foreign insurer, as defined in ORS 731.082,
28 that is excluded from the consolidated state return under ORS 317.710 [(5)
29 or (7)] **(6) or (8)**, before the additions, subtractions, adjustments and modifi-
30 cations to federal taxable income provided for in this chapter are made, and
31 before allocation and apportionment as provided in ORS 317.010 (10), if any,

1 modified federal consolidated taxable income shall be computed. Modified
2 federal consolidated taxable income shall be determined by eliminating from
3 the federal consolidated taxable income of the affiliated group the separate
4 taxable income, as determined under Treasury Regulations adopted under
5 section 1502 of the Internal Revenue Code, and any deductions or additions
6 or items of income, expense, gain or loss for which consolidated treatment
7 is prescribed under Treasury Regulations adopted under section 1502 of the
8 Internal Revenue Code, attributable to the member or members of any
9 unitary group of which the corporation is not a member or to insurers ex-
10 cluded from the consolidated state return under ORS 317.710 [(5) or (7)] **(6)**
11 **or (8)**.

12 (3)(a) After modified federal consolidated taxable income is determined
13 under subsection (2) of this section, the additions, subtractions, adjustments
14 and modifications prescribed by this chapter shall be made to the modified
15 federal consolidated taxable income of the remaining members of the affil-
16 iated group, where applicable, as if all such members were subject to taxa-
17 tion under this chapter. After those modifications are made, Oregon taxable
18 income or loss shall be determined as provided in ORS 317.010 (10)(a) to (c),
19 if necessary.

20 (b) In the computation of the Oregon apportionment percentage for a
21 corporation that is a member of an affiliated group filing a consolidated
22 federal return, there shall be taken into consideration only the property,
23 payroll, sales or other factors of those members of the affiliated group whose
24 items of income, expense, gain or loss remain in modified federal consol-
25 idated taxable income after the eliminations required under subsection (2)
26 of this section. Those members of an affiliated group making a consolidated
27 federal return or a consolidated state return may not be treated as one tax-
28 payer for purposes of determining whether any member of the group is tax-
29 able in this state or any other state with respect to questions of jurisdiction
30 to tax or the composition of the apportionment factors used to attribute in-
31 come to this state under ORS 314.280 or 314.605 to 314.675.

1 **SECTION 5.** The amendments to ORS 317.010, 317.267, 317.710 and
2 317.715 by sections 1 to 4 of this 2019 Act apply to tax years beginning
3 on or after January 1, 2020.

4 **SECTION 6.** This 2019 Act takes effect on the 91st day after the date
5 on which the 2019 regular session of the Eightieth Legislative Assem-
6 bly adjourns sine die.

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