

D R A F T

SUMMARY

Provides that interstate broadcaster's market for sales, used in determination of receipts factor in apportionment formula for corporate excise tax, is in state if customer's corporate domicile is in state or if individual customer is resident of state.

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 apportionment of income of interstate broadcasters; creating new
3 provisions; amending ORS 314.665 and 314.666; repealing ORS 314.680,
4 314.682, 314.684, 314.686, 314.688 and 314.690; and prescribing an effective
5 date.

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

6 **SECTION 1.** ORS 314.666 is amended to read:

7 314.666. (1) A taxpayer's market for sales is in this state:

8 (a) In the case of the sale, rental, lease or license of real property, if and
9 to the extent the property is located in this state.

10 (b) In the case of the rental, lease or license of tangible personal property,
11 if and to the extent the property is located in this state.

12 (c) In the case of the sale of a service, if and to the extent the service is
13 delivered to a location in this state.

14 (2) A taxpayer's market for sales is in this state in the case of intangible
15 property that is rented, leased or licensed, if and to the extent the property
16 is used in this state. Intangible property utilized in marketing a good or
17 service to a consumer is deemed to be used in this state if that good or ser-
18

1 vice is purchased by a consumer that is in this state.

2 (3) A taxpayer's market for sales is in this state in the case of intangible
3 property that is sold, if and to the extent the property is used in this state.

4 Under this subsection:

5 (a) A contract right, government license or similar intangible property
6 that authorizes the holder to conduct a business activity in a specific ge-
7 ographic area is deemed to be used in this state if the geographic area in-
8 cludes all or part of this state.

9 (b) Intangible property sales that are contingent on the productivity, use
10 or disposition of the intangible property shall be treated as the rental, lease
11 or licensing of such intangible property under subsection (2) of this section.

12 (c) All other intangible property sales shall be excluded from the sales
13 factor.

14 **(4)(a) As used in this subsection:**

15 **(A)(i) "Broadcaster" means a television network, a cable program
16 network or a television distribution company.**

17 **(ii) "Broadcaster" does not include a cable system operator, a direct
18 broadcast satellite system operator or a television or radio station li-
19 censed by the Federal Communications Commission.**

20 **(B) "Broadcasting activities" means the transmission of any one-
21 way electronic signal by radio waves, microwaves, wires, coaxial ca-
22 bles, wave guides or any other conduit of communication.**

23 **(C) "Commercial domicile" has the meaning given that term in ORS
24 314.610.**

25 **(D) "Customer" means an advertiser, a licensee or any other person
26 that has a direct contractual relationship with an interstate
27 broadcaster under which revenue is derived by the interstate
28 broadcaster.**

29 **(b) The market for sales of a taxpayer that is an interstate
30 broadcaster is in this state:**

31 **(A) If the commercial domicile of the customer is in this state; or**

1 **(B) In the case of an individual customer, if the customer is a res-**
2 **ident of this state.**

3 [(4)] (5) If the state or states of assignment under subsections (1) to [(3)]
4 (4) of this section cannot be determined, the state or states of assignment
5 shall be reasonably approximated.

6 **SECTION 2.** ORS 314.665 is amended to read:

7 314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the
8 numerator of which is the total sales of the taxpayer in this state during the
9 tax period, and the denominator of which is the total sales of the taxpayer
10 everywhere during the tax period.

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

12 (a) The property is delivered or shipped to a purchaser, other than the
13 United States Government, within this state regardless of the f.o.b. point or
14 other conditions of the sale; or

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

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

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

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

27 (B) "Taxpayer" means a taxpayer as defined in section 7701 of the Inter-
28 nal Revenue Code, an affiliate of the person storing goods in a public ware-
29 house or a person that is related under section 267 of the Internal Revenue
30 Code to the person storing goods in a public warehouse.

31 (3) Subsection (2)(b) of this section does not apply to sales of tangible

1 personal property if:

2 (a) The sales are included in the numerator of a formula used to apportion
3 income to another state of the United States, a foreign country or the Dis-
4 trict of Columbia; and

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

7 (4) Sales, other than sales of tangible personal property, are in this state
8 if the taxpayer's market for sales is in this state, as determined under ORS
9 314.666.

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

14 (6) The department may determine that a warehouse that meets the defi-
15 nition of "public warehouse" under this section may not be treated as a
16 public warehouse if the warehouse is being used primarily for tax avoidance
17 purposes or if transactions related to the use of the warehouse are primarily
18 for tax avoidance purposes.

19 (7) As used in this section, "public warehouse":

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

22 (b) Does not include a warehouse that is owned by a person that is related
23 to the person that owns goods that are stored in the warehouse, as deter-
24 mined under section 267 of the Internal Revenue Code, or an affiliate of the
25 person that owns goods that are stored in the warehouse.

26 **SECTION 3. ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690**
27 **are repealed.**

28 **SECTION 4. The amendments to ORS 314.665 and 314.666 by sections**
29 **1 and 2 of this 2019 Act and the repeal of ORS 314.680, 314.682, 314.684,**
30 **314.686, 314.688 and 314.690 by section 3 of this 2019 Act apply to tax**
31 **years beginning on or after January 1, 2020.**

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

4
