

Enrolled
House Bill 2273

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Revenue)

CHAPTER

AN ACT

Relating to methods of determining taxpayer business activity in state; creating new provisions; amending ORS 314.610 and 314.665; and prescribing an effective date.

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

SECTION 1. ORS 314.610 is amended to read:

314.610. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, the management, use or rental, and the disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Financial institution" means a person, corporation or other business entity that is any of the following:

(a) A bank holding company under the laws of this state or under the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended.

(b) A savings and loan holding company under the National Housing Act, 12 U.S.C. 1701 et seq., as amended.

(c) A national bank organized and existing as a national bank association under the National Bank Act, 12 U.S.C. 21 et seq., as amended.

(d) A savings association, as defined in 12 U.S.C. 1813(b)(1), as amended.

(e) A bank or thrift institution incorporated or organized under the laws of any state.

(f) An entity organized under the provisions of 12 U.S.C. 611 to 631, as amended.

(g) An agency or branch of a foreign bank, as defined in 12 U.S.C. 3101, as amended.

(h) A state credit union with loan assets that exceed \$50,000,000 as of the first day of the taxable year of the state credit union.

(i) A production credit association subject to 12 U.S.C. 2071 et seq., as amended.

(j) A corporation, more than 50 percent of the voting stock of which is owned, directly or indirectly, by a person, corporation or other business entity described in paragraphs (a) to (i) of this subsection, provided that the corporation is not an insurer taxable under ORS 317.655.

(k) An entity that is not otherwise described in this subsection, that is not an insurer taxable under ORS 317.655 and that derives more than 50 percent of its gross income from activities that

a person, corporation or entity described in paragraph (c), (d), (e), (f), (g), (h), (i) or (L) of this subsection is authorized to conduct, not taking into account any income derived from nonrecurring extraordinary sources.

(L) A person that derives at least 50 percent of the person's annual average gross income, for financial accounting purposes for the current tax year and the two preceding tax years, from finance leases, excluding any gross income from incidental or occasional transactions. For purposes of this paragraph, "finance lease" means:

(A) A lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks of the ownership of the leased property;

(B) A direct financing lease or a leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13; or

(C) Any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any business entity whose principal business is ownership and operation for public use of any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(7) "Sales" means all gross receipts of the taxpayer **that are not allocated under ORS 314.615 to 314.645 and that are received from transactions and activity occurring in the regular course of the taxpayer's trade or business, except:**

(a)(A) Receipts from hedging transactions and from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities;

(B) Property or money received or acquired by an agent, intermediary, fiduciary or other person acting in a similar capacity on behalf of another in excess of the recipient's commission, fee or other remuneration; or

(C) Amounts received from others and held in trust by the taxpayer; or

(b) Other exceptions designated by rule by the Department of Revenue.

(8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SECTION 2. ORS 314.665 is amended to read:

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

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

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or 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 [shall] **does** not apply to sales of tangible personal property if:

(a) The sales are included in the numerator of a formula used to apportion business 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 business income.

(4) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS 314.682, 314.684, 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) For purposes of this section, "sales":]

[(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible assets, including but not limited to securities, unless those receipts are derived from the taxpayer's primary business activity.]

[(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from the primary business activity of the taxpayer but included in the taxpayer's business income.]

[(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets used in the regular course of the taxpayer's trade or business if a substantial amount of the gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state.]

[(7)] (6) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.

[(8)] (7) As used in this section, "public warehouse":

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

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

SECTION 3. If House Bill 2275 becomes law, section 2 of this 2017 Act (amending ORS 314.665) is repealed and ORS 314.665, as amended by section 5, chapter 43, Oregon Laws 2017 (Enrolled House Bill 2275), is amended to read:

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

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

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or 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 (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(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) For purposes of this section, "sales":*]

[*(a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible assets, including but not limited to securities, unless those receipts are derived from the taxpayer's primary business activity.*]

[*(b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from the primary business activity of the taxpayer but included in the taxpayer's apportionable income.*]

[*(c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or assets used in the regular course of the taxpayer's trade or business if a substantial amount of the gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to this state.*]

[*(7) (6) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.*]

[*(8) (7) As used in this section, "public warehouse":*]

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

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

SECTION 4. ORS 314.610 (7):

(1) Does not apply to taxpayers that are required to allocate and apportion income under ORS 314.280; and

(2) Does not affect the power of the Department of Revenue to adopt rules under ORS 314.280.

SECTION 5. The amendments to ORS 314.610 and 314.665 by sections 1 and 2 of this 2017 Act apply to tax years beginning on or after January 1, 2018.

SECTION 6. If House Bill 2275 becomes law, section 5 of this 2017 Act is amended to read:

Sec. 5. The amendments to ORS 314.610 and 314.665 by sections 1 and [2] **3** of this 2017 Act apply to tax years beginning on or after January 1, 2018.

SECTION 7. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House March 6, 2017

Repassed by House July 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 1, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State