

A-Engrossed
Senate Bill 28

Ordered by the Senate May 24
Including Senate Amendments dated May 24

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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.

[Requires all members of affiliated group of corporations to be treated as single taxpayer and requires sales of all members to be included in numerator for computation of Oregon apportionment percentage if any member is taxable in state.]

Replaces standard using cost of performance with market-sourcing standard for purposes of determining sales factor applicable to intangible property and services, as used in corporate excise tax apportionment calculation.

Applies to tax years beginning on or after January 1, 2018.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to apportionment of corporate income; creating new provisions; amending ORS 314.665; and
3 prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 314.605 to**
6 **314.675.**

7 **SECTION 2. (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 to the extent**
9 **the property is located in this state.**

10 (b) **In the case of the rental, lease or license of tangible personal property, if and to the**
11 **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 delivered to a**
13 **location in this state.**

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

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

20 (a) **A contract right, government license or similar intangible property that authorizes**
21 **the holder to conduct a business activity in a specific geographic area is deemed to be used**
22 **in this state if the geographic area includes all or part of this state.**

23 (b) **Intangible property sales that are contingent on the productivity, use or disposition**

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 **of the intangible property shall be treated as the rental, lease or licensing of such intangible**
2 **property under subsection (2) of this section.**

3 **(c) All other intangible property sales shall be excluded from the sales factor.**

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

6 **SECTION 3.** ORS 314.665 is amended to read:

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

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

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

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

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

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

20 (ii) The taxpayer's only activities in Oregon are the storage of the goods in the public ware-
21 house prior to shipment and the presence of employees within this state solely for purposes of so-
22 liciting sales of the taxpayer's products; and

23 (B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an
24 affiliate of the person storing goods in a public warehouse or a person that is related under section
25 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

26 (3) Subsection (2)(b) of this section shall not apply to sales of tangible personal property if:

27 (a) The sales are included in the numerator of a formula used to apportion business income to
28 another state of the United States, a foreign country or the District of Columbia; and

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

31 (4) Sales, other than sales of tangible personal property, are in this state if [(a) *the income-*
32 *producing activity is performed in this state; or (b) the income-producing activity is performed both in*
33 *and outside this state and a greater proportion of the income-producing activity is performed in this*
34 *state than in any other state, based on costs of performance.] **the taxpayer's market for sales is in**
35 **this state, as determined under section 2 of this 2017 Act.***

36 (5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS
37 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are con-
38 sistent with the determination of the sales factor under this section.

39 (6) For purposes of this section, "sales":

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

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

45 (c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or as-

1 sets used in the regular course of the taxpayer's trade or business if a substantial amount of the
2 gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets
3 used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross re-
4 cepts arising from incidental or occasional transactions or activities may be excluded from the sales
5 factor unless the exclusion would materially affect the amount of income apportioned to this state.

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

10 (8) As used in this section, "public warehouse":

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

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

16 **SECTION 4. Section 2 of this 2017 Act and ORS 314.665 (4):**

17 **(1) Do not apply to taxpayers that are required to allocate and apportion income under**
18 **ORS 314.280; and**

19 **(2) Do not affect the power of the Department of Revenue to adopt rules under ORS**
20 **314.280.**

21 **SECTION 5. Section 2 of this 2017 Act and the amendments to ORS 314.665 by section 3**
22 **of this 2017 Act apply to tax years beginning on or after January 1, 2018.**

23 **SECTION 6. This 2017 Act takes effect on the 91st day after the date on which the 2017**
24 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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