

SB 28-12  
(LC 729)  
5/16/17 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO  
SENATE BILL 28**

1 On page 1 of the printed bill, line 2, delete “317.715” and insert  
2 “314.665”.

3 Delete lines 5 through 28 and delete page 2 and insert:

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

6 **“SECTION 2. (1) A taxpayer’s market for sales is in this state:**

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

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

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

13 **“(2) A taxpayer’s market for sales is in this state in the case of in-**  
14 **tangible property that is rented, leased or licensed, if and to the extent**  
15 **the property is used in this state. Intangible property utilized in mar-**  
16 **keting 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**  
18 **state.**

19 **“(3) A taxpayer’s market for sales is in this state in the case of in-**  
20 **tangible property that is sold, if and to the extent the property is used**  
21 **in this state. Under this subsection:**

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

5       “(b) Intangible property sales that are contingent on the produc-  
6 tivity, use or disposition of the intangible property shall be treated as  
7 the rental, lease or licensing of such intangible property under sub-  
8 section (2) of this section.

9       “(c) All other intangible property sales shall be excluded from the  
10 sales factor.

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

14       “**SECTION 3.** ORS 314.665 is amended to read:

15       “314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the  
16 numerator of which is the total sales of the taxpayer in this state during the  
17 tax period, and the denominator of which is the total sales of the taxpayer  
18 everywhere during the tax period.

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

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

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

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

29       “(i) The taxpayer’s only activity in Oregon is the storage of the goods in  
30 the public warehouse prior to shipment; or

1       “(ii) The taxpayer’s only activities in Oregon are the storage of the goods  
2 in the public warehouse prior to shipment and the presence of employees  
3 within this state solely for purposes of soliciting sales of the taxpayer’s  
4 products; and

5       “(B) ‘Taxpayer’ means a taxpayer as defined in section 7701 of the Inter-  
6 nal Revenue Code, an affiliate of the person storing goods in a public ware-  
7 house or a person that is related under section 267 of the Internal Revenue  
8 Code to the person storing goods in a public warehouse.

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

11       “(a) The sales are included in the numerator of a formula used to appor-  
12 tion business income to another state of the United States, a foreign country  
13 or the District of Columbia; and

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

16       “(4) Sales, other than sales of tangible personal property, are in this state  
17 if [(a) *the income-producing activity is performed in this state; or (b) the*  
18 *income-producing activity is performed both in and outside this state and a*  
19 *greater proportion of the income-producing activity is performed in this state*  
20 *than in any other state, based on costs of performance.] **the taxpayer’s**  
21 **market for sales is in this state, as determined under section 2 of this**  
22 **2017 Act.***

23       “(5) Where the sales apportionment factor is determined by administrative  
24 rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department  
25 of Revenue shall adopt rules that are consistent with the determination of  
26 the sales factor under this section.

27       “(6) For purposes of this section, ‘sales’:

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

1 “(b) Includes net gain from the sale, exchange or redemption of intangible  
2 assets not derived from the primary business activity of the taxpayer but  
3 included in the taxpayer’s business income.

4 “(c) Excludes gross receipts arising from an incidental or occasional sale  
5 of a fixed asset or assets used in the regular course of the taxpayer’s trade  
6 or business if a substantial amount of the gross receipts of the taxpayer arise  
7 from an incidental or occasional sale or sales of fixed assets used in the  
8 regular course of the taxpayer’s trade or business. Insubstantial amounts of  
9 gross receipts arising from incidental or occasional transactions or activities  
10 may be excluded from the sales factor unless the exclusion would materially  
11 affect the amount of income apportioned to this state.

12 “(7) The department may determine that a warehouse that meets the de-  
13 finition of ‘public warehouse’ under this section may not be treated as a  
14 public warehouse if the warehouse is being used primarily for tax avoidance  
15 purposes or if transactions related to the use of the warehouse are primarily  
16 for tax avoidance purposes.

17 “(8) As used in this section, ‘public warehouse’:

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

20 “(b) Does not include a warehouse that is owned by a person that is re-  
21 lated to the person that owns goods that are stored in the warehouse, as  
22 determined under section 267 of the Internal Revenue Code, or an affiliate  
23 of the person that owns goods that are stored in the warehouse.

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

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

27 **“(2) Do not affect the power of the Department of Revenue to adopt**  
28 **rules under ORS 314.280.**

29 **“SECTION 5. Section 2 of this 2017 Act and the amendments to ORS**  
30 **314.665 by section 3 of this 2017 Act apply to tax years beginning on**

1 or after January 1, 2018.

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

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